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

UNITED STATES BANKRUPTCY COURT Northern District of Texas	PROOF OF CLAIM
Name of Debtor: Opus West Corporation	Case Number: 09-34356-hdh11

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

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

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

Court Claim Number: _____ (*If known*)

Filed on: _____

Name and address where notices should be sent:
Thompson & Knight LLP
c/o John S. Brannon
1722 Routh St., Suite 1500
Dallas, Texas 75201
Telephone number:
(214) 969-1700

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

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

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

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

1. Amount of Claim as of Date Case Filed: $82,215,239.55

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
00616

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.

Irvine Center III

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 (IRVINE CENTER III) 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 three (3) other Lenders (as such terms are hereinafter defined).

2. Pursuant to that Construction Loan Agreement dated as of October 11, 2006 (the "Loan Agreement"), LaSalle Bank National Association ("LaSalle"), as the agent on behalf of itself, MidFirst Bank, Union Bank of California, N.A., and Richter-Schroeder Company, Inc. (collectively, the "Lenders") agreed to make a loan to Irvine Center Partners III, L.L.C. ("Irvine Center III"), as Borrower, in the original principal amount of Ninety-Three Million Three Hundred Thousand and No/100 Dollars ($93,300,000.00) (the "Loan"). The purpose of the Loan was to provide financing for the development and construction of improvements on the Property (as defined herein). The Loan Agreement was amended and restated as of October 31, 2006.

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. That certain Promissory Note dated as of October 11, 2006, in the original principal amount of $93,300,000.00; those certain Amended and Restated Promissory Notes, each dated as of October 31, 2006, made by Irvine Center III to each of the Lenders in the amounts of $24,300,000.00 [LaSalle], $23,500,000.00 [Union Bank of California], $23,500,000.00 [Richter-Schroeder Company, Inc.], and $22,000,000.00 [MidFirst Bank] (collectively, as amended, the "Notes").

b. That certain Construction Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing executed by Irvine Center III to First American Title Insurance Company, as Trustee, for the benefit of Agent and recorded in the Official Records of Orange County, California (the "Official Records") on October 11, 2006, as Document No. 2006000674880 (as amended, "Deed of Trust"). The Deed of Trust encumbers, among other things, certain real property located in Orange County, California, as more particularly described

therein (the "Property"). The Deed of Trust, inclusive of all assignment and security provisions contained therein, gives Agent a security interest in the Property, 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. Modification of Loan Documents dated as of October 31, 2006 and recorded October 31, 2006 and recorded in the Official Records on November 1, 2006 as Document No. 2006000739166 (the "Modification Agreement").

d. Those certain consents and assignments dated as of October 11, 2006, collectively referred to herein as the "Consents and Assignments":

i. That certain Assignment of Rents and Leases executed by Irvine Center III in favor of Agent and recorded in the Official Records on October 11, 2006 as Document No. 2006000674881;

ii. That certain Assignment and Subordination of Management Agreement, executed by Irvine Center III in favor of Agent;

iii. That certain Assignment of Architect's Contract; and

iv. That certain Contractor's Consent Agreement.

e. On March 21, 2008, Agent, Irvine Center III and certain other parties entered into a letter agreement that amended certain provisions of the Loan Agreement (the "Modification Letter Agreement").

f. A form UCC-1 financing statement was filed in the Official Records on October 11, 2006, as Document No. 2006000674882 naming Irvine Center III as debtor and Agent as secured party (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 and Completion on October 11, 2006, wherein Opus West Corporation irrevocably and unconditionally guaranteed the obligations of Irvine Center III to Agent and the other Lenders under the Loan. Opus West Corporation further executed a Certificate of Guarantor of the same date. Opus West Corporation and Irvine Center III entered into that certain Certificate of Representations, Warranties and Covenants for the benefit of Agent, dated as of October 11, 2006.

6. Prior to the July 6, 2009 Opus West Corporation petition date (the "Petition Date"), Irvine Center III defaulted under the terms of the Loan Documents. As a result of the events of default, Agent sent Irvine Center III default letters dated April 6, April 9, May 5, and June 16, 2009, notifying it of the various events of default that had occurred and demanding that Irvine Center III pay all past-due amounts in accordance with the terms of the Loan Documents. Irvine Center III failed to cure the defaults under the Loan, and, as a result, Agent exercised its rights under the Loan Documents to accelerate the Loan and declare all outstanding amounts immediately due and payable.

7. On July 2, 2009, Agent sent Irvine Center III an acceleration letter, notifying it of Agent's election to accelerate the Loan and demanding immediate repayment of all outstanding amounts (the "Notice of Default").

8. 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 **$82,215,239.55** (the "Liquidated Agent Claim Amount"), which consists of:

Principal	$80,947,194.78
Interest	$1,109,959.67
Prepetition Costs and Fees of Bank of America	
Attorney's Fees	$23,247.96
Appraisal costs	$15,000.00
Late Charges	$50,860.38
Consulting Fees	$24,454.81
Trustee Fees	$44,521.95
	$158,085.10
TOTAL:	**$82,215,239.55**

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

Bank of America, N.A.	26.05%
Union Bank of California	25.19%
MidFirst Bank	23.58%
M&I Marshall & Ilsley Bank[1]	25.19%
	100.00%

10. 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. Union Bank of California $ as yet undetermined

b. MidFirst Bank $ as yet undetermined

c. M&I Marshall & Ilsley Bank $ as yet undetermined

11. 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

[1] Richter-Schroeder Company, Inc. transferred its interest in the Loan to M&I Marshall & Ilsley Bank.

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.

12. As the amount of the claims asserted in paragraph 11 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 **$82,215,239.55 (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]

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

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

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

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

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

Date: November 9, 2009

Respectfully submitted,

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

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

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

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

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

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

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ATTACHMENT 2: Promissory Note dated October 11, 2006, in the original principal amount of $93,300,000.00; and Amended and Restated Promissory Notes dated October 31, 2006 in the amounts of $24,300,000.00 (LaSalle), $23,500,000.00 (Union Bank of California), $23,500,000.00 (Richter-Schroeder Company), and $22,000,000.00 (MidFirst Bank).

ATTACHMENT 3: Construction Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing recorded in the Official Records of Orange County, California on October 11, 2006.

ATTACHMENT 4: Modification of Loan Documents dated October 31, 2006.

ATTACHMENT 5: Assignment of Rents and Leases dated October 11, 2006.

ATTACHMENT 6: Assignment and Subordination of Management Agreement dated October 11, 2006.

ATTACHMENT 7: Assignment of Architect's Contract dated October 11, 2006.

ATTACHMENT 8: Contractor's Consent Agreement dated October 11, 2006.

ATTACHMENT 9: Modification Letter Agreement dated March 21, 2008.

ATTACHMENT 10: UCC-1 Financing Statement filed in the Official Records of Orange County on October 11, 2006.

ATTACHMENT 11: Guaranty of Payment and Completion dated October 11, 2006.

ATTACHMENT 12: Certificate of Guarantor dated October 11, 2006.

ATTACHMENT 13: Certificate of Representations, Warranties and Covenants dated October 11, 2006.

ATTACHMENT 14: Default Letters dated April 6, April 9, May 5, 2009 and June 16, 2009.

ATTACHMENT 15: Acceleration Notice dated July 2, 2009.

ATTACHMENT 1

CONSTRUCTION LOAN AGREEMENT

dated October 11, 2006

by and between

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

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

and

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

Opus Center Irvine
Irvine, California

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CONSTRUCTION LOAN AGREEMENT

THIS CONSTRUCTION LOAN AGREEMENT ("Agreement"), is made and entered into as of October 11, 2006, by and between **IRVINE CENTER PARTNERS III, L.L.C.**, a Delaware limited liability company ("Borrower"), **LASALLE BANK NATIONAL ASSOCIATION**, a national banking association (in its individual capacity, together with any of its successors and assigns as agent, "LaSalle"), for itself and any other financial institutions that are or may from time to time become parties hereto (together with LaSalle, in its capacity as lender, and their respective successors and assigns, the "Banks").

RECITALS:

A. Borrower owns fee title to the property described in **Exhibit A** attached hereto ("Land") and proposes to construct on the Land an approximately 330,000 square foot, 13-story office building ("Improvements") and any and all improvements not on the Land which are required to be in place to make use of the Improvements ("Offsite Improvements"; the Improvements and the Offsite Improvements are collectively referred to herein as the "Project").

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

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

ARTICLE 1 INCORPORATION AND DEFINITIONS

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

Adjusted Tangible Net Worth: The sum of all items which, in accordance with GAAP, would be included as tangible assets plus Subordinated Affiliate Debt, less Indebtedness and all items which, in accordance with GAAP, would be included as minority interests.

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

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

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

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

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: Langdon Wilson, Inc.

Architect's Contract: The contract between Architect and Borrower dated July 20, 2006 for preparation of the Plans and Specifications.

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

Available Funds: As defined in Section 7.5 hereof.

Bank(s): As defined in the Preamble.

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

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

Borrower: As defined in the Preamble.

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

Business Day: Any day on which LaSalle is open for commercial banking business in Chicago, Illinois.

Co-Lender Agreement: The Co-Lender Agreement to be entered into among Agent and the other Banks.

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 Ninety Three Million Three Hundred Thousand and no/100 Dollars ($93,300,000.00).

Commitment Fee: The commitment fee payable to Agent pursuant to that certain letter agreement, dated October 11, 2006, between Agent and Borrower.

Completion Date: November 1, 2007.

Construction Commencement Date: August 1, 2006.

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

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

Contractor: Opus West Construction Corporation, a Minnesota corporation.

Contractor's Fee: The fee to the Contractor in the amount of $3,376,943.00 which shall not be paid until such time as the Loans and all amounts due Banks under any of the Loan Documents are paid in full.

County: Orange County, California.

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 $93,300,000.00, (ii) a twenty-five (25) year amortization schedule and (iii) an interest rate equal to the greater of (A) seven and one-quarter percent (7.25%) 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 $2,904,773.00 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: Teledine Engineering, Inc.

Engineer's Contract: The contracts 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: $10,189,598.00, $7,600,00.00 of which shall be in the form of cash and the balance shall consist of the value of the Land.

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

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

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

Federal Funds Rate: For any day, a fluctuating interest rate equal for each day during such period to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for such day on such transactions received by the Agent from three Federal funds brokers of recognized standing selected by the Agent. The Agent's determination of such rate shall be binding and conclusive absent manifest error.

Final Disbursement: As defined in Section 7.12 hereof.

Financial Covenants: As defined in Section 8.14 hereof.

Foundation Work: As defined in Section 7.6 hereof.

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

GAAP: Generally accepted accounting principals, consistently applied.

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

Guarantor: Opus West Corporation, a Minnesota corporation.

Hazardous Substances: As defined in the Environmental Indemnity Agreement.

Improvements: As defined in the Recitals to this Agreement.

In Balance: As defined in Section 7.5 hereof.

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

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

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

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

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

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

Interest Reserve: As defined in Section 4.2 hereof.

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

LaSalle: As defined in the Preamble.

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

Legal Requirements: As to any person or party, the certificate of incorporation and by-laws or other organizational or governing documents of such person or party, and any law, treaty, rule or regulation or determination of an arbitrator or a court or other governmental authority, in each case applicable to or binding upon such person or party or any of its property or to which such person or party or any of its property is subject.

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

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

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

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

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

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

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

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

Loan Opening: The first disbursement of the Loan Proceeds.

Loan Opening Date: October 11, 2006.

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

Maturity Date: October 11, 2009, subject to one twelve (12) month extension to October 11, 2010 on the terms provided in Section 4.12 hereof.

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

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

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

Outstanding Bank Debt: Without duplication, the aggregate of all of 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.

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

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

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

Premises: The Land and the Project.

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

Project: As defined in the Recitals to this Agreement.

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

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

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

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.

Site Plan: The site plan of the Land contained in **Exhibit I** attached hereto.

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 (or Guarantor, as applicable) to one or more Affiliates of Borrower (or Guarantor, as applicable) which are junior and subordinate to the liabilities of Borrower (or Guarantor, as applicable) o Banks.

"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

Title Insurance Company: First American Title Insurance Company.

ARTICLE 2 REPRESENTATIONS AND WARRANTIES

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

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

(b) Borrower is a duly formed limited liability company under the laws of the State of Delaware and is qualified to conduct business in the State of California. Borrower has full power and authority to conduct its business as presently conducted, to develop the Project, to enter into this Agreement and to perform all of its duties and obligations under this Agreement and under the Loan Documents; such execution and performance have been duly authorized by all necessary Legal Requirements; Borrower has not been convicted of a felony and there are no proceedings or investigations being conducted involving criminal activities of Borrower;

(c) This Agreement, the Notes, the Deed of Trust, the other Loan Documents and any other documents and instruments required to be executed and delivered by Borrower in connection with 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 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) Intentionally Omitted;

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

(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;

(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; and

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

2.2 **Continuation of Representations and Warranties.** The Borrower hereby covenants, warrants and agrees that the representations and warranties made in Section 2.1 hereof shall be and shall remain true and correct at the time of the Loan Opening and at all times

thereafter so long as any part of the Loan shall remain outstanding. 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. 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 $7,600,000 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 the Land, and such improvements thereon, 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 principal amount of each Loan for the period commencing on the date of such Loan until such Loan is paid in full as follows:

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

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

provided that at any time an Event of Default exists and is continuing, the interest rate applicable to each Loan shall be increased by 5% (the "Default Rate").

4.2 **Payment of Principal and Interest**.

(a) Through and including the Maturity Date, accrued interest on each Base Rate Loan and each LIBOR Loan shall be payable in arrears on the first Business Day of each calendar month and on the Maturity Date. The outstanding principal balance on all Loans made by the Banks hereunder shall be due and payable in full on the Maturity Date if the Maturity Date is not extended to the Extended Maturity Date pursuant to Section 4.12, in which event the outstanding principal balance will be due on the Extended Maturity Date. After the Maturity Date or Extended Maturity Date, as applicable, accrued interest on all Loans shall be payable on demand.

(b) In the event the Maturity Date has been extended to the Extended Maturity Date, on the first Business Day of each calendar month through and including the Extended Maturity Date, Borrower shall make monthly payments of principal and interest in a fixed amount calculated by amortizing the outstanding principal balance of the Loans and any unfunded Commitments over twenty-five (25) years at an annual interest rate equal to the greater of (i) seven and one-quarter percent (7.25%) and (ii) the Current Yield for the United States Treasury Security closest in maturity to the tenth anniversary of the date of calculation as published by *The Wall Street Journal* on the fifth Business Day preceding the date of calculation, **plus** one and one-half percent (1.50%) plus the corresponding swap spread as published in Bloomberg's Financial Markets Commodities News as of the Determination Date (or if not so published, Agent, in its sole discretion, shall designate another daily financial or governmental publication of national circulation to be used to determine such spread). If publication of (A) *The Wall Street Journal*, or (B) the Current Yield of the United States Treasury Security in *The Wall Street Journal* is discontinued, the Agent, in its sole discretion, shall designate another daily financial or

governmental publication of national circulation to be used to determine the Current Yield.

(c) Borrower hereby authorizes and directs each Bank to disburse interest to itself on the dates interest payments are due from the undisbursed proceeds of the Loans in an amount not to exceed the line item in the Project Budget allocated for the payment of interest, which amount shall constitute an interest reserve (the "Interest Reserve") and which shall be withheld from the Borrower until disbursed by the Banks and which, when disbursed, shall constitute a Loan hereunder; provided, however, that (i) upon disbursement of the Interest Reserve, interest shall be paid directly by the Borrower from sources other than the proceeds of a Loan, or (ii) if any portion of the Project is substantially complete and one or more tenants have commenced paying rent, then Borrower shall pay interest from Project cash flow after payment of actual operating expenses. To the extent there is insufficient cash flow available at the Project after payment of actual operating expenses, the Banks shall advance such shortfall to the extent available in the line item of the Project Budget allocated to interest.

(d) Prior to the occurrence of an Event of Default, all payments and prepayments on account of the indebtedness evidenced by the Notes shall be applied as follows: (i) first, to fees, expenses, costs and other similar amounts then due and payable to the Banks, (ii) second, to accrued and unpaid interest on the principal balance of the Notes, (iii) third, to the payment of principal due in the month in which the payment or prepayment is made, if any, (iv) fourth, to any escrows, impounds or other amounts which may then be due and payable under the Loan Documents, (v) fifth, to any other amounts then due the Banks hereunder or under any of the Loan Documents, and (vi) last, to the unpaid principal balance of the Notes. After an Event of Default has occurred and is continuing, payments shall be applied as required under applicable law and in the absence of any such requirements, payments may be applied to amounts owed hereunder and under the Loan Documents in such order as Agent shall determine, in its sole discretion, subject to Section 4.7 hereof.

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

(f) If any payment of interest or principal due hereunder is not made within five days after such payment is due in accordance with the terms hereof, then, in addition to the payment of the amount so due, Borrower shall pay to Agent a "late charge" of five cents for each whole dollar so overdue to defray part of the cost of collection and

handling such late payment. Borrower agrees that the damages to be sustained by the holder hereof for the detriment caused by any late payment are extremely difficult and impractical to ascertain, and that the amount of five cents for each one dollar due is a reasonable estimate of such damages, does not constitute interest, and is not a penalty.

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

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

(a) Each Loan shall be divided into tranches which are either a Base Rate Loan or a LIBOR Loan (each a "type" of Loan), as Borrower shall specify in the Request For Advance pursuant to Section 7.3 hereof. Base Rate Loans and LIBOR Loans may be outstanding at the same time, provided that not more than five (5) different tranches of LIBOR Loans shall be outstanding at any one time. All borrowings, conversions and repayments of Loans shall be effected so that each Bank will have a pro rata share (according to its Pro Rata Share) of all Loans. Each LIBOR Loan shall be in an aggregate amount of at least $500,000 and an integral multiple thereafter of at least $250,000.

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

4.4 **Conversion and Continuation Procedures**.

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

applicable), and (iii) the conversion of LIBOR Loans is otherwise subject to the provisions governing LIBOR Loans set forth in Article 4 hereof.

(b) Any LIBOR Loans may be continued as such upon the expiration of the then current Interest Period with respect thereto by Borrower giving notice to Agent, in accordance with the applicable provisions of the term "Interest Period" set forth in Section 1.1, of the length of the next Interest Period to be applicable to such Loans, provided that no LIBOR Loan may be continued as such (i) when any Event of Default has occurred and is continuing and Agent has or the Required Banks have determined that such a continuation is not appropriate or (ii) after the date that is one month prior to the Maturity Date and provided, further, that if Borrower shall fail to give any required notice as described above in this paragraph or if such continuation is not otherwise permitted under the terms of Article 4 of this Agreement, such Loans shall be automatically converted to Base Rate Loans on the last day of such then expiring Interest Period.

4.5 **Computation of Interest and Fees**.

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

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

4.6 **Inability to Determine Interest Rate**. If prior to the first day of any Interest Period, (a) Agent shall have determined (which determination shall be conclusive, absent manifest error) that (i) the making or maintenance of any LIBOR Loan would violate any applicable law, rule, regulation or directive, whether or not having the force of law, (ii) United States dollar deposits in the principal amount, and for periods equal to the Interest Period for funding any LIBOR Loan are not available in the London Interbank Eurodollar market in the ordinary course of business, or (iii) by reason of circumstances affecting the London Interbank Eurodollar market, adequate and fair means do not exist for ascertaining the LIBOR Rate to be applicable to the relevant LIBOR Loan, or (b) Agent shall have received notice from the Required Banks that the LIBOR Rate determined or to be determined for such Interest Period will not adequately and fairly reflect the cost to such Banks (as conclusively certified by such Bank) of making or maintaining their affected Loans during such Interest Period, Agent shall give telecopy or telephonic notice thereof to Borrower and Banks as soon as practicable thereafter and, so long as such circumstances shall continue (i) no Bank shall be under any obligation on the last day of the current Interest Period for each LIBOR Loan to make a new

LIBOR Loan, and such Loan shall, unless then repaid in full, automatically convert to a Base Rate Loan, without further demand, presentment, protest or notice of any kind, all of which are hereby waived by the Borrower.

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

4.8 **Illegality**. Notwithstanding any other provision herein, if Agent shall have reasonably determined that any Regulatory Change shall make it unlawful for any Bank to make or maintain LIBOR Loans as contemplated by this Agreement, Agent shall give notice of such determination to Borrower and each Bank and (a) the commitment of such Bank hereunder to make LIBOR Loans, continue LIBOR Loans as such and convert Base Rate Loans to LIBOR Loans shall forthwith be canceled and (b) the LIBOR Loans then outstanding, if any, shall be converted automatically to Base Rate Loans on the respective last days of the then current Interest Periods with respect to such LIBOR Loans or within such earlier period as required by law. If any such conversion of a LIBOR Loan occurs on a day which is not the last day of the then current Interest Period with respect thereto, Borrower shall pay to each Bank such amounts, if any, as may be required pursuant to 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 indemnified amount shall include any and all costs, expenses, penalties and charges incurred by the Banks as a result thereof, plus an amount equal to the excess, if any, of (i) the amount of interest which would have accrued on the amount so prepaid, or borrowed, converted or continued, for the period from the time of such prepayment or of such failure to borrow, convert or continue to the last day of such Interest Period (or, in the case of the failure to borrow, convert or continue, the Interest Period which would have commenced on the date of such failure) in each case the applicable rate of interest for such Loans provided herein (excluding, however, the Applicable Margin included thereon, if any) over (ii) the amount of interest (as reasonably defined by such Bank) which would have accrued to such Bank on such amount by placing such amount on deposit for a comparable period with leading banks in the certificate of deposit market, the eurodollar deposit market, or other appropriate money market selected by such Bank. This covenant shall survive the termination of this Agreement and the payment of the Notes and all other amounts due hereunder. Amounts payable pursuant to this Section shall be paid to Agent for the account of the applicable Bank, upon the request of such Bank through Agent and a determination of any Bank as to the amounts payable pursuant to this Section shall be conclusive absent manifest error, based upon the assumption that such Bank funded its loan commitment for LIBOR Loans in the London Interbank Eurodollar market using any reasonable attribution or averaging methods which such Bank deems appropriate and practical, provided, however, that such Bank is not obligated to accept a deposit in the London Interbank Eurodollar market in order to charge interest on a LIBOR Loan at the LIBOR Rate.

4.12 **Extension of Maturity Date**. Subject to satisfaction of all the following conditions, Borrower may extend the Maturity Date for twelve (12) months to October ___, 2010 (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 in the amount set forth in the letter agreement of even date herewith between Agent and Borrower;

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

(e) The Debt Service Coverage Ratio for the Project, based upon Operating Cash Flow and Debt Service projected by Agent for the twelve (12) months commencing on the Maturity Date, shall be not less than 1.20 to 1.0 on the basis of the Loans in the amount of the outstanding principal balance of the Loans and any unfunded Commitments;

ARTICLE 5 LOAN DOCUMENTS

5.1 **Loan Documents**. As a condition precedent to the Loan Opening, except as otherwise provided below, Borrower 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**. Promissory Notes executed by the Borrower payable to the order of each Bank in the amount of its respective Commitment in the form of **Exhibit B** attached hereto.

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

(c) **Assignment of Rents and Leases**. A first collateral assignment from Borrower to Agent, for the benefit of the Banks, of all rents, leases and profits of the Premises as security for the Notes, and, if Agent so requires, specific collateral assignments of any particular Leases bearing the consent to the assignment of the lessee whose Lease is so assigned.

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

(e) **Guaranty of Payment and Completion**. A Guaranty of Payment and Completion executed by Guarantor.

(f) **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.

(g) **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.

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

(i) **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, an ALTA 1992 Construction Loan Policy issued on the date of the Loan Opening by the Title Insurance Company to Agent in the full amount of the Loans, insuring the Deed of Trust to be a valid first, prior and paramount lien upon the fee title to the Premises subject only to the Permitted Exceptions and to customary exceptions for pending disbursements of the Loans ("Construction Title Insurance Policy"). The Construction Title Insurance Policy must specifically insure Agent for claims and questions related to claims for mechanics' or materialmen's liens and contain the following endorsements to the extent available in the State of California: (i) An ALTA Modified Form 3.1 (plans and specifications) (including compliance with parking requirements) which must state the intended use of the Project when completed in accordance with the Plans and Specifications is a "permitted use" under the governing zoning ordinance; (ii) Access Endorsement; (iii) One Tax Parcel Endorsement; (iv) if the Land consists of more than one subparcel,

Contiguity Endorsement; (v) Environmental Lien Endorsement; (vi) Variable Rate Endorsement; (vii) Pending Disbursements Endorsement; (viii) Survey Endorsement (ix) Modified Comprehensive Endorsement No. 1; (x) Doing Business Endorsement; (xi) Creditor's Rights Endorsement; and (xii) such other endorsements as Agent may require. If required by any Agent, Borrower shall procure reinsurance with companies and in amounts satisfactory to the Agent.

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

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

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

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

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

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

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

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

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

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

The Survey shall be made in accordance with (i) the current survey standards of the American Title Association and American Congress on Surveying and Mapping including items 1, 2, 3, 4, 6, 7(a) and (b), 8, 9, 10, 11(a) and (b) and 13 of Table A thereof and (ii) the laws of the State. To the extent that there is any conflict or inconsistency among the Survey standards described above, the more restrictive standard shall apply. The Survey shall be dated not later than sixty (60) days prior to the Loan Opening, and shall bear a proper certificate by the surveyor, which certificate shall recite compliance with the laws and standards enumerated above, shall include the legal description of the Premises and shall run in favor of Borrower, Agent and the Title Insurance Company. After the Survey has been delivered, Borrower shall furnish supplemental surveys showing the Foundation Work for the Project and showing additional improvements placed on the Premises from time to time as Agent may request, as well as two (2) copies of a final as-built survey on completion of construction showing the location of all improvements on the Land and otherwise complying with the foregoing requirements.

(c) **Insurance Policies**. Borrower shall, during the term of this Agreement, procure at its expense and keep in force the insurance coverages required by the Deed of Trust. In addition, all insurance shall be in form, content and amounts approved by Agent and written by an insurance company or companies licensed to do business in the state in which the Premises are located and domiciled in the United States or a governmental agency or instrumentality approved by Agent. The policies for such insurance shall have attached thereto standard mortgagee clauses in favor of and permitting Agent to collect any and all proceeds payable thereunder and shall include a 30 day (except for nonpayment of premium, in which case, a 10 day) notice of cancellation clause in favor of Agent. Duplicate policies or certificates of insurance shall be delivered to and held by Agent as further security for the payment of the Notes and any other obligations arising under the Loan Documents, with evidence of renewal coverage delivered to Agent at least 15 days before the expiration date of any policy.

(d) **Utilities; Licenses; Permits**. Evidence satisfactory to Agent that:

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

(ii) all permits, licenses and governmental approvals ("Permits"), including a building permit issued by the appropriate governmental authority authorizing construction of the Project in accordance with the Plans and

Specifications and including tap-on permits, required by applicable law to construct, occupy and operate the Premises have been issued, are in full force and all fees therefor have been fully paid or, if the stage of construction of the Project does not allow the issuance of all such Permits, then Borrower shall provide evidence, satisfactory to Agent that as the construction progresses Borrower will promptly obtain and deliver to Agent such Permits as and when they become available;

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

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

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

(e) **Geotechnical Report**. A geotechnical report prepared by a licensed soil engineer satisfactory to Agent showing the locations of all borings, containing boring logs for all borings together with recommendations for the design of the foundations, paved areas and underground utilities for the Project, confirming that there are no mining facilities, sink holes or voids beneath the Land, confirming that no conditions exist which could cause subsidence of any portion of the Land and showing no state of facts which could adversely affect the Project.

(f) **Environmental Report**. A written report ("Environmental Report") prepared at Borrower's sole cost and expense by an independent professional environmental consultant approved by Agent in its sole and absolute discretion. The Environmental Report shall be subject to the approval of the Agent in its sole and absolute discretion. If the Environmental Report reveals contamination or conditions warranting further investigation in order to establish baseline data, the Agent may require, in its sole and absolute discretion, a written report (also referred to herein as the "Environmental Report") based on additional testing and investigation in order to define

the source and extent of the contamination or to establish baseline data, as well as to provide relevant detailed information on the area's geological and hydrogeological conditions. Any additional Environmental Report prepared pursuant to this requirement shall be subject to the approval of the Agent, in its sole and absolute discretion.

(g) **Appraisal**. An appraisal addressed to Agent and satisfactory to the Banks prepared by a certified or licensed appraiser who is approved by Agent. The appraisal must show an "as stabilized" appraised value of the Premises, assuming completion of the Project in accordance with the Plans and Specifications, such that the ratio of the Commitment Amount to the appraised value of the Premises shall be no more than eighty percent (80%) and the ratio of the Commitment Amount to cost shall be no more than eighty-five percent (85%).

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

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

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

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

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

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

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

(iv) the execution and delivery of this Agreement and the Loan Documents and the performance thereunder by Borrower will comply with all applicable law and will not violate or conflict with the instruments under which Borrower is organized or any applicable contracts or agreements; and

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

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

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

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

(o) **Development Agreement**. A copy, certified by Borrower, of the Master Planned Development Project.

(p) **Interest Rate Protection**. One or more contracts for interest rate protection purchased from Agent for not less than forty percent (40%) of the Commitment Amount which contracts shall be in effect for not less than fifteen (15) months and for a rate and otherwise in form and substance satisfactory to Agent in all respects.

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

(r) **Engineer's Certificate**. An Engineer's Certificate on Agent's standard form with respect to the Improvements;

(s) **Construction Contracts**. Copies of any executed Subcontracts for work and materials in excess of $100,000, if requested by Agent with respect to the Improvements, 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 must be strictly satisfactory to Agent and Agent's counsel in all respects; 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;

(t) **Architect's and Engineer's Contracts**. A certified 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, and which must be satisfactory to Agent and Agent's counsel in all material respects;

(u) **Construction Schedule**. A schedule ("Construction Schedule") in form and content satisfactory to Agent which, among other things, sets forth dates for commencement and completion of all phases of the Project, indicates the time for performance of the work to be accomplished under the Construction Contracts or the Subcontracts, and includes a statement from the Contractor that, in its best professional judgment, the Construction Schedule is realistic and can be adhered to, subject to an Excusable Delay (as defined herein) in completing the Project in accordance with the Plans and Specifications. An "Excusable Delay" means a delay, not to exceed a total of thirty (30) consecutive days, caused by unusually adverse weather conditions which have not been taken into account in the Construction Schedule, fire, earthquake or other acts of God, strikes, lockouts, acts of public enemy, riots or insurrections or any other unforeseen circumstances or events beyond the reasonable control of Borrower (except financial circumstances or events which may be resolved by the payment of money), and as to which Borrower notifies Agent in writing within ten (10) days after Borrower is actually aware of such occurrence; provided, however, no Excusable Delay shall suspend or abate any obligation of Borrower or any other person to pay any money nor may an Excusable Delay extend construction or any other obligation beyond the Maturity Date;

(v) **Intentionally Omitted**.

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

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

(y) **Intentionally Omitted**.

(z) **Subordinated Affiliate Debt**. In each case in which Affiliate Debt exists, Borrower shall cause each such Affiliate to deliver a subordination agreement satisfactory to Agent, in Agent's sole discretion, whereby the Affiliate Debt shall be subordinated in all respect to the Loans and all rights and liens of Banks under the Loan Documents;

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

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

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

ARTICLE 7 DISBURSEMENTS

7.1 **Conditions Precedent to Disbursement of Loan Proceeds**. The Loan Opening shall be made at such time as all of the conditions and requirements of this Agreement required to be performed by Borrower or other parties prior to the Loan Opening have been satisfied or

performed, unless the same shall have been waived in writing by Agent; but in no event shall the Loan Opening occur later than the Loan Opening Date. At the Loan Opening, the Banks shall disburse funds necessary to pay any Loan Expenses then due. No disbursement of Loan Proceeds shall be made by the Banks to Borrower at any time unless:

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

(b) the Loan is In Balance;

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

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

(e) no litigation or proceedings are pending or threatened (including proceedings under Title 11 of the United States Code) against Borrower, the Project or the Contractor, which litigation or proceedings, in the judgment of Agent, could materially affect the Project or Borrower's obligations hereunder or under any of the Loan Documents;

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

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

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

7.2 **Borrowing Procedures**.

(a) Borrower shall submit a Request for Advance (appropriately completed and including all documentation required to be attached thereto pursuant to Section 7.3 hereof) to Agent and Agent's Consultant by 2:00 p.m. (Chicago time) not less than ten (10) Business Days prior to the Borrowing Date specified therein requesting that the Banks make Loans on the Borrowing Date and specifying (i) the amount to be borrowed, and (ii) all Project Costs to be paid with such advance, including any retainage to be paid. Not less than three (3) Business Days prior to the Borrowing Date, Borrower shall notify Agent in writing (which written notice may be sent via telecopy or email) whether the Loans are to be LIBOR Loans, Base Rate Loans, or a combination thereof, and if the Loans are to be entirely or partly LIBOR Loans, the respective amounts of each such type of Loan and the respective lengths of the initial Interest Periods therefor. If Borrower

selects a LIBOR Loan and the borrowing is not made on the Borrowing Date for any reason, Borrower shall be liable for any amounts payable pursuant to Section 4.11 hereof. Agent, no later than two (2) Business Days prior to the date an advance is to be made, shall (i) notify each Bank thereof and (ii) send to each Bank a copy of Borrower's Request For Advance together with all supporting documentation and Agent's Consultant's monthly report. Provided all conditions to an advance of Loan Proceeds have been satisfied or waived, as determined by Agent, each Bank will make the amount of its Pro Rata Share of each borrowing available to Agent for the account of Borrower at the Chicago office of Agent specified in Section 14.10 hereof prior to 11:00 A.M., Chicago time on the date requested by Borrower in funds immediately available to Agent. Each borrowing will be made available to Borrower by Agent depositing the aggregate amounts made available to Agent by the Banks through the Construction Escrow, or at Agent's option, Agent may advance such funds by payment directly to any third party to whom an amount is payable. The execution of this Agreement by Borrower constitutes an irrevocable authorization to Agent and the Banks to advance Loan Proceeds as provided in this Section. No further authorization shall be necessary to warrant such direct advances. All sums advanced by direct payment to third parties shall reduce the Available Commitment, shall be evidenced by the Notes and shall be secured by the Loan Documents. The Banks shall have no obligation to make advances of the Loan Proceeds more often than once in each calendar month, provided that the Banks may make an additional advance each calendar month to pay interest as provided in Section 4.2. Agent shall give Borrower written notice of monthly interest advances (provided that such notice shall not be a condition to such advance). Neither the Banks nor Agent shall have any obligation to see to the disposition of any direct payments to any contractor or other person.

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

this Section 7.2(b) shall be deemed to relieve any Bank of its obligation hereunder to make its Loan on any date specified in any borrowing notice.

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

Defaulting Bank, Borrower may find a replacement Bank and require the Defaulting Bank to assign its interests to such replacement in accordance with the terms of Section 10.1 of this Agreement provided that there shall be deducted from the amount that would otherwise be paid to the Defaulting Bank an amount equal to the Bank Default Obligation.

(d) Borrower hereby requests and authorizes Agent to make advances directly to itself for payment and reimbursement of all interest, charges, costs and expenses incurred by Agent in connection with the Loans, including, but not limited to, (i) interest due on the Loans and any points, loan fees, service charges, commitment fees or other fees due to Agent in connection with the Loans; (ii) all title examination, survey, escrow, filing, search, recording and registration fees and charges; (iii) all fees and disbursements of architects, engineers and consultants engaged by Borrower and Agent, including the fees and disbursements of the Architect, 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) ALTA Form Comprehensive Endorsement 1 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**. Disbursement of the available proceeds of the Loans shall be limited to an amount equal to the percentage thereof required by the terms of the Construction Contracts, but in no event shall the Banks be obligated in respect of any Construction Contract until Final Disbursement to disburse in excess of ninety percent (90%) of the value (as certified by Agent's Consultant) of the materials and labor incorporated in the Project from time to time pursuant to such Construction Contract.

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 Completion Date but prior to the original Maturity Date and no Event of Default then exists:

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

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

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

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

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

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

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

(h) Agent shall have received reports from the Title Insurance Company or the appropriate filing offices of the state and county in which the Premises are located, indicating that no judgments, tax or other liens, security interests, leases of personalty, financing statements or other encumbrances (other than Permitted Exceptions and liens and security interests in favor of Agent and no other party), are of record or on file encumbering any portion of the Premises, and that there are no judgments or tax liens outstanding in respect to Borrower;

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

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

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

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

7.15 **Agent's Action for Agent's Own Protection Only**. The authority herein conferred upon Agent and any action taken by Agent or Agent's Consultant or their agents or employees in making inspections of the Premises, attending regularly scheduled Project meetings, procuring sworn statements and waivers of lien, approving Subcontracts and approving Plans and Specifications will be taken by Agent and Agent's Consultant and by their agents or employees for their own protection and that of the Banks only, and neither Agent nor Agent's Consultant nor their agents or employees shall be deemed to have assumed any responsibility to Borrower or any other person or entity with respect to any such action herein authorized or taken by them or with respect to the proper construction and equipping of the Project, performance of Construction Contracts or prevention of claims for mechanics' or materialmen's liens.

ARTICLE 8 FURTHER AGREEMENTS OF BORROWER

8.1 **Construction of Project**. Borrower agrees that the Project will be constructed and fully equipped free and clear of all liens and encumbrances (excepting only (i) the lien of real estate taxes and assessments not delinquent, (ii) any liens and encumbrances of Agent and (iii) 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 Three Hundred Thousand Dollars ($300,000.00); 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 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 Guarantor, 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;

(c) promptly supply Agent with such information concerning Guarantor'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 Guarantor, and within sixty (60) days of the end of each fiscal quarter, company prepared financial statements of Guarantor, each showing the results of operations of the Guarantor and consisting of a balance sheet, cash flow statement, and statement of income and expense prepared in accordance with GAAP and signed by an officer of Guarantor;

(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 Guarantor's compliance with the Financial Covenants set forth herein and in the Guaranty;

(e) no later than fifteen (15) days after the end of each month, furnish Agent and each Bank a rent roll, as of the last day of such period in a form reasonable satisfactory to Agent;

(f) promptly notify Agent and each Bank of any condition or event which constitutes (or which, with the giving of notice or lapse of time, or both, would constitute) an Event of Default, and of any material adverse change in the financial condition of Borrower;

(g) promptly supply Agent with monthly occupancy reports which shall include the name of the each lessee, the expiration date of each Lease, and the rental amount for each demised space;

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

(i) permit Agent, Agent's Consultants or any of their agents or representatives to have access to and to examine all books and records regarding the Premises at any time or times hereafter during business hours; and

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

All information provided to Agent from Borrower or Guarantor 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 Guarantor, 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 **Deferred Developer and Contractor's Fee**. Borrower shall defer payment of the $2,904,773.00 Developer Fee and the $3,367,943.00 Contractor's Fee provided in the Project Budget to be paid to Borrower or any Affiliate of Borrower until such time as the Loans and all amounts due Agent under any of the Loan Documents are paid in full.

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

(i) Guarantor shall maintain an Adjusted Tangible Net Worth 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 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 equal to or less than 5.0:1.0. At all times after January 1, 2008, Guarantor shall maintain an Outstanding Bank Debt Ratio equal to or less than 4.0:1.0. Guarantor's Outstanding Bank Debt Ratio shall be calculated at of the end of each fiscal quarter and fiscal year.

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 (s); 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 Matt Montgomery 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 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 fifteen (15) 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 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 Guarantor which materially impairs Borrower's or 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 Guarantor (i) files a voluntary petition in bankruptcy or is adjudicated a bankrupt or insolvent or files any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal, state, or other statute or law, or (ii) seeks or consents to or acquiesces in the appointment of any trustee, receiver or

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

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

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

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

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

(r) A default by the Guarantor in meeting any of the Financial Covenants set forth herein and in the Guaranty.

ARTICLE 12 AGENT'S REMEDIES UPON EVENT OF DEFAULT

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

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

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

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

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

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

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

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

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

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

(c) Declare the Notes to be due and payable forthwith without notice, demand, presentment, notice of nonpayment or nonperformance, protest, notice of protest, notice of intent to accelerate, notice of acceleration, or any other notice or any other action; and

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

12.2 **Setoff Rights**. In addition to any rights of setoff that Agent and/or the Banks may have under applicable law, Agent and/or the Banks, without notice of any kind to Borrower, may appropriate and apply to the payment of the Notes or of any sums due under this Agreement any and all balances, deposits, credits, accounts, certificates of deposit, instruments or money of Borrower then or thereafter in the possession of Agent, any Bank or any Participant of any Bank.

12.3 **Right of Banks to Make Advances to Cure Event of Defaults; Obligatory Advances**. If Borrower shall fail to perform any of its covenants or agreements herein or in any of the other Loan Documents contained, Agent may (but shall not be required to) perform any of such covenants and agreements, and any amounts expended by Agent in so doing, and any amounts expended by Agent pursuant to Section 12.1 hereof and any amounts advanced by the Banks pursuant to this Agreement shall be deemed advanced by the Banks under an obligation to

do so regardless of the identity of the person or persons to whom said funds are disbursed. Loan Proceeds advanced by the Banks to complete the Project to protect their security for the Loans are obligatory advances hereunder and shall constitute additional indebtedness payable on demand and evidenced and secured by the Loan Documents.

12.4 **Attorneys' Fees**. Borrower will pay Agent's reasonable attorneys' fees and costs in connection with the negotiation, preparation and administration of this Agreement and will pay the Agent's reasonable attorneys' fees and costs in connection with the administration and enforcement of this Agreement and the other Loan Documents; without limiting the generality of the foregoing, if at any time or times hereafter Agent employs counsel for advice or other representation with respect to any matter concerning Borrower, this Agreement, the Premises or the Loan Documents (including any bankruptcy proceeding) or if the Agent employs one or more counsel to protect, collect, lease, sell, take possession of, or liquidate any of the Premises, or to attempt to enforce or protect any security interest or lien or other right in any of the Premises or under any of the Loan Documents, or to enforce any rights of the Banks or obligations of Borrower or any other person, firm or corporation which may be obligated to the Banks by virtue of this Agreement or under any of the Loan Documents or any other agreement, instrument or document, heretofore or hereafter delivered to Agent in furtherance hereof, then in any such event, all of the attorneys' fees arising from such services, and any expenses, costs and charges relating thereto, shall constitute an additional indebtedness owing by Borrower to the Banks payable on demand and evidenced and secured by the Loan Documents.

12.5 **No Waiver**. No failure by Agent to exercise, or delay by Agent in exercising, any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof, or the exercise of any other right, power or privilege. The rights and remedies provided in this Agreement and in the Loan Documents are cumulative and not exclusive of each other or of any right or remedy provided at law or in equity. No notice to or demand on Borrower in any case, in itself, shall entitle Borrower to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of Agent to any other or further action in any circumstances without notice or demand.

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

ARTICLE 13 THE AGENT

13.1 **Appointment and Authorization**.

(a) Each Bank hereby irrevocably (subject to the provisions of the Co-Lender Agreement) 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 **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.

13.3 **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.

ARTICLE 14 MISCELLANEOUS

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

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

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

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

14.5 **Borrower Indemnification**. **TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY AGREES TO PROTECT, INDEMNIFY, DEFEND AND SAVE HARMLESS AGENT AND THE BANKS AND THEIR RESPECTIVE DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES FROM AND AGAINST ANY AND ALL LIABILITY, EXPENSE OR DAMAGE OF ANY KIND OR NATURE AND FROM ANY SUITS, CLAIMS OR DEMANDS, INCLUDING LEGAL FEES AND EXPENSES ON ACCOUNT OF ANY MATTER OR THING OR ACTION OR FAILURE TO ACT BY AGENT OR BANKS, WHETHER OR NOT IN LITIGATION, ARISING OUT OF THIS AGREEMENT OR IN CONNECTION HEREWITH UNLESS SUCH SUIT, CLAIM OR DAMAGE IS CAUSED SOLELY BY ANY ACT, OMISSION OR WILLFUL MALFEASANCE OF AGENT OR BANKS, THEIR DIRECTORS,**

OFFICERS, AGENTS AND AUTHORIZED EMPLOYEES. THIS INDEMNITY IS NOT INTENDED TO EXCUSE AGENT OR BANKS FROM PERFORMING HEREUNDER. THIS OBLIGATION ON THE PART OF BORROWER SHALL SURVIVE THE CLOSING OF THE LOANS, THE REPAYMENT THEREOF AND ANY CANCELLATION OF THIS AGREEMENT. BORROWER SHALL PAY, AND HOLD THE BANKS HARMLESS FROM, ANY AND ALL CLAIMS OF ANY BROKERS, FINDERS OR AGENTS CLAIMING A RIGHT TO ANY FEES IN CONNECTION WITH ARRANGING THE FINANCING CONTEMPLATED HEREBY. THE BANKS HEREBY REPRESENT THAT THEY HAVE NOT EMPLOYED A BROKER OR OTHER FINDER IN CONNECTION WITH THE LOANS. BORROWER REPRESENTS AND WARRANTS THAT NO BROKERAGE COMMISSIONS OR FINDER'S FEES ARE TO BE PAID IN CONNECTION WITH THE LOANS.

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

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

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

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

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

To Agent:	LaSalle Bank National Association Suite 1225 135 South LaSalle Street Chicago, Illinois 60603 Attn: Thomas G. Jeffery, Senior Vice President
With a copy to:	LaSalle Bank National Association Suite 1425 135 South LaSalle Street Chicago, Illinois 60603 Attn: Commercial Real Estate Syndications
And:	Schwartz Cooper Chartered 180 North LaSalle Street Suite 2700 Chicago, Illinois 60601 Attn: Michael S. Kurtzon, Esq.
To a Bank:	See notice addresses set forth on Schedule 3.1 hereto
To Borrower:	Irvine Center Partners III, L.L.C. 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.

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

BORROWER:

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
Its: Senior Vice President

AGENT:

LASALLE BANK NATIONAL ASSOCIATION, a national banking association

By: [signature]
Name: [illegible]
Title: FVP

THE BANKS:

LASALLE BANK NATIONAL ASSOCIATION, a national banking association

By: [signature]
Name: [illegible]
Title: FVP

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 1225 Chicago, Illinois 60603 Attn: Thomas G. Jeffery, Senior Vice President	$93,300,000.00	100.000000000%

EXHIBIT "A"

LEGAL DESCRIPTION

Real property in the City of Irvine, County of Orange, State of California, described as follows:

PARCEL A:

PARCEL 2, IN THE CITY OF IRVINE, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON EXHIBIT "B" ATTACHED TO LOT LINE ADJUSTMENT 40088-LL RECORDED SEPTEMBER 14 1999 AS INSTRUMENT NO. 19990660556 OF OFFICIAL RECORDS OF ORANGE COUNTY CALIFORNIA.

PARCEL B:

PARCEL 2, IN THE CITY OF IRVINE, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON PARCEL MAP NO. 2001-215, FILED DECEMBER 17, 2002 IN BOOK 329, PAGES 22 TO 24 INCLUSIVE, OF PARCEL MAPS OF ORANGE COUNTY, CALIFORNIA.

EXCEPTING FROM THE HEREINABOVE DESCRIBED PARCELS A AND B ALL OIL, OIL RIGHTS MINERALS, MINERAL RIGHTS, NATURAL GAS, NATURAL GAS RIGHTS AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOWN THAT MAY BE WITHIN OR UNDER THE PARCEL OF LAND HEREINABOVE DESCRIBED, TOGETHER WITH THE PERPETUAL RIGHT OF DRILLING, MINING, EXPLORING AND OPERATING THEREFOR, AND STORING IN AND REMOVING THE SAME FROM SAID LAND OR ANY OTHER LAND, INCLUDING THE RIGHT TO WHIPSTOCK OR DIRECTIONALL Y DRILL AND MINE FROM LANDS OTHER THAN THOSE HEREINABOVE DESCRIBED, OIL OR GAS WELLS, TUNNELS AND SHAFTS INTO, THROUGH OR ACROSS THE SUBSURFACE OF THE LAND HEREINABOVE DESCRIBED, AND TO BOTTOM SUCH WHIPSTOCKED OR DIRECTIONALLY DRILLED WELLS, TUNNELS AND SHAFTS UNDER AND BENEATH OR BEYOND THE EXTERIOR LIMITS THEREOF, AND TO REDRILL, RETUNNEL, EQUIP MAINTAIN, REPAIR, DEEPEN AND OPERATE ANY SUCH WELLS OR MINES, WITHOUT HOWEVER, THE RIGHT TO DRILL, MINE, STORE, EXPLORE AND OPERATE THROUGH THE SURFACE OF THE UPPER 500 FEET OF THE LAND, AS RESERVED IN THE DEED FROM IRVINE INDUSTRIAL COMPLEX, A CORPORATION, RECORDED JANUARY 21, 1974 IN BOOK 11060, PAGE 213 OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA.

PARCEL C:

NON-EXCLUSIVE EASEMENTS FOR VEHICULAR AND PEDESTRIAN INGRESS AND EGRESS PURPOSES, AS SAID EASEMENTS ARE SET FORTH IN THAT CERTAIN AMENDED AND RESTATED DECLARATION OF ESTABLISHMENT OF COVENANTS, CONDITIONS AND RESTRICTIONS AND GRANT OF EASEMENTS FOR KOLL CENTER IRVINE NORTH RECORDED FEBRUARY 9, 1987 AS INSTRUMENT NO. 87-074459 OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA.

PARCEL D:

NON-EXCLUSIVE EASEMENTS FOR VEHICULAR AND PEDESTRIAN INGRESS AND EGRESS UTILITIES, DRAINAGE AND OTHER PURPOSES, AS SAID EASEMENTS ARE SET FORTH IN ARTICLE IV OF THAT CERTAIN AMENDED AND RESTATED DECLARATION ESTABLISHING EASEMENTS, COVENANTS AND RESTRICTIONS FOR KCIN PARKING FACILITIES RECORDED SEPTEMBER 1, 1998 AS INSTRUMENT NO. 19980582940 OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA.

PARCEL E:

A TEMPORARY NON-EXCLUSIVE ACCESS EASEMENT FOR VEHICULAR AND PEDESTRIAN ACCESS AND A TEMPORARY CONSTRUCTION EASEMENT AS SET FORTH IN THAT CERTAIN "TEMPORARY ACCESS EASEMENT AND SUPPLEMENT TO TEMPORARY PARKING EASEMENT" RECORDED OCTOBER 6, 2004 AS INSTRUMENT NO. 2004000897997, OF OFFICIAL RECORDS.

APN: 435-161-72 (PARCEL A) and 435-161-75 (PARCEL B)

EXHIBIT B

FORM OF NOTES

PROMISSORY NOTE

$_____ Date: _____, 2006
Chicago, Illinois Maturity Date: _____, 2009

FOR VALUE RECEIVED, **IRVINE CENTER PARTNERS III, L.L.C.**, a Delaware limited liability company (the "Borrower"), hereby promises to pay to the order of **LASALLE BANK NATIONAL ASSOCIATION**, a national banking association (the "Bank"), at the principal office of LaSalle Bank National Association (the "Agent") in Chicago, Illinois, on or before the Maturity Date or Extended Maturity Date, as applicable (as such terms are defined in the hereinafter referred to Loan Agreement), the lesser of (i) _____ 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.

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EXHIBIT C

PERMITTED EXCEPTIONS

THE FOLLOWING ARE THE PERMITTED TITLE EXCEPTIONS PURSUANT TO PRO FORMA LOAN POLICY NO. NCS-237626-SA1 ISSUED BY FIRST AMERICAN TITLE INSURANCE COMPANY.

Exceptions 1, 1a, 2, 3, 4, 5, 5a, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 21 as set forth on Schedule B, Part I together with Exceptions 1, 2 and 3 as set forth on Schedule B, Part II.

EXHIBIT D

PROJECT BUDGET

Uses	Amount	$/SF	% Total
Land	$ 11,633,621	$ 35.47	11%
Real Estate Taxes	174,982	0.53	0%
Base Bldg. & Parking	56,132,388	171.16	51%
Tenant Improvements	14,133,330	43.10	13%
Off-Site Improvements	1,000,000	3.05	1%
Parking Allocation	350,000	1.07	0%
Government Charges	5,693,637	17.36	5%
Westbay Expenses	50,000	0.15	0%
Leasing Commissions	4,571,260	13.94	4%
Legal/ Financing Fees	1,549,518	4.72	1%
Advertising/Marketing	150,000	0.46	0%
Interest Reserve	3,478,270	10.61	3%
Operating Shortfall	3,572,592	10.89	3%
Project Contingency	1,000,000	3.05	1%
Design/Build Fee	3,367,943	10.27	3%
Development Fee	2,904,773	8.86	3%
Total Uses	$ 109,762,314	$ 334.69	100%

ARCHITECT'S STATEMENT

Re: Construction Loans in the aggregate principal amount of $93,300,000.00 (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 October __, 2006 by and among LaSalle Bank National Association, as Agent for itself and the Banks ("Agent"), the Banks and Irvine Center Partners III, L.L.C., a Delaware limited liability company, for construction of a 330,000 square foot shell and core office building located in Irvine, Orange County, California ("Project").

The undersigned, Langdon Wilson ("**Architect**"), has entered into that certain agreement dated as of April 8, 2005 with Opus Architects & Engineers, Inc. (the "**Contract**"). The undersigned hereby represents and confirms to the Agent that pursuant to the Contract the undersigned has designed its portion of the Project as described in the Contract and will perform certain other services, as provided in the Contract.

The undersigned, using the standard of professional care customary in the Irvine metropolitan area and the State of California, hereby represents and confirms to Agent for its portion of the Project as follows:

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

(b) The following permits or governmental agency approvals will be required for the construction of the Architect's portion of the building:

	Issuing Agency	Date Issued
Foundation Permit	City of Irvine	9/21/06
Building Permit	City of Irvine	_____
Final Sign-Off of Inspection Cards	City of Irvine	_____

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

(d) The Plans and Specifications, as instruments of service, prepared by Architect pursuant to the Contract ("Plans") have been prepared in the regular course of the Architect's professional services and contain detail necessary to provide for construction of the Architect's portion of the Project;

(e) The Plans are in substantial compliance with published applicable building, zoning, environmental and land use laws, statutes, codes, regulations and the prevailing practices of the agencies having jurisdiction thereof necessary to obtain a building permit;

(f) The Plans and interpretations and instructions of the Architect will provide in detail for building the Architect's portion of the Project;

(g) Subject to force majeure, the undersigned knows of no reason why the Project will not be substantially completed and ready for construction of tenant improvements by October 1, 2007; and

(h) To the best of our knowledge, adequate ingress and egress to the Project over public streets, rights of way and easements currently exist and will be available after completion of construction of the Project.

The undersigned acknowledges that this Statement is given to Agent incident to completion of arrangements between borrower and Agent for construction financing, and it may be used by Agent for no other purpose or by any other person or entity for any purpose whatsoever. Nothing contained herein shall be interpreted to require Architect's knowledge or services beyond the scope of the Contract.

Date: September 29, 2006

For: Langdon Wilson

By: _____
Name: J. Patrick Allen
Title: Partner

Address:

18800 Von Karman Ave.
Suite 200
Irvine, CA 92612

EXHIBIT F

FORM OF ASSIGNMENT AND ACCEPTANCE

Reference is made to the Construction Loan Agreement dated as of October ___, 2006 (as the same may be amended, modified or supplemented from time to time in accordance with its terms, the "Loan Agreement") among (i) **IRVINE CENTER PARTNERS III, L.L.C.**, a Delaware limited liability company ("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: Opus Center Irvine III (the "Project")
BORROWER: **IRVINE CENTERS PARTNERS III, L.L.C.**, a Delaware limited liability company (the "Borrower")
DRAW NO: _____

Reference is hereby made to that certain Construction Loan Agreement dated as of October ___, 2006 (the "Loan Agreement"), executed by and among the Borrower, the "Banks" and LaSalle Bank National Association, as Agent (the "Agent"). Capitalized words and phrases used herein without definition shall have the respective meanings ascribed to such words and phrases in the Loan Agreement.

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

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

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

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

(b) all representations and warranties made by the Borrower to the Agent and Banks in the Loan Agreement and otherwise in connection with the Loan continue to be accurate;

(c) no Event of Default has occurred under the Loan Agreement or under any Loan Document, and no event, circumstance or condition has occurred or exists which, with the

passage of time or the giving of notice, would constitute an Event of Default under the Loan Agreement or under the other Loan Documents;

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

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

(f) all Construction Disbursements advanced by the Agent and Banks to the Borrower for labor, materials and/or services furnished prior to this draw request have been paid to the parties entitled to such payment, and all Loan Proceeds so disbursed have been used for the purposes set forth in the Loan Agreement;

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

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

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

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

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

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

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

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

IN WITNESS WHEREOF, the Borrower has executed this Loan Advance Requisition as of _____, 2006.

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

By: Opus West Corporation, a Minnesota corporation, its manager

By:_____
Name:_____
Its:_____

AMENDED AND RESTATED CONSTRUCTION LOAN AGREEMENT

dated October 31, 2006

by and between

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

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

and

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

Opus Center Irvine
Irvine, California

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AMENDED AND RESTATED CONSTRUCTION LOAN AGREEMENT

THIS AMENDED AND RESTATED CONSTRUCTION LOAN AGREEMENT ("Agreement"), is made and entered into as of October 31, 2006, by and between **IRVINE CENTER PARTNERS III, L.L.C.**, a Delaware limited liability company ("Borrower"), **LASALLE BANK NATIONAL ASSOCIATION**, a national banking association (in its individual capacity, together with any of its successors and assigns as agent, "LaSalle"), for itself and any other financial institutions that are or may from time to time become parties hereto (together with LaSalle, in its capacity as lender, and their respective successors and assigns, the "Banks").

RECITALS:

A. Borrower owns fee title to the property described in **Exhibit A** attached hereto ("Land") and proposes to construct on the Land an approximately 330,000 square foot, 13-story office building and a parking garage containing approximately 1,100 parking spaces ("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 and LaSalle entered into that certain Construction Loan Agreement dated October 11, 2006 (the "Original Loan Agreement") pursuant to which LaSalle made the Loans (as hereinafter defined) available to Borrower. This Loan Agreement amends and restated the Original Loan Agreement in its entirety.

C. Borrower has applied to the Banks for the Loans (as hereinafter defined) for the purpose of financing Borrower's construction of the Project, and the Banks are willing to make the Loans upon the terms and conditions hereinafter set forth.

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

ARTICLE 1 INCORPORATION AND DEFINITIONS

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

Adjusted Tangible Net Worth: The sum of all items which, in accordance with GAAP, would be included as tangible assets plus Subordinated Affiliate Debt, less Indebtedness and all items which, in accordance with GAAP, would be included as minority interests.

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

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

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

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

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: Langdon Wilson, Inc.

Architect's Contract: The contract between Architect and Borrower dated July 20, 2006 for preparation of the Plans and Specifications.

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

Available Funds: As defined in Section 7.5 hereof.

Bank(s): As defined in the Preamble.

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

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

Borrower: As defined in the Preamble.

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

Business Day: Any day on which LaSalle is open for commercial banking business in Chicago, Illinois.

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

Commitment Amount: At any time, the aggregate principal amount of the Loans outstanding at such time plus the sum of the Available Commitment of each Bank at such time. The maximum Commitment Amount is equal to Ninety Three Million Three Hundred Thousand and no/100 Dollars ($93,300,000.00).

Commitment Fee: The commitment fee payable to Agent pursuant to that certain letter agreement, dated October 11, 2006, between Agent and Borrower.

Completion Date: November 1, 2007.

Construction Commencement Date: August 1, 2006.

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

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

Contractor: Opus West Construction Corporation, a Minnesota corporation.

Contractor's Fee: The fee to the Contractor in the amount of $3,367,943.00 which shall not be paid until such time as the Loans and all amounts due Banks under any of the Loan Documents are paid in full.

County: Orange County, California.

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 $93,300,000.00, (ii) a twenty-five (25) year amortization schedule and (iii) an interest rate equal to the greater of (A) seven and one-quarter percent (7.25%) 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 $2,904,773.00 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: Teledine Engineering, Inc.

Engineer's Contract: The contracts 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: $10,189,598.00, $7,600,00.00 of which shall be in the form of cash and the balance shall consist of the value of the Land.

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

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

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

Federal Funds Rate: For any day, a fluctuating interest rate equal for each day during such period to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for such day on such transactions received by the Agent from three Federal funds brokers of recognized standing selected by the Agent. The Agent's determination of such rate shall be binding and conclusive absent manifest error.

Final Disbursement: As defined in Section 7.12 hereof.

Financial Covenants: As defined in Section 8.14 hereof.

Foundation Work: As defined in Section 7.6 hereof.

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

GAAP: Generally accepted accounting principals, consistently applied.

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

Guarantor: Opus West Corporation, a Minnesota corporation.

Hazardous Substances: As defined in the Environmental Indemnity Agreement.

Improvements: As defined in the Recitals to this Agreement.

In Balance: As defined in Section 7.5 hereof.

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

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

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

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

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

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

Interest Reserve: As defined in Section 4.2 hereof.

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

LaSalle: As defined in the Preamble.

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

Legal Requirements: As to any person or party, the certificate of incorporation and by-laws or other organizational or governing documents of such person or party, and any law, treaty, rule or regulation or determination of an arbitrator or a court or other governmental authority, in each case applicable to or binding upon such person or party or any of its property or to which such person or party or any of its property is subject.

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

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

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

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

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

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

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

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

Loan Opening: The first disbursement of the Loan Proceeds.

Loan Opening Date: October 11, 2006.

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

Maturity Date: October 11, 2009, subject to one twelve (12) month extension to October 11, 2010 on the terms provided in Section 4.12 hereof.

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

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

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

Outstanding Bank Debt: Without duplication, the aggregate of all of 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.

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

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

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

Premises: The Land and the Project.

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

Project: As defined in the Recitals to this Agreement.

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

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

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

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

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

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

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

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 (or Guarantor, as applicable) to one or more Affiliates of Borrower (or Guarantor, as applicable) which are junior and subordinate to the liabilities of Borrower (or Guarantor, as applicable) o Banks.

"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

Title Insurance Company: First American Title Insurance Company.

ARTICLE 2 REPRESENTATIONS AND WARRANTIES

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

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

(b) Borrower is a duly formed limited liability company under the laws of the State of Delaware and is qualified to conduct business in the State of California. Borrower has full power and authority to conduct its business as presently conducted, to develop the Project, to enter into this Agreement and to perform all of its duties and obligations under this Agreement and under the Loan Documents; such execution and performance have been duly authorized by all necessary Legal Requirements; Borrower has not been convicted of a felony and there are no proceedings or investigations being conducted involving criminal activities of Borrower;

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

(d) The execution, delivery and performance of this Agreement, the Notes, the Deed of Trust, the other Loan Documents and any other documents or instruments to be executed and delivered by Borrower pursuant to this Agreement or in connection with the Loans and the construction, occupancy and use of the Project will **not**: (i) 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 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) Intentionally Omitted;

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

(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;

(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; and

(s) There are no Leases for use or occupancy of any part of the Premises and Borrower shall not enter into any Lease for all or any portion of the Premises without the prior written consent of Agent except that, without Agent's prior consent, Borrower may

enter into Leases with tenants of acceptable credit worthiness, as reasonably determined by the Agent for terms of five (5) years or more at rental rates of at least 95% of Borrower's current proforma rental rates approved by Agent on a standard form of lease approved by Agent, provided Borrower delivers a copy of each such Lease to Agent. Tenants shall be deemed to be of acceptable credit worthiness if such tenants' credit worthiness is consistent with that of existing tenants in other "Class A" office towers within the Irvine Concourse development.

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. 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 has contributed not less than $7,600,000 of the Equity Requirements in cash on the Loan Opening Date, which amounts have been 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 the Land, and such improvements thereon, 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 principal amount of each Loan for the period commencing on the date of such Loan until such Loan is paid in full as follows:

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

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

provided that at any time an Event of Default exists and is continuing, the interest rate applicable to each Loan shall be increased by 5% (the "Default Rate").

4.2 **Payment of Principal and Interest**.

(a) Through and including the Maturity Date, accrued interest on each Base Rate Loan and each LIBOR Loan shall be payable in arrears on the first Business Day of each calendar month and on the Maturity Date. The outstanding principal balance on all Loans made by the Banks hereunder shall be due and payable in full on the Maturity Date if the Maturity Date is not extended to the Extended Maturity Date pursuant to Section 4.12, in which event the outstanding principal balance will be due on the Extended Maturity Date. After the Maturity Date or Extended Maturity Date, as applicable, accrued interest on all Loans shall be payable on demand.

(b) In the event the Maturity Date has been extended to the Extended Maturity Date, on the first Business Day of each calendar month through and including the Extended Maturity Date, Borrower shall make monthly payments of principal and interest in a fixed amount calculated by amortizing the outstanding principal balance of the Loans and any unfunded Commitments over twenty-five (25) years at an annual interest rate

equal to the greater of (i) seven and one-quarter percent (7.25%) and (ii) the Current Yield for the United States Treasury Security closest in maturity to the tenth anniversary of the date of calculation as published by *The Wall Street Journal* on the fifth Business Day preceding the date of calculation, **plus** one and one-half percent (1.50%) plus the corresponding swap spread as published in Bloomberg's Financial Markets Commodities News as of the Determination Date (or if not so published, Agent, in its sole discretion, shall designate another daily financial or governmental publication of national circulation to be used to determine such spread). If publication of (A) *The Wall Street Journal*, or (B) the Current Yield of the United States Treasury Security in *The Wall Street Journal* is discontinued, the Agent, in its sole discretion, shall designate another daily financial or governmental publication of national circulation to be used to determine the Current Yield.

(c) Borrower hereby authorizes and directs each Bank to disburse interest to itself on the dates interest payments are due from the undisbursed proceeds of the Loans in an amount not to exceed the line item in the Project Budget allocated for the payment of interest, which amount shall constitute an interest reserve (the "Interest Reserve") and which shall be withheld from the Borrower until disbursed by the Banks and which, when disbursed, shall constitute a Loan hereunder; provided, however, that (i) upon disbursement of the Interest Reserve, interest shall be paid directly by the Borrower from sources other than the proceeds of a Loan, or (ii) if any portion of the Project is substantially complete and one or more tenants have commenced paying rent, then Borrower shall pay interest from Project cash flow after payment of actual operating expenses. To the extent there is insufficient cash flow available at the Project after payment of actual operating expenses, the Banks shall advance such shortfall to the extent available in the line item of the Project Budget allocated to interest.

(d) Prior to the occurrence of an Event of Default, all payments and prepayments on account of the indebtedness evidenced by the Notes shall be applied as follows: (i) first, to fees, expenses, costs and other similar amounts then due and payable to the Banks, (ii) second, to accrued and unpaid interest on the principal balance of the Notes, (iii) third, to the payment of principal due in the month in which the payment or prepayment is made, if any, (iv) fourth, to any escrows, impounds or other amounts which may then be due and payable under the Loan Documents, (v) fifth, to any other amounts then due the Banks hereunder or under any of the Loan Documents, and (vi) last, to the unpaid principal balance of the Notes. After an Event of Default has occurred and is continuing, payments shall be applied as required under applicable law and in the absence of any such requirements, payments may be applied to amounts owed hereunder and under the Loan Documents in such order as Agent shall determine, in its sole discretion, subject to Section 4.7 hereof.

(e) All payments of principal (including prepayments) and accrued interest shall be paid by wire transfer or check in United States Dollars, to Agent, for the account of the Banks, at such place as Agent may from time to time direct, and in the absence of such direction, then at the offices of Agent at 135 South LaSalle Street, 12th Floor, Chicago, Illinois 60603. Payment made by check shall be deemed paid on the date Agent

receives such check; provided, however, that if such check is subsequently returned to Agent unpaid due to insufficient funds or otherwise, the payment shall not be deemed to have been made and shall continue to bear interest until collected. Notwithstanding the foregoing, the final payment due under the Notes must be made by wire transfer or other immediately available funds.

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

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

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

(a) Each Loan shall be divided into tranches which are either a Base Rate Loan or a LIBOR Loan (each a "type" of Loan), as Borrower shall specify in the Request For Advance pursuant to Section 7.3 hereof. Base Rate Loans and LIBOR Loans may be outstanding at the same time, provided that not more than five (5) different tranches of LIBOR Loans shall be outstanding at any one time. All borrowings, conversions and repayments of Loans shall be effected so that each Bank will have a pro rata share (according to its Pro Rata Share) of all Loans. Each LIBOR Loan shall be in an aggregate amount of at least $500,000 and an integral multiple thereafter of at least $250,000.

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

4.4 **Conversion and Continuation Procedures**.

(a) Borrower may elect from time to time to convert LIBOR Loans to Base Rate Loans by giving Agent at least three (3) Business Days' prior irrevocable written notice of such election no later than 11:00 A.M. (Chicago time), provided that any such conversion of LIBOR Loans may only be made on the last day of an Interest Period with respect thereto or shall be subject to payment of all applicable breakage costs if paid prior

thereto. Borrower may elect from time to time to convert Base Rate Loans to LIBOR Loans by giving Agent at least three (3) Business Days' prior irrevocable written notice of such election. Any such notice of conversion to LIBOR Loans shall specify the length of the initial Interest Period or Interest Periods therefor. Upon receipt of any such written notice, Agent shall promptly notify each Bank thereof. All or any part of outstanding LIBOR Loans and Base Rate Loans may be converted as provided herein, provided that (i) no Loan may be converted into a LIBOR Loan when any Event of Default has occurred and is continuing and Agent has or the Required Banks have determined that such a conversion is not appropriate, (ii) no Loan may be converted into a LIBOR Loan after the date that is one month prior to the Maturity Date (or Extended Maturity Date as applicable), and (iii) the conversion of LIBOR Loans is otherwise subject to the provisions governing LIBOR Loans set forth in Article 4 hereof.

(b) Any LIBOR Loans may be continued as such upon the expiration of the then current Interest Period with respect thereto by Borrower giving notice to Agent, in accordance with the applicable provisions of the term "Interest Period" set forth in Section 1.1, of the length of the next Interest Period to be applicable to such Loans, provided that no LIBOR Loan may be continued as such (i) when any Event of Default has occurred and is continuing and Agent has or the Required Banks have determined that such a continuation is not appropriate or (ii) after the date that is one month prior to the Maturity Date and provided, further, that if Borrower shall fail to give any required notice as described above in this paragraph or if such continuation is not otherwise permitted under the terms of Article 4 of this Agreement, such Loans shall be automatically converted to Base Rate Loans on the last day of such then expiring Interest Period.

4.5 **Computation of Interest and Fees**.

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

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

4.6 **Inability to Determine Interest Rate**. If prior to the first day of any Interest Period, (a) Agent shall have determined (which determination shall be conclusive, absent manifest error) that (i) the making or maintenance of any LIBOR Loan would violate any applicable law, rule, regulation or directive, whether or not having the force of law, (ii) United States dollar deposits in the principal amount, and for periods equal to the Interest Period for

funding any LIBOR Loan are not available in the London Interbank Eurodollar market in the ordinary course of business, or (iii) by reason of circumstances affecting the London Interbank Eurodollar market, adequate and fair means do not exist for ascertaining the LIBOR Rate to be applicable to the relevant LIBOR Loan, or (b) Agent shall have received notice from the Required Banks that the LIBOR Rate determined or to be determined for such Interest Period will not adequately and fairly reflect the cost to such Banks (as conclusively certified by such Bank) of making or maintaining their affected Loans during such Interest Period, Agent shall give telecopy or telephonic notice thereof to Borrower and Banks as soon as practicable thereafter and, so long as such circumstances shall continue (i) no Bank shall be under any obligation on the last day of the current Interest Period for each LIBOR Loan to make a new LIBOR Loan, and such Loan shall, unless then repaid in full, automatically convert to a Base Rate Loan, without further demand, presentment, protest or notice of any kind, all of which are hereby waived by the Borrower.

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

4.8 **Illegality**. Notwithstanding any other provision herein, if Agent shall have reasonably determined that any Regulatory Change shall make it unlawful for any Bank to make or maintain LIBOR Loans as contemplated by this Agreement, Agent shall give notice of such determination to Borrower and each Bank and (a) the commitment of such Bank hereunder to make LIBOR Loans, continue LIBOR Loans as such and convert Base Rate Loans to LIBOR Loans shall forthwith be canceled and (b) the LIBOR Loans then outstanding, if any, shall be converted automatically to Base Rate Loans on the respective last days of the then current Interest Periods with respect to such LIBOR Loans or within such earlier period as required by law. If any such conversion of a LIBOR Loan occurs on a day which is not the last day of the then current Interest Period with respect thereto, Borrower shall pay to each Bank such amounts, if any, as may be required pursuant to 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 indemnified amount shall include any and all costs, expenses, penalties and charges incurred by the Banks as a result thereof, plus an amount equal to the excess, if any, of (i) the amount of interest which would have accrued on the amount so prepaid, or borrowed, converted or continued, for the period from the time of such prepayment or of such failure to borrow, convert or continue to the last day of such Interest Period (or, in the case of the failure to borrow, convert or continue, the Interest Period which would have commenced on the date of such failure) in each case the applicable rate of interest for such Loans provided herein (excluding, however, the Applicable Margin included thereon, if any) over (ii) the amount of interest (as reasonably defined by such Bank) which would have accrued to such Bank on such amount by placing such amount on deposit for a comparable period with leading banks in the certificate of deposit market, the eurodollar deposit market, or other appropriate money market selected by such Bank. This covenant shall survive the termination of this Agreement and the payment of the Notes and all other amounts due hereunder. Amounts payable pursuant to this Section shall be paid to Agent for the account of the applicable Bank, upon the request of such Bank through Agent and a determination of any Bank as to the amounts payable pursuant to this Section shall be conclusive absent manifest error, based upon the assumption that such Bank funded its loan commitment for LIBOR Loans in the London Interbank Eurodollar market using any reasonable attribution or averaging methods which such Bank deems appropriate and practical, provided, however, that such Bank is

not obligated to accept a deposit in the London Interbank Eurodollar market in order to charge interest on a LIBOR Loan at the LIBOR Rate.

4.12 **Extension of Maturity Date**. Subject to satisfaction of all the following conditions, Borrower may extend the Maturity Date for twelve (12) months to October 11, 2010 (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 in the amount set forth in the letter agreement of even date herewith between Agent and Borrower;

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

(e) The Debt Service Coverage Ratio for the Project, based upon Operating Cash Flow and Debt Service projected by Agent for the twelve (12) months commencing on the Maturity Date, shall be not less than 1.20 to 1.0 on the basis of the Loans in the amount of the outstanding principal balance of the Loans and any unfunded Commitments.

ARTICLE 5 LOAN DOCUMENTS

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

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

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

(c) **Assignment of Rents and Leases**. A first collateral assignment from Borrower to Agent, for the benefit of the Banks, of all rents, leases and profits of the

Premises as security for the Notes, and, if Agent so requires, specific collateral assignments of any particular Leases bearing the consent to the assignment of the lessee whose Lease is so assigned.

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

(e) **Guaranty of Payment and Completion**. A Guaranty of Payment and Completion executed by Guarantor.

(f) **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.

(g) **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.

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

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

ARTICLE 6 CONDITIONS TO LOAN OPENING

6.1 **Conditions to Loan Opening**. As a condition precedent to the Loan Opening (except as otherwise expressly provided below), Borrower has furnished the following to Agent prior to the Loan Opening or at such time as is set forth below, all of which must be strictly satisfactory to Agent and Agent's counsel in form, content and execution:

(a) **Title Insurance Policy**. At the Loan Opening, an ALTA 1992 Construction Loan Policy issued on the date of the Loan Opening by the Title Insurance Company to Agent in the full amount of the Loans, insuring the Deed of Trust to be a valid first, prior and paramount lien upon the fee title to the Premises subject only to the Permitted Exceptions and to customary exceptions for pending disbursements of the Loans ("Construction Title Insurance Policy"). The Construction Title Insurance Policy

must specifically insure Agent for claims and questions related to claims for mechanics' or materialmen's liens and contain the following endorsements to the extent available in the State of California: (i) An ALTA Modified Form 3.1 (plans and specifications) (including compliance with parking requirements) which must state the intended use of the Project when completed in accordance with the Plans and Specifications is a "permitted use" under the governing zoning ordinance; (ii) Access Endorsement; (iii) One Tax Parcel Endorsement; (iv) if the Land consists of more than one subparcel, Contiguity Endorsement; (v) Environmental Lien Endorsement; (vi) Variable Rate Endorsement; (vii) Pending Disbursements Endorsement; (viii) Survey Endorsement (ix) Modified Comprehensive Endorsement No. 1; (x) Doing Business Endorsement; (xi) Creditor's Rights Endorsement; and (xii) such other endorsements as Agent may require. If required by any Agent, Borrower shall procure reinsurance with companies and in amounts satisfactory to the Agent.

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

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

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

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

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

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

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

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

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

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

The Survey shall be made in accordance with (i) the current survey standards of the American Title Association and American Congress on Surveying and Mapping including items 1, 2, 3, 4, 6, 7(a) and (b), 8, 9, 10, 11(a) and (b) and 13 of Table A thereof and (ii) the laws of the State. To the extent that there is any conflict or inconsistency among the Survey standards described above, the more restrictive standard shall apply. The Survey shall be dated not later than sixty (60) days prior to the Loan Opening, and shall bear a proper certificate by the surveyor, which certificate shall recite compliance with the laws and standards enumerated above, shall include the legal description of the Premises and shall run in favor of Borrower, Agent and the Title Insurance Company. After the Survey has been delivered, Borrower shall furnish supplemental surveys showing the Foundation Work for the Project and showing additional improvements placed on the Premises from time to time as Agent may request, as well as two (2) copies of a final as-built survey on completion of construction showing the location of all improvements on the Land and otherwise complying with the foregoing requirements.

(c) **Insurance Policies**. Borrower shall, during the term of this Agreement, procure at its expense and keep in force the insurance coverages required by the Deed of Trust. In addition, all insurance shall be in form, content and amounts approved by Agent and written by an insurance company or companies licensed to do business in the state in which the Premises are located and domiciled in the United States or a governmental agency or instrumentality approved by Agent. The policies for such insurance shall have attached thereto standard mortgagee clauses in favor of and permitting Agent to collect any and all proceeds payable thereunder and shall include a 30 day (except for nonpayment of premium, in which case, a 10 day) notice of cancellation clause in favor of Agent. Duplicate policies or certificates of insurance shall be delivered to and held by Agent as further security for the payment of the Notes and any other obligations arising under the Loan Documents, with evidence of renewal coverage delivered to Agent at least 15 days before the expiration date of any policy.

(d) **Utilities; Licenses; Permits**. Evidence satisfactory to Agent that:

(i) all utility and municipal services required for the construction, occupancy and operation of the Premises are available for use and tap-on at the Premises, subject only to payment of fees included in the Project Budget, or will

be available after construction thereof as provided in the Construction Contracts, subject only to payment of costs and fees included in the Project Budget;

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

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

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

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

(e) **Geotechnical Report**. A geotechnical report prepared by a licensed soil engineer satisfactory to Agent showing the locations of all borings, containing boring logs for all borings together with recommendations for the design of the foundations, paved areas and underground utilities for the Project, confirming that there are no mining facilities, sink holes or voids beneath the Land, confirming that no conditions exist which could cause subsidence of any portion of the Land and showing no state of facts which could adversely affect the Project.

(f) **Environmental Report**. A written report ("Environmental Report") prepared at Borrower's sole cost and expense by an independent professional

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

(g) **Appraisal**. An appraisal addressed to Agent and satisfactory to the Banks prepared by a certified or licensed appraiser who is approved by Agent. The appraisal must show an "as stabilized" appraised value of the Premises, assuming completion of the Project in accordance with the Plans and Specifications, such that the ratio of the Commitment Amount to the appraised value of the Premises shall be no more than eighty percent (80%) and the ratio of the Commitment Amount to cost shall be no more than eighty-five percent (85%).

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

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

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

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

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

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

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

(iv) the execution and delivery of this Agreement and the Loan Documents and the performance thereunder by Borrower will comply with all applicable law and will not violate or conflict with the instruments under which Borrower is organized or any applicable contracts or agreements; and

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

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

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

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

(o) **Development Agreement**. A copy, certified by Borrower, of the Master Planned Development Project.

(p) **Interest Rate Protection**. One or more contracts for interest rate protection purchased from Agent for not less than forty percent (40%) of the Commitment Amount which contracts shall be in effect for not less than fifteen (15) months and for a rate and otherwise in form and substance satisfactory to Agent in all respects. LaSalle, individually and as Agent, hereby acknowledges and agrees that any interest rate protection agreement (swap, hedge or collar agreement, as the case may be) secured by the Deed of Trust shall be secured as a subordinate position to the repayment

of the Loans to the Lenders and such repayment of Loans shall have a first priority position.

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

(r) **Engineer's Certificate**. An Engineer's Certificate on Agent's standard form with respect to the Improvements;

(s) **Construction Contracts**. Copies of any executed Subcontracts for work and materials in excess of $100,000, if requested by Agent with respect to the Improvements, 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 must be strictly satisfactory to Agent and Agent's counsel in all respects; 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;

(t) **Architect's and Engineer's Contracts**. A certified 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, and which must be satisfactory to Agent and Agent's counsel in all material respects;

(u) **Construction Schedule**. A schedule ("Construction Schedule") in form and content satisfactory to Agent which, among other things, sets forth dates for commencement and completion of all phases of the Project, indicates the time for performance of the work to be accomplished under the Construction Contracts or the Subcontracts, and includes a statement from the Contractor that, in its best professional judgment, the Construction Schedule is realistic and can be adhered to, subject to an Excusable Delay (as defined herein) in completing the Project in accordance with the Plans and Specifications. An "Excusable Delay" means a delay, not to exceed a total of thirty (30) consecutive days, caused by unusually adverse weather conditions which have not been taken into account in the Construction Schedule, fire, earthquake or other acts of God, strikes, lockouts, acts of public enemy, riots or insurrections or any other unforeseen circumstances or events beyond the reasonable control of Borrower (except

financial circumstances or events which may be resolved by the payment of money), and as to which Borrower notifies Agent in writing within ten (10) days after Borrower is actually aware of such occurrence; provided, however, no Excusable Delay shall suspend or abate any obligation of Borrower or any other person to pay any money nor may an Excusable Delay extend construction or any other obligation beyond the Maturity Date;

(v) **Intentionally Omitted**.

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

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

(y) **Intentionally Omitted**.

(z) **Subordinated Affiliate Debt**. In each case in which Affiliate Debt exists, Borrower shall cause each such Affiliate to deliver a subordination agreement satisfactory to Agent, in Agent's sole discretion, whereby the Affiliate Debt shall be subordinated in all respect to the Loans and all rights and liens of Banks under the Loan Documents;

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

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

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

Borrower shall pay all Loan Expenses which have accrued or been charged as of the Loan Opening Date.

ARTICLE 7 DISBURSEMENTS

7.1 **Conditions Precedent to Disbursement of Loan Proceeds**. The Loan Opening shall be made at such time as all of the conditions and requirements of this Agreement required to be performed by Borrower or other parties prior to the Loan Opening have been satisfied or performed, unless the same shall have been waived in writing by Agent; but in no event shall the Loan Opening occur later than the Loan Opening Date. At the Loan Opening, the Banks shall disburse funds necessary to pay any Loan Expenses then due. No disbursement of Loan Proceeds shall be made by the Banks to Borrower at any time unless:

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

(b) the Loan is In Balance;

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

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

(e) no litigation or proceedings are pending or threatened (including proceedings under Title 11 of the United States Code) against Borrower, the Project or the Contractor, which litigation or proceedings, in the judgment of Agent, could materially affect the Project or Borrower's obligations hereunder or under any of the Loan Documents;

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

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

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

7.2 **Borrowing Procedures**.

(a) Borrower shall submit a Request for Advance (appropriately completed and including all documentation required to be attached thereto pursuant to Section 7.3 hereof) to Agent and Agent's Consultant by 2:00 p.m. (Chicago time) not less than ten

(10) Business Days prior to the Borrowing Date specified therein requesting that the Banks make Loans on the Borrowing Date and specifying (i) the amount to be borrowed, and (ii) all Project Costs to be paid with such advance, including any retainage to be paid. Not less than three (3) Business Days prior to the Borrowing Date, Borrower shall notify Agent in writing (which written notice may be sent via telecopy or email) whether the Loans are to be LIBOR Loans, Base Rate Loans, or a combination thereof, and if the Loans are to be entirely or partly LIBOR Loans, the respective amounts of each such type of Loan and the respective lengths of the initial Interest Periods therefor. If Borrower selects a LIBOR Loan and the borrowing is not made on the Borrowing Date for any reason, Borrower shall be liable for any amounts payable pursuant to Section 4.11 hereof. Agent, no later than two (2) Business Days prior to the date an advance is to be made, shall (i) notify each Bank thereof and (ii) send to each Bank a copy of Borrower's Request For Advance together with all supporting documentation and Agent's Consultant's monthly report. Provided all conditions to an advance of Loan Proceeds have been satisfied or waived, as determined by Agent, each Bank will make the amount of its Pro Rata Share of each borrowing available to Agent for the account of Borrower at the Chicago office of Agent specified in Section 14.10 hereof prior to 11:00 A.M., Chicago time on the date requested by Borrower in funds immediately available to Agent. Each borrowing will be made available to Borrower by Agent depositing the aggregate amounts made available to Agent by the Banks through the Construction Escrow, or at Agent's option, Agent may advance such funds by payment directly to any third party to whom an amount is payable. The execution of this Agreement by Borrower constitutes an irrevocable authorization to Agent and the Banks to advance Loan Proceeds as provided in this Section. No further authorization shall be necessary to warrant such direct advances. All sums advanced by direct payment to third parties shall reduce the Available Commitment, shall be evidenced by the Notes and shall be secured by the Loan Documents. The Banks shall have no obligation to make advances of the Loan Proceeds more often than once in each calendar month, provided that the Banks may make an additional advance each calendar month to pay interest as provided in Section 4.2. Agent shall give Borrower written notice of monthly interest advances (provided that such notice shall not be a condition to such advance). Neither the Banks nor Agent shall have any obligation to see to the disposition of any direct payments to any contractor or other person.

(b) Unless Agent shall have been notified by any Bank prior to the date of any proposed borrowing that such Bank does not intend to make available to the Agent the Loan on such date, Agent may assume that such Bank has made the Loan available to the Agent on such date and Agent in its sole discretion may, but shall not be obligated to, make available to the Borrower a corresponding amount on such date. If such corresponding amount is not in fact made available to Agent by such Bank by 1:00 P.M., Chicago time, on the Business Day of such proposed borrowing (it being understood that any such notice received after 1:00 P.M., Chicago time, on any Business Day shall be deemed to have been received the immediately following Business Day), such Bank agrees to pay and the Borrower agrees to repay to Agent within two Business Days of demand such corresponding amount together with interest thereon, for each day from the

date such amount is made available to the Borrower until the date such amount is paid or repaid to Agent, at the interest rate applicable to such borrowing. If such Bank shall pay to Agent such amount, such amount so paid shall constitute such Bank's Loan, and if both such Bank and the Borrower shall have paid and repaid, respectively, such corresponding amount, Agent shall promptly pay over to the Borrower such corresponding amount in same day funds, but the Borrower shall remain obligated for all interest thereon to the extent not already paid by the Borrower pursuant to the preceding sentence. Nothing in this Section 7.2(b) shall be deemed to relieve any Bank of its obligation hereunder to make its Loan on any date specified in any borrowing notice.

(c) If a Bank (a "Defaulting Bank") defaults in making any advance or paying any other sum due and payable by it hereunder, such sum together with interest thereon at the interest rate applicable to such borrowing from the date such amount was due until repaid (such sum and interest thereon as aforesaid referred to, collectively, as the "Bank Default Obligation") shall be payable by the Defaulting Bank (i) to any Bank which elects, at its sole option (and with no obligation to do so), to fund the amount which the Defaulting Bank failed to fund or (ii) to Agent or any other Bank which under the terms of this Agreement is entitled to reimbursement from the Defaulting Bank for the amounts advanced or expended. Notwithstanding any provision hereof to the contrary, until such time as a Defaulting Bank has repaid the Bank Default Obligation in full, all amounts which would otherwise be distributed to the Defaulting Bank shall instead be applied first to repay the Bank Default Obligation (to be applied first to interest at the Federal Funds Rate and then to principal) until the Bank Default Obligation has been repaid in full (whether by such application or by cure by the Defaulting Bank), whereupon such Bank shall no longer be a Defaulting Bank. Any interest collected from Borrower on account of principal advanced by any Bank(s) on behalf of a Defaulting Bank shall be paid to the Bank(s) who made such advance and shall be credited against the Defaulting Bank's obligation to pay interest on the amount advanced at the Federal Funds Rate. If no other Bank funds the amount which the Defaulting Bank was obligated to fund, then a portion of the Defaulting Bank's indebtedness hereunder equal to the Bank Default Obligation shall be subordinated to the indebtedness of Borrower to the Banks (other than the Defaulting Bank) and shall be repaid only after payment in full of all other indebtedness hereunder. The provisions of this Section shall apply and be effective regardless of whether an Event of Default occurs and is then continuing, and notwithstanding (i) any other provision of this Agreement to the contrary or (ii) any instruction of Borrower as to its desired application of payments. Additionally, a Defaulting Bank's right to vote on matters which are subject to the consent or approval of the Required Banks (other than the Defaulting Bank) shall be suspended until it ceases to be a Defaulting Bank, and during any such period in which a Defaulting Bank's voting rights have been suspended the Required Banks shall be the requisite percentage of all other entities comprising the Banks. Agent shall be entitled to (i) withhold or set off, and to apply to the payment of the Bank Default Obligation any amounts to be paid to such Defaulting Bank under this Agreement, and (ii) bring an action or suit against such Defaulting Bank in a court of competent jurisdiction to recover the Bank Default Obligation and, to the extent such recovery would not fully compensate Bank (other than the Defaulting Bank) for the

Defaulting Bank's breach of this Agreement, to collect damages. In addition, the Defaulting Bank shall indemnify, defend and hold Agent and each of the other Banks harmless from and against any and all claims, actions, liabilities, damages, costs and expenses (including attorneys' fees and expenses), plus interest thereon at the Default Rate, for funds advanced by Agent or any other Bank on account of the Defaulting Bank or any other damages such entities may sustain by reason of the Defaulting Bank's failure or refusal to abide by its obligations under this Agreement. If a Bank becomes a Defaulting Bank, Borrower may find a replacement Bank and require the Defaulting Bank to assign its interests to such replacement in accordance with the terms of Section 10.1 of this Agreement provided that there shall be deducted from the amount that would otherwise be paid to the Defaulting Bank an amount equal to the Bank Default Obligation.

(d) Borrower hereby requests and authorizes Agent to make advances directly to itself for payment and reimbursement of all interest, charges, costs and expenses incurred by Agent in connection with the Loans, including, but not limited to, (i) interest due on the Loans and any points, loan fees, service charges, commitment fees or other fees due to Agent in connection with the Loans; (ii) all title examination, survey, escrow, filing, search, recording and registration fees and charges; (iii) all fees and disbursements of architects, engineers and consultants engaged by Borrower and Agent, including the fees and disbursements of the Architect, 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) ALTA Form Comprehensive Endorsement 1 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**. Disbursement of the available proceeds of the Loans shall be limited to an amount equal to the percentage thereof required by the terms of the Construction Contracts,

but in no event shall the Banks be obligated in respect of any Construction Contract until Final Disbursement to disburse in excess of ninety percent (90%) of the value (as certified by Agent's Consultant) of the materials and labor incorporated in the Project from time to time pursuant to such Construction Contract.

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 Completion Date, prior to the original Maturity Date and no Event of Default then exists:

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

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

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

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

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

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

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

(h) Agent shall have received reports from the Title Insurance Company or the appropriate filing offices of the state and county in which the Premises are located, indicating that no judgments, tax or other liens, security interests, leases of personalty, financing statements or other encumbrances (other than Permitted Exceptions and liens and security interests in favor of Agent and no other party), are of record or on file encumbering any portion of the Premises, and that there are no judgments or tax liens outstanding in respect to Borrower;

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

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

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

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

7.15 **Agent's Action for Agent's Own Protection Only**. The authority herein conferred upon Agent and any action taken by Agent or Agent's Consultant or their agents or employees in making inspections of the Premises, attending regularly scheduled Project

meetings, procuring sworn statements and waivers of lien, approving Subcontracts and approving Plans and Specifications will be taken by Agent and Agent's Consultant and by their agents or employees for their own protection and that of the Banks only, and neither Agent nor Agent's Consultant nor their agents or employees shall be deemed to have assumed any responsibility to Borrower or any other person or entity with respect to any such action herein authorized or taken by them or with respect to the proper construction and equipping of the Project, performance of Construction Contracts or prevention of claims for mechanics' or materialmen's liens.

ARTICLE 8 FURTHER AGREEMENTS OF BORROWER

8.1 **Construction of Project**. Borrower agrees that the Project will be constructed and fully equipped free and clear of all liens and encumbrances (excepting only (i) the lien of real estate taxes and assessments not delinquent, (ii) any liens and encumbrances of Agent and (iii) 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 Three Hundred Thousand Dollars ($300,000.00); 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 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 Guarantor, 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;

(c) once the Premises is generating cash flow, 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, financial statements of Borrower showing the results of operations of the Premises and consisting of a balance sheet and statement of income and expense prepared in accordance with generally accepted accounting principles and certified by an officer of Borrower;

(d) promptly supply Agent with such information concerning Guarantor'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 Guarantor, and within sixty (60) days of the end of each fiscal quarter, company prepared financial statements of Guarantor, each showing the results of operations of the Guarantor and consisting of a balance sheet, cash flow statement, and statement of income and expense prepared in accordance with GAAP and signed by an officer of Guarantor;

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

(f) promptly notify Agent and each Bank of any condition or event which constitutes (or which, with the giving of notice or lapse of time, or both, would constitute) an Event of Default, and of any material adverse change in the financial condition of Borrower;

(g) once tenants are in occupancy of the Premises, no later than fifteen (15) days after the end of each month, supply Agent with monthly occupancy reports which shall include the name of the each lessee, the expiration date of each Lease, and the rental amount for each demised space;

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

(i) permit Agent, Agent's Consultants or any of their agents or representatives to have access to and to examine all books and records regarding the Premises at any time or times hereafter during business hours; and

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

All information provided to Agent from Borrower or Guarantor 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 Guarantor, 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 **Deferred Developer and Contractor's Fee**. Borrower shall defer payment of the $2,904,773.00 Developer Fee and the $3,367,943.00 Contractor's Fee provided in the Project

Budget to be paid to Borrower or any Affiliate of Borrower until such time as the Loans and all amounts due Agent under any of the Loan Documents are paid in full.

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

(i) Guarantor shall maintain an Adjusted Tangible Net Worth 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 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 equal to or less than 5.0:1.0. At all times after January 1, 2008, Guarantor shall maintain an Outstanding Bank Debt Ratio equal to or less than 4.0:1.0. Guarantor's Outstanding Bank Debt Ratio shall be calculated at of the end of each fiscal quarter and fiscal year.

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 (s); 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 Matt Montgomery 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 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 fifteen (15) 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 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 Guarantor which materially impairs Borrower's or 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 Guarantor (i) files a voluntary petition in bankruptcy or is adjudicated a bankrupt or insolvent or files any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal, state, or other statute or law, or (ii) seeks or consents to or acquiesces in the appointment of any trustee, receiver or similar officer of Borrower or Guarantor or of all or any substantial part of the property of Borrower or Guarantor or any of the Premises; or all or a substantial part of the assets of Borrower or Guarantor are attached, seized, subjected to a writ or distress warrant or are levied upon unless the same is released or located within thirty (30) days;

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

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

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

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

(r) A default by the Guarantor in meeting any of the Financial Covenants set forth herein and in the Guaranty.

ARTICLE 12 AGENT'S REMEDIES UPON EVENT OF DEFAULT

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

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

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

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

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

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

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

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

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

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

(c) Declare the Notes to be due and payable forthwith without notice, demand, presentment, notice of nonpayment or nonperformance, protest, notice of protest, notice of intent to accelerate, notice of acceleration, or any other notice or any other action; and

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

12.2 **Setoff Rights**. In addition to any rights of setoff that Agent and/or the Banks may have under applicable law, Agent and/or the Banks, without notice of any kind to Borrower, may appropriate and apply to the payment of the Notes or of any sums due under this Agreement any and all balances, deposits, credits, accounts, certificates of deposit, instruments or money of Borrower then or thereafter in the possession of Agent, any Bank or any Participant of any Bank.

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

12.4 **Attorneys' Fees**. Borrower will pay Agent's reasonable attorneys' fees and costs in connection with the negotiation, preparation and administration of this Agreement and will pay the Agent's reasonable attorneys' fees and costs in connection with the administration and enforcement of this Agreement and the other Loan Documents; without limiting the generality of the foregoing, if at any time or times hereafter Agent employs counsel for advice or other representation with respect to any matter concerning Borrower, this Agreement, the Premises or the Loan Documents (including any bankruptcy proceeding) or if the Agent employs one or more counsel to protect, collect, lease, sell, take possession of, or liquidate any of the Premises, or to attempt to enforce or protect any security interest or lien or other right in any of the Premises or under any of the Loan Documents, or to enforce any rights of the Banks or obligations of Borrower or any other person, firm or corporation which may be obligated to the Banks by virtue of this Agreement or under any of the Loan Documents or any other agreement, instrument or document, heretofore or hereafter delivered to Agent in furtherance hereof, then in any such event, all of the attorneys' fees arising from such services, and any expenses, costs and charges relating thereto, shall constitute an additional indebtedness owing by Borrower to the Banks payable on demand and evidenced and secured by the Loan Documents.

12.5 **No Waiver**. No failure by Agent to exercise, or delay by Agent in exercising, any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof, or the exercise of any other right, power or privilege. The rights and remedies provided in this Agreement and in the Loan Documents are cumulative and not exclusive of each other or of any right or remedy provided at law or in equity. No notice to or demand on Borrower in any case, in itself, shall entitle Borrower to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of Agent to any other or further action in any circumstances without notice or demand.

12.6 **Default Rate**. From and after the date of any Event of Default until the date on which such Event of Default is cured or waived, interest on funds outstanding hereunder shall

accrue at the Default Rate and be payable on demand. The failure of Agent to charge interest at the Default Rate shall not be evidence of the absence of an Event of Default or waiver of an Event of Default by Agent.

ARTICLE 13 THE AGENT

13.1 **Appointment and Authorization**.

(a) Each Bank hereby irrevocably (subject to Section 13.9) appoints, designates and authorizes Agent to take such action on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to it by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary contained elsewhere in this Agreement or in any other Loan Document, Agent shall not have any duty or responsibility except those expressly set forth herein, nor shall Agent have or be deemed to have any fiduciary relationship with any Bank, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against Agent. Without limiting the generality of the foregoing sentence, the use of the term "agent" herein and in other Loan Documents with reference to the Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

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

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

(i) Agent shall not, without the prior approval or consent of the Required Banks, appoint a successor Agent, provided that no Bank shall unreasonably withhold its consent to the appointment of a successor Agent and further provided that nothing contained in this Section 13.2 shall limit the rights

of Agent under Section 13.9 in the event a successor Agent is not appointed within thirty (30) days of the retiring Agent giving notice of its resignation; and

(ii) Waive any non-monetary Event of Default on the part of the Borrower 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 (except as in accordance with the terms of this Agreement) or forgive all or any portion of the principal amount of the Loans or any accrued interest thereon, or any other amendment of this Agreement or the other Loan Documents which would reduce the underlying interest rate or the rate at which fees are calculated or forgive any loan fee, or extend the time of payment of any principal, interest or fees;

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

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

(ix) Modify any financial covenants of Guarantor.

(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 1225 135 South LaSalle Street Chicago, Illinois 60603 Attn: Thomas G. Jeffery, Senior Vice President
With a copy to:	LaSalle Bank National Association Suite 1425 135 South LaSalle Street Chicago, Illinois 60603 Attn: Commercial Real Estate Syndications

And:	Schwartz Cooper Chartered 180 North LaSalle Street Suite 2700 Chicago, Illinois 60601 Attn: Michael S. Kurtzon, Esq.
To a Bank:	See notice addresses set forth on Schedule 3.1 hereto
To Borrower:	Irvine Center Partners III, L.L.C. 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.

[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:

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
Its: Vice President

AGENT:

LASALLE BANK NATIONAL ASSOCIATION, a national banking association

By:_____
Name:_____
Title:_____

THE BANKS:

LASALLE BANK NATIONAL ASSOCIATION, a national banking association

By:_____
Name:_____
Title:_____

MIDFIRST BANK, a federally chartered savings association

By:_____
Name:_____
Title:_____

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

BORROWER:

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

By: Opus West Corporation, a Minnesota corporation, its manager

By:_____
Name:_____
Its:_____

AGENT:

LASALLE BANK NATIONAL ASSOCIATION, a national banking association

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

THE BANKS:

LASALLE BANK NATIONAL ASSOCIATION, a national banking association

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

MIDFIRST BANK, a federally chartered savings association

By:_____
Name:_____
Title:_____

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

BORROWER:

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

By: Opus West Corporation, a Minnesota corporation, its manager

By:_____
Name:_____
Its:_____

AGENT:

LASALLE BANK NATIONAL ASSOCIATION, a national banking association

By:_____
Name:_____
Title:_____

THE BANKS:

LASALLE BANK NATIONAL ASSOCIATION, a national banking association

By:_____
Name:_____
Title:_____

MIDFIRST BANK, a federally chartered savings association

By: Scott Willits
Name: Scott Willits
Title: Vice President

UNION BANK OF CALIFORNIA, N.A., a national banking association

By: _____
Name: David B. Murray
Title: SVP / Regional Manager

RICHTER-SCHROEDER COMPANY, INC., a Wisconsin Corporation

By: _____
Name: _____
Title: _____

UNION BANK OF CALIFORNIA, N.A., a national banking association

By:_____
Name:_____
Title:_____

RICHTER-SCHROEDER COMPANY, INC., a Wisconsin Corporation

By: Pamela S. VanBuren
Name: PAMELA S. VANBUREN
Title: VICE PRESIDENT

SCHEDULE 3.1

THE BANKS AND COMMITMENTS

BANK	COMMITMENT	PRO RATA SHARE
LaSalle Bank National Association 135 South LaSalle Street Suite 1225 Chicago, Illinois 60603 Attn: Thomas G. Jeffery, Senior Vice President	$24,300,000.00	26.045016078%
MidFirst Bank 2575 E Camelback Rd # 450 Phoenix, AZ 85016 Attn: Scott Willits, Vice President	$22,000,000.00	23.579849946%
Union Bank of California, N.A. San Francisco Corporate Office 350 California Street 7th Floor San Francisco, California 94104 Attn: Karen Kokame Vice President	$23,500,000.00	25.187566988%
Richter-Schroeder Company, Inc. 3131 East Camelback Road, Suite 130 Phoenix, Arizona 85016 Attn: Dorene J. Longfellow, Vice President	$23,500,000.00	25.187566988%

EXHIBIT "A"

LEGAL DESCRIPTION

Real property in the City of Irvine, County of Orange, State of California, described as follows:

PARCEL A:

PARCEL 2, IN THE CITY OF IRVINE, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON EXHIBIT "B" ATTACHED TO LOT LINE ADJUSTMENT 40088-LL RECORDED SEPTEMBER 14 1999 AS INSTRUMENT NO. 19990660556 OF OFFICIAL RECORDS OF ORANGE COUNTY CALIFORNIA.

PARCEL B:

PARCEL 2, IN THE CITY OF IRVINE, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON PARCEL MAP NO. 2001-215, FILED DECEMBER 17, 2002 IN BOOK 329, PAGES 22 TO 24 INCLUSIVE, OF PARCEL MAPS OF ORANGE COUNTY, CALIFORNIA.

EXCEPTING FROM THE HEREINABOVE DESCRIBED PARCELS A AND B ALL OIL, OIL RIGHTS MINERALS, MINERAL RIGHTS, NATURAL GAS, NATURAL GAS RIGHTS AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOWN THAT MAY BE WITHIN OR UNDER THE PARCEL OF LAND HEREINABOVE DESCRIBED, TOGETHER WITH THE PERPETUAL RIGHT OF DRILLING, MINING, EXPLORING AND OPERATING THEREFOR, AND STORING IN AND REMOVING THE SAME FROM SAID LAND OR ANY OTHER LAND, INCLUDING THE RIGHT TO WHIPSTOCK OR DIRECTIONALL Y DRILL AND MINE FROM LANDS OTHER THAN THOSE HEREINABOVE DESCRIBED, OIL OR GAS WELLS, TUNNELS AND SHAFTS INTO, THROUGH OR ACROSS THE SUBSURFACE OF THE LAND HEREINABOVE DESCRIBED, AND TO BOTTOM SUCH WHIPSTOCKED OR DIRECTIONALLY DRILLED WELLS, TUNNELS AND SHAFTS UNDER AND BENEATH OR BEYOND THE EXTERIOR LIMITS THEREOF, AND TO REDRILL, RETUNNEL, EQUIP MAINTAIN, REPAIR, DEEPEN AND OPERATE ANY SUCH WELLS OR MINES, WITHOUT HOWEVER, THE RIGHT TO DRILL, MINE, STORE, EXPLORE AND OPERATE THROUGH THE SURFACE OF THE UPPER 500 FEET OF THE LAND, AS RESERVED IN THE DEED FROM IRVINE INDUSTRIAL COMPLEX, A CORPORATION, RECORDED JANUARY 21, 1974 IN BOOK 11060, PAGE 213 OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA.

PARCEL C:

NON-EXCLUSIVE EASEMENTS FOR VEHICULAR AND PEDESTRIAN INGRESS AND EGRESS PURPOSES, AS SAID EASEMENTS ARE SET FORTH IN THAT CERTAIN AMENDED AND RESTATED DECLARATION OF ESTABLISHMENT OF COVENANTS, CONDITIONS AND RESTRICTIONS AND GRANT OF EASEMENTS FOR KOLL CENTER IRVINE NORTH RECORDED FEBRUARY 9, 1987 AS INSTRUMENT NO. 87-074459 OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA.

PARCEL D:

NON-EXCLUSIVE EASEMENTS FOR VEHICULAR AND PEDESTRIAN INGRESS AND EGRESS UTILITIES, DRAINAGE AND OTHER PURPOSES, AS SAID EASEMENTS ARE SET FORTH IN ARTICLE IV OF THAT CERTAIN AMENDED AND RESTATED DECLARATION ESTABLISHING EASEMENTS, COVENANTS AND RESTRICTIONS FOR KCIN PARKING FACILITIES RECORDED SEPTEMBER 1, 1998 AS INSTRUMENT NO. 19980582940 OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA.

PARCEL E:

A TEMPORARY NON-EXCLUSIVE ACCESS EASEMENT FOR VEHICULAR AND PEDESTRIAN ACCESS AND A TEMPORARY CONSTRUCTION EASEMENT AS SET FORTH IN THAT CERTAIN "TEMPORARY ACCESS EASEMENT AND SUPPLEMENT TO TEMPORARY PARKING EASEMENT" RECORDED OCTOBER 6, 2004 AS INSTRUMENT NO. 2004000897997, OF OFFICIAL RECORDS.

APN: 435-161-72 (PARCEL A) and 435-161-75 (PARCEL B)

EXHIBIT B

FORM OF NOTES

PROMISSORY NOTE

$_____
Chicago, Illinois

Date: _____, 2006
Maturity Date: _____, 2009

FOR VALUE RECEIVED, **IRVINE CENTER PARTNERS III, L.L.C.**, a Delaware limited liability company (the "Borrower"), hereby promises to pay to the order of **LASALLE BANK NATIONAL ASSOCIATION**, a national banking association (the "Bank"), at the principal office of LaSalle Bank National Association (the "Agent") in Chicago, Illinois, on or before the Maturity Date or Extended Maturity Date, as applicable (as such terms are defined in the hereinafter referred to Loan Agreement), the lesser of (i) _____ 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.

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

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

By: _____
Name: _____
Title: _____

EXHIBIT C

PERMITTED EXCEPTIONS

THE FOLLOWING ARE THE PERMITTED TITLE EXCEPTIONS PURSUANT TO PRO FORMA LOAN POLICY NO. NCS-237626-SA1 ISSUED BY FIRST AMERICAN TITLE INSURANCE COMPANY.

Exceptions 1, 1a, 2, 3, 4, 5, 5a, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 21 as set forth on Schedule B, Part I together with Exceptions 1, 2 and 3 as set forth on Schedule B, Part II.

EXHIBIT D

PROJECT BUDGET

Uses	Amount	$/SF	% Total
Land	$ 11,633,621	$ 35.47	11%
Real Estate Taxes	174,982	0.53	0%
Base Bldg. & Parking	56,132,388	171.16	51%
Tenant Improvements	14,133,330	43.10	13%
Off-Site Improvements	1,000,000	3.05	1%
Parking Allocation	350,000	1.07	0%
Government Charges	5,693,637	17.36	5%
Westbay Expenses	50,000	0.15	0%
Leasing Commissions	4,571,260	13.94	4%
Legal/ Financing Fees	1,549,518	4.72	1%
Advertising/Marketing	150,000	0.46	0%
Interest Reserve	3,478,270	10.61	3%
Operating Shortfall	3,572,592	10.89	3%
Project Contingency	1,000,000	3.05	1%
Design/Build Fee	3,367,943	10.27	3%
Development Fee	2,904,773	8.86	3%
Total Uses	$ 109,762,314	$ 334.69	100%

EXHIBIT E

ARCHITECT'S CERTIFICATE

Re: Construction Loans in the aggregate principal amount of $93,300,000.00 (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 October __, 2006 by and among LaSalle Bank National Association, as Agent for itself and the Banks ("Agent"), the Banks and Irvine Center Partners III, L.L.C., a Delaware limited liability company, for construction of a 330,000 square foot office building located in Irvine, Orange County, California ("Project").

The undersigned, Langdon Wilson, Inc. ("**Architect**"), has entered into that certain agreement dated as of July 20, 2006 with Opus Architects and Engineers, Inc. (the "**Contract**"). The undersigned hereby certifies to the Agent that pursuant to the Contract the undersigned has designed the Project and will perform certain other services, as provided in the Contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

Date: _____, 2006

Langdon Wilson, Inc.

By:_____
Name:_____
Its:_____

Address:

_____
_____
_____

EXHIBIT F

FORM OF ASSIGNMENT AND ACCEPTANCE

Reference is made to the Construction Loan Agreement dated as of October ___, 2006 (as the same may be amended, modified or supplemented from time to time in accordance with its terms, the "Loan Agreement") among (i) **IRVINE CENTER PARTNERS III, L.L.C.**, a Delaware limited liability company ("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: Opus Center Irvine III (the "Project")
BORROWER: **IRVINE CENTERS PARTNERS III, L.L.C.**, a Delaware limited liability company (the "Borrower")
DRAW NO: _____

Reference is hereby made to that certain Construction Loan Agreement dated as of October ___, 2006 (the "Loan Agreement"), executed by and among the Borrower, the "Banks" and LaSalle Bank National Association, as Agent (the "Agent"). Capitalized words and phrases used herein without definition shall have the respective meanings ascribed to such words and phrases in the Loan Agreement.

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

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

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

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

(b) all representations and warranties made by the Borrower to the Agent and Banks in the Loan Agreement and otherwise in connection with the Loan continue to be accurate;

(c) no Event of Default has occurred under the Loan Agreement or under any Loan Document, and no event, circumstance or condition has occurred or exists which, with the

passage of time or the giving of notice, would constitute an Event of Default under the Loan Agreement or under the other Loan Documents;

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

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

(f) all Construction Disbursements advanced by the Agent and Banks to the Borrower for labor, materials and/or services furnished prior to this draw request have been paid to the parties entitled to such payment, and all Loan Proceeds so disbursed have been used for the purposes set forth in the Loan Agreement;

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

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

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

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

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

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

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

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

IN WITNESS WHEREOF, the Borrower has executed this Loan Advance Requisition as of _____, 2006.

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

By: Opus West Corporation, a Minnesota corporation, its manager

By:_____
Name:_____
Its:_____

ATTACHMENT 2

PROMISSORY NOTE

$93,300,000.00
Chicago, Illinois

Date: October 11, 2006
Maturity Date: October 11, 2009

FOR VALUE RECEIVED, **IRVINE CENTER PARTNERS III, L.L.C.**, a Delaware limited liability company (the "Borrower"), hereby promises to pay to the order of **LASALLE BANK NATIONAL ASSOCIATION**, a national banking association (the "Bank"), at the principal office of LaSalle Bank National Association, in its capacity as agent, (the "Agent") in Chicago, Illinois, on or before the Maturity Date or Extended Maturity Date, as applicable (as such terms are defined in the hereinafter referred to Loan Agreement), the lesser of (i) Ninety Three Million Three Hundred Thousand and 00/100 Dollars ($93,300,000.00), 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.

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: Senior Vice President

THIS AMENDED AND RESTATED PROMISSORY NOTE ("NOTE") IS MADE AS OF THE 31st DAY OF OCTOBER, 2006 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 MIDFIRST BANK, A FEDERALLY CHARTERED SAVINGS ASSOCIATION, IN THE PRINCIPAL AMOUNT OF $22,000,000.00, (II) AMENDED AND RESTATED PROMISSORY NOTE DATED AS OF EVEN DATE HEREWITH FROM BORROWER TO UNION BANK OF CALIFORNIA, A NATIONAL BANKING ASSOCIATION, IN THE PRINCIPAL AMOUNT OF $23,500,000.00, AND (III) AMENDED AND RESTATED PROMISSORY NOTE DATED AS OF EVEN DATE HEREWITH FROM BORROWER TO RICHTER-SCHROEDER COMPANY, INC., A WISCONSIN CORPORATION, IN THE PRINCIPAL AMOUNT OF $23,500,000.00, AMEND, RESTATE, AND SUPERSEDE IN ITS ENTIRETY THAT CERTAIN PROMISSORY NOTE DATED OCTOBER 11, 2006 IN THE ORIGINAL PRINCIPAL AMOUNT OF $93,300,000.00 FROM BORROWER TO LASALLE BANK NATIONAL ASSOCIATION.

AMENDED AND RESTATED PROMISSORY NOTE

$24,300,000.00
Chicago, Illinois

Date: October 31, 2006
Maturity Date: October 11, 2009

FOR VALUE RECEIVED, **IRVINE CENTER PARTNERS III, L.L.C.**, a Delaware limited liability company (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) Twenty Four Million Three Hundred Thousand and 00/100 Dollars ($24,300,000.00), or (ii) the aggregate principal amount of all Loans made to the Borrower by the Bank under and pursuant to that certain Amended and Restated 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 pay interest on the unpaid principal amount of all Loans outstanding from time to time, at the rate(s) and at the time(s) set forth in the Loan Agreement. The outstanding principal amount of all Loans shall be repaid by the Borrower on the Maturity Date or Extended Maturity Date, as applicable, unless payable sooner pursuant to the provisions of the Loan Agreement. Payments of both principal and interest are to be made in lawful money of the United States of America. The Loans made by the Bank and all payments on account of the principal and interest thereof, shall be recorded on the books and records of the Agent and the principal balance as shown on such books and records shall be rebuttably presumptive evidence of the principal amount owing hereunder.

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 pursuant to which the Maturity Date 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.

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:
Title: Charles Vogel
Vice President

THIS AMENDED AND RESTATED PROMISSORY NOTE ("NOTE") IS MADE AS OF THE 31st DAY OF OCTOBER, 2006 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, A NATIONAL BANKING ASSOCIATION, IN THE PRINCIPAL AMOUNT OF $24,300,000.00, (II) AMENDED AND RESTATED PROMISSORY NOTE DATED AS OF EVEN DATE HEREWITH FROM BORROWER TO MIDFIRST BANK, A FEDERALLY CHARTERED SAVINGS ASSOCIATION, IN THE PRINCIPAL AMOUNT OF $22,000,000.00, AND (III) AMENDED AND RESTATED PROMISSORY NOTE DATED AS OF EVEN DATE HEREWITH FROM BORROWER TO RICHTER-SCHROEDER COMPANY, INC., A WISCONSIN CORPORATION, IN THE PRINCIPAL AMOUNT OF $23,500,000.00, AMEND, RESTATE, AND SUPERSEDE IN ITS ENTIRETY THAT CERTAIN PROMISSORY NOTE DATED OCTOBER 11, 2006 IN THE ORIGINAL PRINCIPAL AMOUNT OF $93,300,000.00 FROM BORROWER TO LASALLE BANK NATIONAL ASSOCIATION.

AMENDED AND RESTATED PROMISSORY NOTE

$23,500,000.00
Chicago, Illinois

Date: October 31, 2006
Maturity Date: October 11, 2009

FOR VALUE RECEIVED, **IRVINE CENTER PARTNERS III, L.L.C.**, a Delaware limited liability company (the "Borrower"), hereby promises to pay to the order of Union Bank of California, 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) Twenty Three Million Five Hundred Thousand and 00/100 Dollars ($23,500,000.00), or (ii) the aggregate principal amount of all Loans made to the Borrower by the Bank under and pursuant to that certain Amended and Restated 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 pay interest on the unpaid principal amount of all Loans outstanding from time to time, at the rate(s) and at the time(s) set forth in the Loan Agreement. The outstanding principal amount of all Loans shall be repaid by the Borrower on the Maturity Date or Extended Maturity Date, as applicable, unless payable sooner pursuant to the provisions of the Loan Agreement. Payments of both principal and interest are to be made in lawful money of the United States of America. The Loans made by the Bank and all payments on account of the principal and interest thereof, shall be recorded on the books and records of the Agent and the principal balance as shown on such books and records shall be rebuttably presumptive evidence of the principal amount owing hereunder.

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 pursuant to which the Maturity Date 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.

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

THIS AMENDED AND RESTATED PROMISSORY NOTE ("NOTE") IS MADE AS OF THE 31st DAY OF OCTOBER, 2006 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, A NATIONAL BANKING ASSOCIATION, IN THE PRINCIPAL AMOUNT OF $24,300,000.00, (II) AMENDED AND RESTATED PROMISSORY NOTE DATED AS OF EVEN DATE HEREWITH FROM BORROWER TO MIDFIRST BANK, A FEDERALLY CHARTERED SAVINGS ASSOCIATION, IN THE PRINCIPAL AMOUNT OF $22,000,000.00, AND (III) AMENDED AND RESTATED PROMISSORY NOTE DATED AS OF EVEN DATE HEREWITH FROM BORROWER TO UNION BANK OF CALIFORNIA, A NATIONAL BANKING ASSOCIATION, IN THE PRINCIPAL AMOUNT OF $23,500,000.00, AMEND, RESTATE, AND SUPERSEDE IN ITS ENTIRETY THAT CERTAIN PROMISSORY NOTE DATED OCTOBER 11, 2006 IN THE ORIGINAL PRINCIPAL AMOUNT OF $93,300,000.00 FROM BORROWER TO LASALLE BANK NATIONAL ASSOCIATION.

AMENDED AND RESTATED PROMISSORY NOTE

$23,500,000.00
Chicago, Illinois

Date: October 31, 2006
Maturity Date: October 11, 2009

FOR VALUE RECEIVED, **IRVINE CENTER PARTNERS III, L.L.C.**, a Delaware limited liability company (the "Borrower"), hereby promises to pay to the order of Richter-Schroeder Company, Inc., a Wisconsin corporation, (the "Bank") at the principal office of LaSalle Bank National Association (the "Agent") in Chicago, Illinois, on or before the Maturity Date (as defined in the hereinafter referred to Loan Agreement), the lesser of (i) Twenty Three Million Five Hundred Thousand and 00/100 Dollars ($23,500,000.00), or (ii) the aggregate principal amount of all Loans made to the Borrower by the Bank under and pursuant to that certain Amended and Restated 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 pay interest on the unpaid principal amount of all Loans outstanding from time to time, at the rate(s) and at the time(s) set forth in the Loan Agreement. The outstanding principal amount of all Loans shall be repaid by the Borrower on the Maturity Date or Extended Maturity Date, as applicable, unless payable sooner pursuant to the provisions of the Loan Agreement. Payments of both principal and interest are to be made in lawful money of the United States of America. The Loans made by the Bank and all payments on account of the principal and interest thereof, shall be recorded on the books and records of the Agent and the principal balance as shown on such books and records shall be rebuttably presumptive evidence of the principal amount owing hereunder.

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 pursuant to which the Maturity Date 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.

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

THIS AMENDED AND RESTATED PROMISSORY NOTE ("NOTE") IS MADE AS OF THE 31st DAY OF OCTOBER, 2006 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, A NATIONAL BANKING ASSOCIATION, IN THE PRINCIPAL AMOUNT OF $24,300,000.00, (II) AMENDED AND RESTATED PROMISSORY NOTE DATED AS OF EVEN DATE HEREWITH FROM BORROWER TO UNION BANK OF CALIFORNIA, A NATIONAL BANKING ASSOCIATION, IN THE PRINCIPAL AMOUNT OF $23,500,000.00, AND (III) AMENDED AND RESTATED PROMISSORY NOTE DATED AS OF EVEN DATE HEREWITH FROM BORROWER TO RICHTER-SCHROEDER COMPANY, INC., A WISCONSIN CORPORATION, IN THE PRINCIPAL AMOUNT OF $23,500,000.00, AMEND, RESTATE, AND SUPERSEDE IN ITS ENTIRETY THAT CERTAIN PROMISSORY NOTE DATED OCTOBER 11, 2006 IN THE ORIGINAL PRINCIPAL AMOUNT OF $93,300,000.00 FROM BORROWER TO LASALLE BANK NATIONAL ASSOCIATION.

AMENDED AND RESTATED PROMISSORY NOTE

$22,000,000.00
Chicago, Illinois

Date: October 31, 2006
Maturity Date: October 11, 2009

FOR VALUE RECEIVED, **IRVINE CENTER PARTNERS III, L.L.C.**, a Delaware limited liability company (the "Borrower"), hereby promises to pay to the order of MidFirst Bank, a federally chartered savings 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) Twenty Two Million and 00/100 Dollars ($22,000,000.00), or (ii) the aggregate principal amount of all Loans made to the Borrower by the Bank under and pursuant to that certain Amended and Restated 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 pay interest on the unpaid principal amount of all Loans outstanding from time to time, at the rate(s) and at the time(s) set forth in the Loan Agreement. The outstanding principal amount of all Loans shall be repaid by the Borrower on the Maturity Date or Extended Maturity Date, as applicable, unless payable sooner pursuant to the provisions of the Loan Agreement. Payments of both principal and interest are to be made in lawful money of the United States of America. The Loans made by the Bank and all payments on account of the principal and interest thereof, shall be recorded on the books and records of the Agent and the principal balance as shown on such books and records shall be rebuttably presumptive evidence of the principal amount owing hereunder.

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 pursuant to which the Maturity Date 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.

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

ATTACHMENT 3

This Document is electronically recorded by First American Title_B

Recorded in Official Records, Orange County
Tom Daly, Clerk-Recorder

183.00
2006000674880 01:22pm 10/11/06
113 28 D11 A36 A34 S02 54
0.00 0.00 0.00 0.00 159.00 0.00 0.00 0.00

Upon recordation return to:

Schwartz Cooper Chartered
180 North LaSalle Street
Suite 2700
Chicago, Illinois 60601
Attn: James J. Ginsburg, Esq.

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

by

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

to

FIRST AMERICAN TITLE INSURANCE COMPANY

for the benefit of

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

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EXHIBIT D - Additional Collateral

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

THIS CONSTRUCTION DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING ("Instrument") is made as of the 11TH day of October, 2006 by **IRVINE CENTER PARTNERS III, L.L.C.**, a Delaware limited liability company, whose mailing address is c/o Opus West Corporation, 2555 East Camelback Road, Suite 800, Phoenix, Arizona, 85016 ("Borrower"), to **FIRST AMERICAN TITLE INSURANCE COMPANY,** whose mailing address is 5 First American Way, Santa Ana, California 92707 ("Trustee"), for the benefit of **LASALLE BANK NATIONAL ASSOCIATION**, a national banking association, whose mailing address is 135 South LaSalle Street, Chicago, Illinois 60603, its successors and assigns, as Agent for itself and other Banks (as defined in the Loan Agreement referenced below) ("Agent").

RECITALS:

Pursuant to the terms and conditions of that certain Construction Loan Agreement of even date herewith (as amended, restated or replaced from time to time) by and among Borrower, Agent, as agent for the Banks (the "Loan Agreement"), the Banks have agreed to make loans to Borrower in the aggregate principal amount of Ninety Three Million Three Hundred Thousand and 00/100 Dollars ($93,300,000.00) (the "Loans"). The Loans shall be evidenced by that certain Promissory Note in the principal amount of $93,300,000.00 in favor of LaSalle Bank National Association, as a Bank, of even date herewith (as amended, restated or replaced from time to time, the "Note") and due on October 11, 2009, subject to extension to October 11, 2010 pursuant to the Loan Agreement (the "Maturity Date"), except as may be accelerated pursuant to the terms hereof or of the Note, the Loan Agreement or any other Loan Document (as defined in the Loan Agreement). All capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Loan Agreement.

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

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

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

and interests are hereby pledged primarily and on a parity with the Real Estate (as defined below) and not secondarily:

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

TOGETHER WITH all improvements of every nature whatsoever now or hereafter situated on the Real Estate, and all fixtures and personal property of every nature whatsoever now or hereafter owned by Borrower and 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 Uniform Commercial Code of the State of California in effect from time to time) (the "Code"), this Instrument shall constitute a security agreement, creating a security interest in such goods, as collateral for the benefit of Agent, as a secured party, and Borrower, as Debtor, all in accordance with the Code; and

TOGETHER WITH all of Borrower's interests in "general intangibles" including "payment intangibles" 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 above granted and described Premises unto and to the use and benefit of Trustee, IN TRUST WITH POWER OF SALE, AND RIGHT TO ENTRY AND POSSESSION and Borrower does hereby bind itself, and its successors and assigns, to WARRANT AND DEFEND title to the Premises, forever;

FOR THE PURPOSE OF SECURING: (i) the payment of the Loans and all interest, late charges, LIBOR breakage charges (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 Note, 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 Note, 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 of record and those in favor of or for the benefit of Agent and as otherwise described on Exhibit B attached hereto ("Permitted Exceptions"); and (b) Borrower has legal power and authority to grant, bargain, sell, and convey the Premises. 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 Note, 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, Borrower 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 Borrower, or otherwise controls the Borrower 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 prior to delinquency and before any penalty attaches, all general and special taxes, assessments, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever (all herein generally called "Taxes"), whether or not assessed against Borrower, if applicable to the Premises or any interest therein, or the Indebtedness, or any obligation or agreement secured hereby, subject to Borrower's right to contest the same, as provided by the terms hereof; and Borrower will, upon written request, furnish to the Agent duplicate receipts therefor within ten (10) days after Agent's request.

4. **Tax Deposits**. Upon 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, 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, (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, and (iii) no tenant of the Premises exercise lease termination rights. 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 Note 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.

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 Note or any of the other Loan Documents, Borrower shall pay such tax in the manner required by any such law. Borrower further agrees to reimburse Agent for any sums which Agent may expend by reason of the imposition of any such tax. Notwithstanding the foregoing, Borrower shall not be required to pay any income or franchise taxes of Agent.

9. **Assignment of Lease and Rents.** 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.

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

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

11. **Effect of Changes in Laws Regarding Taxation**. If any law is enacted after the date hereof requiring (a) the deduction of any lien on the Premises from the value thereof for the purpose of taxation, or (b) the imposition upon Agent of the payment of the whole or any part of the Taxes, charges or liens herein required to be paid by Borrower, or (c) a change in the method of taxation of mortgages, deeds of trust, or debts secured by mortgages or deeds of trust or Agent's interest in the Premises, or the manner of collection of Taxes, so as to affect this Instrument or the Indebtedness or the holders thereof, then Borrower, upon demand by Agent, shall pay such Taxes or charges, or reimburse Agent therefor; provided, however, that Borrower shall not be deemed to be required to pay any income or franchise taxes of Agent. Notwithstanding the foregoing, if in the opinion of counsel for Agent it is or may be unlawful to require Borrower to make such payment or the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then Agent may declare all of the Indebtedness to be 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 Note, this Instrument, any of the other Loan Documents or the Premises, including without limitation, bankruptcy and probate proceedings, or (e) preparing for the commencement, defense or participation in any threatened litigation or proceedings affecting the Note, this Instrument, any of the other Loan Documents or the Premises, shall be so much additional Indebtedness, and shall become immediately due and payable by Borrower to Agent, upon demand, and with interest thereon accruing from the date of such demand until paid at the Default Rate. The interest accruing under this Paragraph 12 shall be immediately due and payable by Borrower to Agent, and shall be additional Indebtedness evidenced by the Note and

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

13. **Security Agreement**. Borrower and Agent agree that this Instrument shall constitute a Security Agreement within the meaning of the Code with respect to (a) all sums at any time on deposit for the benefit of Borrower or held by the Agent (whether deposited by or on behalf of Borrower or anyone else) pursuant to any of the provisions of this Instrument or the other Loan Documents, and (b) with respect to any personal property included in the granting clauses of this Instrument or described on Exhibit D attached hereto, which personal property may not be deemed to be affixed to the Premises or may not constitute a "fixture" (within the meaning of the Code) (which property is hereinafter referred to as "Personal Property"), and all replacements of, substitutions for, additions to, and the proceeds thereof, and the "supporting obligations" (as defined in the Code) (all of said Personal Property and the replacements, substitutions and additions thereto and the proceeds thereof being sometimes hereinafter collectively referred to as "Collateral"), and that a security interest in and to the Collateral is hereby granted to the Agent, and the Collateral and all of Borrower's right, title and interest therein are hereby assigned to Agent, all to secure payment of the Indebtedness. All of the provisions contained in this Instrument pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Premises; and the following provisions of this Paragraph 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 below in Section 26 hereof. This Instrument is to be filed for recording with the Recorder of Deeds of the county or counties where the Premises are located.

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

(j) Borrower represents and warrants that:

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

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

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

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

(v) Borrower's organizational identification number is 4100907.

(k) Borrower agrees that:

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

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

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

14. **Restrictions on Transfer.**

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

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

(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 Note or any other person;

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

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

(a) Borrower fails to pay (i) any installment of principal or interest payable pursuant to the Loan Agreement within five (5) business days of the date when due, or (ii) any other amount payable to Agent under the Note, the Loan Agreement, this

Instrument or any of the other Loan Documents within five (5) business days after receipt of written notice such payment is due in accordance with the terms hereof or thereof;

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

(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 Note or of all or any substantial part of the property of Borrower or any guarantor of the Note 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 Note 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 Note;

(g) the occurrence of a Prohibited Transfer;

(h) the occurrence of a material adverse change in the financial condition of any guarantor of the Note; 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. 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 Note, or the Premises, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding shall be immediately due and payable by Borrower, with interest thereon until paid at the Default Rate and shall be secured by this Instrument.

18. **Remedies**.

(a) Subject to such notice and cure periods as provided by Division 3, Part 4, Title XIV, Chapter 2 (Mortgages) of the California Civil Code, as amended from time to time, upon the occurrence of any Event of Default, Agent may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Borrower and in and to the Premises, by Agent itself or otherwise, including, but not limited to, the

following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Agent may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Agent:

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

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

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

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

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

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

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

(viii) enforce Agent's interest in the Leases and Rents and enter into or upon the Premises, either personally or by its agents, nominees or attorneys and dispossess Borrower and its agents and servants therefrom, and thereupon Agent may (A) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Premises and conduct the business thereat; (B) complete any construction on the Premises in such manner and form as Agent deems advisable; (C) make alterations, additions, renewals,

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

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

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

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

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

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

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

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

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

(f) To the extent permitted by applicable law, Agent may resort to any remedies and the security given by this Instrument or the other Loan Documents in whole or in part, and in such portions and in such order as determined by Agent's sole discretion. No such action shall in any way be considered a waiver of any rights, benefits or remedies evidenced or provided by this Instrument or the other Loan Documents. The

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

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

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

(i) Borrower and Trustee acknowledge and agree that some or all of any personal property collateral for the Indebtedness may at Agent's sole election be sold pursuant to the power of sale contained in this Instrument. Upon the occurrence of an Event of Default, Agent may proceed at its election, in any sequence: (i) to dispose of any personal property collateral separately from the sale of real property in accordance with the Code; (ii) to dispose of some or all of the Premises and the personal property Collateral in any combination consisting of both real and personal property together in

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

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

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

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

20. **Intentionally Omitted**.

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

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

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

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

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

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

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

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

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

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

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

Instrument upon the sale of such portions of the Premises in accordance with the terms in the Loan Agreement.

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

To Agent:	LaSalle Bank National Association 135 South LaSalle Street, Suite 1225 Chicago, Illinois 60603 Attn: Thomas G. Jeffery, Senior Vice President
With a copy to:	LaSalle Bank National Association 135 South LaSalle Street, Suite 1225 Chicago, Illinois 60603 Attn: Commercial Real Estate Syndications
With a copy to:	Schwartz Cooper Chartered 180 North LaSalle Street, Suite 2700 Chicago, Illinois 60603 Attn: Michael S. Kurtzon, Esq.
With a copy to Trustee:	First American Title Insurance Company 5 First American Way Santa Ana, California 92707
To Borrower:	Irvine Center Partners III, LLC 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 Note and Instrument.**

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

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

(ii) May make preparations following the occurrence of an Event of Default hereunder for the commencement of any suit for the foreclosure hereof, 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 Note and interest thereon; this Instrument secures

any and all other amounts which may become due under the Note or any other document or instrument evidencing, securing or otherwise affecting the Indebtedness, including, without limitation, any and all amounts expended by Agent to operate, manage or maintain the Premises or to otherwise protect the Premises or the lien of this Instrument.

34. Indemnity. **BORROWER 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 Note.

(b) **Invalidity of Provisions; Governing Law**. **IN THE EVENT THAT ANY PROVISION OF THIS INSTRUMENT IS DEEMED TO BE INVALID BY REASON OF THE OPERATION OF LAW, OR BY REASON OF THE INTERPRETATION PLACED THEREON BY ANY ADMINISTRATIVE AGENCY OR ANY COURT, THE BORROWER AND AGENT SHALL NEGOTIATE AN EQUITABLE ADJUSTMENT IN THE PROVISIONS OF THE SAME IN ORDER TO EFFECT, TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE PURPOSE OF THIS INSTRUMENT AND THE VALIDITY AND ENFORCEABILITY OF THE REMAINING PROVISIONS, OR PORTIONS OR APPLICATIONS THEREOF, SHALL NOT BE AFFECTED THEREBY AND SHALL REMAIN IN FULL FORCE AND EFFECT. THIS INSTRUMENT SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA AND THE LAWS OF THE UNITED STATES APPLICABLE TO TRANSACTIONS IN CALIFORNIA. IN THE**

EVENT THAT ANY PROVISION OR CLAUSE OF THIS INSTRUMENT OR THE NOTE CONFLICTS WITH APPLICABLE LAW, SUCH CONFLICT SHALL NOT AFFECT OTHER PROVISIONS OF THIS INSTRUMENT OR ANY OF THE LOAN DOCUMENTS WHICH CAN BE GIVEN EFFECT WITHOUT THE CONFLICTING PROVISION, AND TO THIS END THE PROVISIONS OF THIS INSTRUMENT ARE DECLARED TO BE SEVERABLE.

(c) **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 Note and the other Loan Documents and the performance and observance by Borrower of all terms, conditions, obligations and agreements contained in this Instrument and the other Loan Documents.

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

(j) **Consent to Jurisdiction**. **TO INDUCE BANKS TO ACCEPT THE NOTE, BORROWER IRREVOCABLY AGREES THAT, SUBJECT TO AGENT'S SOLE AND ABSOLUTE ELECTION, ALL ACTIONS OR PROCEEDINGS IN ANY WAY ARISING OUT OF OR RELATED TO THE NOTE AND THIS INSTRUMENT WILL BE LITIGATED IN COURTS HAVING SITUS IN 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 Note and the other Loan Documents constitute the complete agreement between the parties with respect to the subject matter hereof and the Loan Documents may not be modified, altered or amended except by an agreement in writing signed by both Borrower and Agent.

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

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

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

(o) **Construction Loan**. The Note evidences a debt created by one or more disbursements made by the Banks to Borrower to finance the cost of the construction of certain Improvements upon the Real Estate in accordance with the provisions of the Loan Agreement and this Instrument is a construction deed of trust. The terms and conditions recited and set forth in the Loan Agreement are fully incorporated in this Instrument and made a part hereof, and an Event of Default under any of the conditions or provisions of the Loan Agreement shall constitute a default hereunder. Upon the occurrence of any such Event of Default, the holder of the Note may at its option declare the Indebtedness immediate due and payable, or complete the construction of said Improvements and enter

into the necessary contracts therefor, in which case all money expended shall be so much additional Indebtedness and any money expended in excess of the amount of the original principal shall be immediately due and payable with interest until paid at the Default Rate. In the event of a conflict between the terms of the Loan Agreement and this Instrument, the provisions of the Loan Agreement shall apply and take precedence over this Instrument.

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

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

38. **Assignment of Leases 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 materially altered, modified, amended, terminated, canceled, renewed or surrendered, except as approved in writing by Agent. 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 not materially alter the term or the amount of rent payable under any Lease without prior written notice to Agent and Agent's prior written consent, which consent shall not be unreasonably withheld.

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

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

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

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

This assignment is absolute, is effective immediately, and is irrevocable by 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 Note 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.

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

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
Its: Senior Vice President

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on the 2 day of October, 2006 by Charles Vogel, the Senior Vice President of Opus West Corporation, a Minnesota corporation, on behalf of said corporation, in its capacity as the Manager of Irvine Center Partners III, LLC, a Delaware limited liability company, on behalf of said limited liability company.

Kim A. Hennis
NOTARY PUBLIC SIGNATURE

Kim A. Hennis
Printed Name of Notary Public

My Commission Expires: 12/08/08

(SEAL)

OFFICIAL SEAL
KIM A. HENNIS
Notary Public - Arizona
Maricopa County
Comm. Expires Dec. 08, 2008

EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

EXHIBIT "A"

LEGAL DESCRIPTION

Real property in the City of Irvine, County of Orange, State of California, described as follows:

PARCEL A:

PARCEL 2, IN THE CITY OF IRVINE, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON EXHIBIT "B" ATTACHED TO LOT LINE ADJUSTMENT 40088-LL RECORDED SEPTEMBER 14 1999 AS INSTRUMENT NO. 19990660556 OF OFFICIAL RECORDS OF ORANGE COUNTY CALIFORNIA.

PARCEL B:

PARCEL 2, IN THE CITY OF IRVINE, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON PARCEL MAP NO. 2001-215, FILED DECEMBER 17, 2002 IN BOOK 329, PAGES 22 TO 24 INCLUSIVE, OF PARCEL MAPS OF ORANGE COUNTY, CALIFORNIA.

EXCEPTING FROM THE HEREINABOVE DESCRIBED PARCELS A AND B ALL OIL, OIL RIGHTS MINERALS, MINERAL RIGHTS, NATURAL GAS, NATURAL GAS RIGHTS AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOWN THAT MAY BE WITHIN OR UNDER THE PARCEL OF LAND HEREINABOVE DESCRIBED, TOGETHER WITH THE PERPETUAL RIGHT OF DRILLING, MINING, EXPLORING AND OPERATING THEREFOR, AND STORING IN AND REMOVING THE SAME FROM SAID LAND OR ANY OTHER LAND, INCLUDING THE RIGHT TO WHIPSTOCK OR DIRECTIONALL Y DRILL AND MINE FROM LANDS OTHER THAN THOSE HEREINABOVE DESCRIBED, OIL OR GAS WELLS, TUNNELS AND SHAFTS INTO, THROUGH OR ACROSS THE SUBSURFACE OF THE LAND HEREINABOVE DESCRIBED, AND TO BOTTOM SUCH WHIPSTOCKED OR DIRECTIONALLY DRILLED WELLS, TUNNELS AND SHAFTS UNDER AND BENEATH OR BEYOND THE EXTERIOR LIMITS THEREOF, AND TO REDRILL, RETUNNEL, EQUIP MAINTAIN, REPAIR, DEEPEN AND OPERATE ANY SUCH WELLS OR MINES, WITHOUT HOWEVER, THE RIGHT TO DRILL, MINE, STORE, EXPLORE AND OPERATE THROUGH THE SURFACE OF THE UPPER 500 FEET OF THE LAND, AS RESERVED IN THE DEED FROM IRVINE INDUSTRIAL COMPLEX, A CORPORATION, RECORDED JANUARY 21, 1974 IN BOOK 11060, PAGE 213 OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA.

PARCEL C:

NON-EXCLUSIVE EASEMENTS FOR VEHICULAR AND PEDESTRIAN INGRESS AND EGRESS PURPOSES, AS SAID EASEMENTS ARE SET FORTH IN THAT CERTAIN AMENDED AND RESTATED DECLARATION OF ESTABLISHMENT OF COVENANTS, CONDITIONS AND RESTRICTIONS AND GRANT OF EASEMENTS FOR KOLL CENTER IRVINE NORTH RECORDED FEBRUARY 9, 1987 AS INSTRUMENT NO. 87-074459 OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA.

PARCEL D:

NON-EXCLUSIVE EASEMENTS FOR VEHICULAR AND PEDESTRIAN INGRESS AND EGRESS UTILITIES, DRAINAGE AND OTHER PURPOSES, AS SAID EASEMENTS ARE SET FORTH IN ARTICLE IV OF THAT CERTAIN AMENDED AND RESTATED DECLARATION ESTABLISHING EASEMENTS, COVENANTS AND RESTRICTIONS FOR KCIN PARKING FACILITIES RECORDED SEPTEMBER 1, 1998 AS INSTRUMENT NO. 19980582940 OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA.

PARCEL E:

A TEMPORARY NON-EXCLUSIVE ACCESS EASEMENT FOR VEHICULAR AND PEDESTRIAN ACCESS AND A TEMPORARY CONSTRUCTION EASEMENT AS SET FORTH IN THAT CERTAIN "TEMPORARY ACCESS EASEMENT AND SUPPLEMENT TO TEMPORARY PARKING EASEMENT" RECORDED OCTOBER 6, 2004 AS INSTRUMENT NO. 2004000897997, OF OFFICIAL RECORDS.

APN: 435-161-72 (PARCEL A) and 435-161-75 (PARCEL B)

EXHIBIT B

PERMITTED EXCEPTIONS

THE FOLLOWING ARE THE PERMITTED TITLE EXCEPTIONS PURSUANT TO PRO FORMA LOAN POLICY NO. NCS-237626-SA1 ISSUED BY FIRST AMERICAN TITLE INSURANCE COMPANY.

Exceptions 1, 1a, 2, 3, 4, 5, 5a, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 21 as set forth on Schedule B, Part I together with Exceptions 1, 2 and 3 as set forth on Schedule B, Part II.

EXHIBIT C

INSURANCE REQUIREMENTS

GENERAL INFORMATION

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

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

3. Proof of coverage must be on an ACORD 28 - EVIDENCE OF PROPERTY INSURANCE form. Liability insurance must be written on ACORD 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 Opus Irvine Center III, 2050 Main Street.

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 Opus Irvine Center III, 2050 Main Street.

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 Opus Center Irvine III, 2050 Main Street.

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.

ATTACHMENT 4

RECORDING REQUESTED BY:
FIRST AMERICAN TITLE COMPANY
NATIONAL COMMERCIAL SERVICES
COMMERCIAL INDUSTRIAL DIVISION
NCS-237626-SM/RH/RC

Recorded in Official Records, Orange County
Tom Daly, Clerk-Recorder
36.00
2006000739166 02:09pm 11/01/06
203 59 M15 11
0.00 0.00 0.00 0.00 30.00 0.00 0.00 0.00

This space reserved for Recorder's use only

MODIFICATION OF ~~LOAN DOCUMENTS~~ Deed of Trust

THIS MODIFICATION OF LOAN DOCUMENTS (this "Agreement") is made as of the 31st day of October, 2006, by and among **IRVINE CENTER PARTNERS III, L.L.C.**, a Delaware limited liability company ("Borrower"), **OPUS WEST CORPORATION**, a Minnesota corporation ("Guarantor") and **LASALLE BANK NATIONAL ASSOCIATION**, a national banking association, its successors and assigns, as Agent for itself and other Banks (as defined below) ("Agent").

RECITALS:

A. Lender, in its capacity as a Bank, has heretofore made a loan ("Loan") to Borrower in the principal amount of Ninety Three Million Three Hundred Thousand and no/100 Dollars ($93,300,000.00) pursuant to the terms and conditions of a Construction Loan Agreement dated as of October 11, 2006 between Borrower and the financial institutions thereto (the "Banks"), (the "Original Loan Agreement", as evidenced by a Promissory Note dated October 11, 2006, in the principal amount of the Loan made payable by Borrower to the order of LaSalle Bank National Association ("Original Note").

This document prepared by and after recording return to:

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

B. The Loan is secured by a Construction Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated October 11, 2006 from Borrower to Agent recorded in the Official Records in Orange County, California (the "Recorder's Office") on October 11, 2006, as Document No. 2006000674880 ("Deed of Trust"), which Deed of Trust encumbers the real property and all improvements thereon legally described on Exhibit A hereto ("Property"), (ii) that certain Assignment of Rents and Leases dated October 11, 2006, from Borrower to Agent and recorded in the Recorder's Office on October 11, 2006, as Document No. 2006000674881 (the "Assignment of Leases"); (iii) that certain Environmental Indemnity Agreement dated October 11, 2006 from Borrower and Guarantor to Agent (the "Indemnity Agreement"); and (iv) certain other loan documents.

C. The Loan is further secured by a Guaranty of Payment and Completion dated October 11, 2006 from Guarantor to Agent (the "Guaranty").

D. Concurrently herewith the Original Loan Agreement is being amended and restated in its entirety pursuant to the terms of that certain Amended and Restated Construction Loan Agreement dated of even date herewith (the "Loan Agreement") whereby MidFirst Bank, a federally chartered savings association, Union Bank of California, a national banking association, and Richter-Schroeder Company, Inc., a Wisconsin corporation each acquired an interest in the Loan and became additional "Banks" under the Loan Agreement.

E. Pursuant to the terms of the Loan Agreement, the Original Note was replaced in its entirety by those certain: (i) Amended and Restated Promissory Note of even date herewith in the amount of $24,300,000.00 from Borrower payable to the order of LaSalle Bank National Association, a national banking association, (ii) Amended and Restated Promissory Note of even date herewith in the amount of $22,000,000.00 from Borrower payable to the order of MidFirst Bank, a federally chartered savings association, (iii) Amended and Restated Promissory Note of even date herewith in the amount of $23,500,000.00 from Borrower payable to the order of Union Bank of California, a national banking association, and (iv) Amended and Restated Promissory Note of even date herewith in the amount of $23,500,000.00 from Borrower payable to the order of Richter-Schroeder Company, Inc., a Wisconsin corporation (collectively, the "Notes"). The Notes, the Deed of Trust, the Assignment of Leases, the Indemnity Agreement, the Guaranty the other documents evidencing, securing and guarantying the Loan, in their original form and as amended, are sometimes collectively referred to herein as the "Loan Documents".

F. Borrower and Agent desire to amend the Loan Documents in order to provide that the Deed of Trust does not secure the Borrower's and Guarantor's obligations under the Indemnity Agreement and make such other changes as are more fully set forth below.

AGREEMENTS:

NOW, THEREFORE, in consideration of (i) the facts set forth hereinabove (which are hereby incorporated into and made a part of this Agreement), (ii) the agreements by Agent to modify the Loan Documents, as provided herein, (iii) the covenants and agreements contained

herein, and (iv) for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Deed of Trust**.

(a) The Deed of Trust is hereby modified to provide that notwithstanding anything to the contrary contained therein, it does not secure any of the Borrower's or Guarantor's obligations under the Indemnity Agreement.

(b) The Deed of Trust is hereby modified to provide that any interest rate protection agreement (swap, hedge or collar agreement, as the case may be) secured by the Deed of Trust shall be secured as a subordinate position to the repayment of the Loan to the Banks and such repayment of the Loan to the Banks shall have a first priority position.

(c) Section 36 of the Deed of Trust is hereby deleted in its entirety.

2. **Indemnity Agreement**.

(a) Section 4(b) of the Indemnity Agreement is hereby deleted in its entirety.

(b) Notwithstanding anything to the contrary contained therein, the Borrower's and Guarantor's obligations thereunder are not secured by the Deed of Trust.

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

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

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

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

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

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

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

4. **Title Policy**. As a condition precedent to the agreements contained herein, Borrower shall, at its sole cost and expense, cause First American Title Insurance Company to issue an endorsement to Agent's Title Insurance Policy No. NCS-237626-SA1 (the "Title Policy"), as of the date this Agreement is recorded, reflecting the recording of this Agreement and insuring the first priority of the lien of the Deed of Trust, subject only to the exceptions set forth in the Title Policy as of its date of issuance and any other encumbrances expressly agreed to by Agent.

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

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

7. **Miscellaneous**.

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

(b) This Agreement shall not be construed more strictly against Agent than against Borrower or Guarantor merely by virtue of the fact that the same has been prepared by counsel for Agent, it being recognized that Borrower, Guarantor and Agent have contributed substantially and materially to the preparation of this Agreement, and Borrower, Guarantor and Agent each acknowledges and waives any claim contesting the existence and the adequacy of the consideration given by the other in entering into this Agreement. Each of the parties to this Agreement represents that it has been advised by its respective counsel of the legal and practical effect of this Agreement, and recognizes that it is executing and delivering this Agreement, intending thereby to be legally bound by the terms and provisions thereof, of its own free will, without promises or threats or the exertion of duress upon it. The signatories hereto state that they have read and

understand this Agreement, that they intend to be legally bound by it and that they expressly warrant and represent that they are duly authorized and empowered to execute it.

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

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

(e) This Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

(f) Any references to the "Notes", the "Deed of Trust" or the "Loan Documents" contained in any of the Loan Documents shall be deemed to refer to the Note, the Deed of Trust and the other Loan Documents as amended hereby. The paragraph and section headings used herein are for convenience only and shall not limit the substantive provisions hereof. All words herein which are expressed in the neuter gender shall be deemed to include the masculine, feminine and neuter genders. Any word herein which is expressed in the singular or plural shall be deemed, whenever appropriate in the context, to include the plural and the singular.

(g) This Agreement may be executed in one or more counterparts, all of which, when taken together, shall constitute one original Agreement.

(h) Time is of the essence of each of Borrower's obligations under this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement dated as of the day and year first above written.

AGENT:

LASALLE BANK NATIONAL ASSOCIATION

By:_____
Name:_____
Title:_____

BORROWER:

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
Senior Vice President

Title:_____

GUARANTOR:

OPUS WEST CORPORATION, a Minnesota corporation

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

IN WITNESS WHEREOF, the parties hereto have executed this Agreement dated as of the day and year first above written.

AGENT:

LASALLE BANK NATIONAL ASSOCIATION

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

BORROWER:

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

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

By:_____

Name:_____

Title:_____

GUARANTOR:

OPUS WEST CORPORATION, a Minnesota corporation

By:_____
Name:_____
Its:

_____

STATE OF ILLINOIS)
) .ss
COUNTY OF COOK)

I TOM THIAKOS, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that DON BRODERICK, FVP of LaSalle Bank National Association, is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 30 day of OCTOBER, 2006.

TOM THIAKOS
Notary Public

My Commission Expires: 12-31-07

OFFICIAL SEAL
TOM S THIAKOS
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:12/31/07

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on the 27 day of October, 2006 by Charles Vogel, the Sr. Vice President of Opus West Corporation, a Minnesota corporation, on behalf of said corporation, in its capacity as the Manager of Irvine Center Partners III, L.L.C., a Delaware limited liability company, on behalf of said limited liability company.



Kim A. Hennis
NOTARY PUBLIC SIGNATURE

Kim A. Hennis
Printed Name of Notary Public

My Commission Expires: 12/08/08

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on the 27 day of October, 2006 by Charles Vogel, the Sr. Vice President of Opus West Corporation, a Minnesota corporation, on behalf of said corporation.



Kim A. Hennis
NOTARY PUBLIC SIGNATURE

Kim A. Hennis
Printed Name of Notary Public

My Commission Expires: 12/08/08

EXHIBIT "A"

LEGAL DESCRIPTION

Real property in the City of Irvine, County of Orange, State of California, described as follows:

PARCEL A:

PARCEL 2, IN THE CITY OF IRVINE, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON EXHIBIT "B" ATTACHED TO LOT LINE ADJUSTMENT 40088-LL RECORDED SEPTEMBER 14 1999 AS INSTRUMENT NO. 19990660556 OF OFFICIAL RECORDS OF ORANGE COUNTY CALIFORNIA.

PARCEL B:

PARCEL 2, IN THE CITY OF IRVINE, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON PARCEL MAP NO. 2001-215, FILED DECEMBER 17, 2002 IN BOOK 329, PAGES 22 TO 24 INCLUSIVE, OF PARCEL MAPS OF ORANGE COUNTY, CALIFORNIA.

EXCEPTING FROM THE HEREINABOVE DESCRIBED PARCELS A AND B ALL OIL, OIL RIGHTS MINERALS, MINERAL RIGHTS, NATURAL GAS, NATURAL GAS RIGHTS AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOWN THAT MAY BE WITHIN OR UNDER THE PARCEL OF LAND HEREINABOVE DESCRIBED, TOGETHER WITH THE PERPETUAL RIGHT OF DRILLING, MINING, EXPLORING AND OPERATING THEREFOR, AND STORING IN AND REMOVING THE SAME FROM SAID LAND OR ANY OTHER LAND, INCLUDING THE RIGHT TO WHIPSTOCK OR DIRECTIONALL Y DRILL AND MINE FROM LANDS OTHER THAN THOSE HEREINABOVE DESCRIBED, OIL OR GAS WELLS, TUNNELS AND SHAFTS INTO, THROUGH OR ACROSS THE SUBSURFACE OF THE LAND HEREINABOVE DESCRIBED, AND TO BOTTOM SUCH WHIPSTOCKED OR DIRECTIONALLY DRILLED WELLS, TUNNELS AND SHAFTS UNDER AND BENEATH OR BEYOND THE EXTERIOR LIMITS THEREOF, AND TO REDRILL, RETUNNEL, EQUIP MAINTAIN, REPAIR, DEEPEN AND OPERATE ANY SUCH WELLS OR MINES, WITHOUT HOWEVER, THE RIGHT TO DRILL, MINE, STORE, EXPLORE AND OPERATE THROUGH THE SURFACE OF THE UPPER 500 FEET OF THE LAND, AS RESERVED IN THE DEED FROM IRVINE INDUSTRIAL COMPLEX, A CORPORATION, RECORDED JANUARY 21, 1974 IN BOOK 11060, PAGE 213 OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA.

PARCEL C:

NON-EXCLUSIVE EASEMENTS FOR VEHICULAR AND PEDESTRIAN INGRESS AND EGRESS PURPOSES, AS SAID EASEMENTS ARE SET FORTH IN THAT CERTAIN AMENDED AND RESTATED DECLARATION OF ESTABLISHMENT OF COVENANTS, CONDITIONS AND RESTRICTIONS AND GRANT OF EASEMENTS FOR KOLL CENTER IRVINE NORTH RECORDED FEBRUARY 9, 1987 AS INSTRUMENT NO. 87-074459 OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA.

PARCEL D:

NON-EXCLUSIVE EASEMENTS FOR VEHICULAR AND PEDESTRIAN INGRESS AND EGRESS UTILITIES, DRAINAGE AND OTHER PURPOSES, AS SAID EASEMENTS ARE SET FORTH IN ARTICLE IV OF THAT CERTAIN AMENDED AND RESTATED DECLARATION ESTABLISHING EASEMENTS, COVENANTS AND RESTRICTIONS FOR KCIN PARKING FACILITIES RECORDED SEPTEMBER 1, 1998 AS INSTRUMENT NO. 19980582940 OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA.

PARCEL E:

A TEMPORARY NON-EXCLUSIVE ACCESS EASEMENT FOR VEHICULAR AND PEDESTRIAN ACCESS AND A TEMPORARY CONSTRUCTION EASEMENT AS SET FORTH IN THAT CERTAIN "TEMPORARY ACCESS EASEMENT AND SUPPLEMENT TO TEMPORARY PARKING EASEMENT" RECORDED OCTOBER 6, 2004 AS INSTRUMENT NO. 2004000897997, OF OFFICIAL RECORDS.

APN: 435-161-72 (PARCEL A) and 435-161-75 (PARCEL B)

ATTACHMENT 5

This Document was electronically recorded by First American Title_B

Recorded in Official Records, Orange County
Tom Daly, Clerk-Recorder

48.00
2006000674881 01:22pm 10/11/06
113 28 A34 A36 13
0.00 0.00 0.00 0.00 36.00 0.00 0.00 0.00

Upon recordation return to:

Schwartz Cooper Chartered
180 North LaSalle Street
Suite 2700
Chicago, Illinois 60601
Attn: James J. Ginsburg, Esq.

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 11TH day of October, 2006 by **IRVINE CENTER PARTNERS III, L.L.C.**, a Delaware limited liability company ("Assignor"), to and for the benefit of **LASALLE BANK NATIONAL ASSOCIATION**, a national banking association, its successors and assigns, as Agent for itself and the other Banks (as defined in the Loan Agreement referenced below) ("Assignee").

RECITALS:

A. Pursuant to the provisions of that certain Construction Loan Agreement of even date herewith among Assignor and Assignee (the "Loan Agreement"), the Banks have agreed to make loans to Assignor in the aggregate principal amount of up to Ninety Three Million Three Hundred Thousand and 00/100 Dollars ($93,300,000.00) (the "Loans"). Assignor is executing a certain Promissory Note in the maximum principal amount of $93,300,000.00 (as the same may be amended, modified, replaced or restated from time to time, the "Note") made by Assignor to evidence the Loan.

B. A condition precedent to Banks' making of the Loans to Assignor is the execution and delivery by Assignor of this Assignment.

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

1. **Definitions**. All capitalized terms which are not defined herein shall have the meanings ascribed thereto in that certain Construction Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing of even date herewith from Assignor for the benefit of Assignee (as amended, modified, replaced or restated from time to time, "Deed of Trust") given as security for the Loans. Rents and Leases were unrecorded

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

improvements being hereinafter referred to collectively as the "Premises"), including, without limitation, lease termination fees, purchase option fees and other fees and expenses payable under any lease; (ii) all leases and subleases (collectively, the "Leases"), now or hereafter existing, of all or any part of the Premises together with all guaranties of any of such Leases and all security deposits delivered by tenants thereunder, whether in cash or letter of credit; (iii) all rights and claims for damage against tenants arising out of defaults under the Leases, including rights to termination fees and compensation with respect to rejected Leases pursuant to Section 365(a) of the Federal Bankruptcy Code or any replacement Section thereof; and (iv) all tenant improvements and fixtures located on the Premises. This Assignment is an absolute transfer and assignment of the foregoing interests to Assignee given to secure:

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

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

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

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

(b) there are no Leases or occupancy agreements affecting the Premises other than the agreements described in Exhibit B attached hereto and made a part of this Agreement; and

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

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

(a) Assignor shall not lease any portion of the Premises unless Assignor obtains Assignee's prior written consent to all aspects of such lease.

(b) Assignor shall observe and perform all of the covenants, terms, conditions and agreements contained in the Leases to be observed or performed by the lessor

thereunder, and Assignor shall not do or suffer to be done anything to impair the security thereof. Assignor shall not (i) release the liability of any tenant under any Lease, (ii) consent to any tenant's withholding of rent or making monetary advances and off-setting the same against future rentals, (iii) consent to any tenant's claim of a total or partial eviction, (iv) consent to a tenant termination or cancellation of any Lease, except as specifically provided therein, or (v) enter into any oral leases with respect to all or any portion of the Premises;

(c) Assignor shall not collect any of the rents, issues, income or profits assigned hereunder more than thirty days in advance of the time when the same shall become due, except for security or similar deposits;

(d) Assignor shall not make any other assignment of its entire or any part of its interest in or to any or all Leases, or any or all rents, issues, income or profits assigned hereunder, except as specifically permitted by the Loan Documents;

(e) Assignor shall not materially modify the terms and provisions of any Lease, nor shall Assignor give any consent (including, but not limited to, any consent to any assignment of, or subletting under, any Lease, except as expressly permitted thereby) or approval, required or permitted by such terms and provisions or cancel or terminate any Lease, without Assignee's prior written consent; provided, however, that Assignor may cancel or terminate any Lease as a result of a material default by the tenant thereunder and failure of such tenant to cure the default within the applicable time periods set forth in the Lease;

(f) Assignor shall not accept a surrender of any Lease or convey or transfer, or suffer or permit a conveyance or transfer, of the premises demised under any Lease or of any interest in any Lease so as to effect, directly or indirectly, proximately or remotely, a merger of the estates and rights of, or a termination or diminution of the obligations of, any tenant thereunder; any termination fees payable under a Lease for the early termination or surrender thereof shall be paid jointly to Assignor and Assignee;

(g) Assignor shall not alter, modify or change the terms of any guaranty of any Lease, or cancel or terminate any such guaranty or do or permit to be done anything which would terminate any such guaranty as a matter of law;

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

(i) Assignor shall, at its sole cost and expense, appear in and defend any and all actions and proceedings arising under, relating to or in any manner connected with any Lease or the obligations, duties or liabilities of the lessor or any tenant or guarantor thereunder, and shall pay all costs and expenses of Assignee, including court costs and reasonable attorneys' fees, in any such action or proceeding in which Assignee may appear;

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

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

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

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

(n) Once the tenants are in possession under the Leases, not less than thirty (30) days after the end of each calendar quarter, the Assignor shall deliver to the Assignee a certified rent roll for the Premises as of the last day of such period in a form reasonably satisfactory to Assignee.

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

6. **Events of Default**. An "Event of Default" shall occur under this Assignment upon the occurrence of (a) a breach by Assignor of any of the covenants, agreements, representations, warranties or other provisions hereof which is not cured or waived within the applicable grace or cure period, if any, set forth in the Deed of Trust or (b) any other Event of Default described in the Note, Deed of Trust or the other Loan Documents.

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

(a) Declare the unpaid balance of the principal sum of the Note, together with all accrued and unpaid interest thereon, immediately due and payable;

(b) Enter upon and take possession of the Premises, either in person or by agent or by a receiver appointed by a court, and have, hold, manage, lease and operate the same on such terms and for such period of time as Assignee may deem necessary or proper, with full power to make from time to time all alterations, renovations, repairs or replacements thereto or thereof as may seem proper to Assignee, to make, enforce, modify and accept the surrender of Leases, to obtain and evict tenants, to fix or modify rents, and to do any other act which Assignee deems necessary or proper;

(c) Either with or without taking possession of the Premises, demand, sue for, settle, compromise, collect, and give acquittances for all rents, issues, income and profits of and from the Premises and pursue all remedies for enforcement of the Leases and all the lessor's rights therein and thereunder. This Assignment shall constitute an authorization and direction to the tenants under the Leases to pay all rents and other amounts payable under the Leases to Assignee, without proof of default hereunder, upon receipt from Assignee of written notice to thereafter pay all such rents and other amounts to Assignee and to comply with any notice or demand by Assignee for observance or performance of any of the covenants, terms, conditions and agreements contained in the Leases to be observed or performed by the tenants thereunder, and Assignor shall facilitate in all reasonable ways Assignee's collection of such rents, issues, income and profits, and upon request will execute written notices to the tenants under the Leases to thereafter pay all such rents and other amounts to Assignee;

(d) Make any payment or do any act required herein of Assignor in such manner and to such extent as Assignee may deem necessary, and any amount so paid by Assignee shall become immediately due and payable by Assignor with interest thereon until paid at the Default Rate (as defined in the Loan Agreement) and shall be secured by this Assignment;

(e) Exercise any other remedy available to it under any of the other Loan Documents, at law or in equity.

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

9. **Limitation of Assignee's Liability**. Assignee shall not be liable for any loss sustained by Assignor resulting from Assignee's failure to let the Premises or from any other act or omission of Assignee in managing, operating or maintaining the Premises following the occurrence of an Event of Default. Assignee shall not be obligated to observe, perform or discharge, nor does Assignee hereby undertake to observe, perform or discharge any covenant, term, condition or agreement contained in any Lease to be observed or performed by the lessor thereunder, or any obligation, duty or liability of Assignor under or by reason of this Assignment. Assignor shall and does hereby agree to indemnify, defend (using counsel satisfactory to Assignee) and hold Assignee and the Banks harmless from and against any and all liability, loss or damage which Assignee or the Banks may incur under any Lease or under or by

reason of this Assignment and of and from any and all claims and demands whatsoever which may be asserted against Assignee or the Banks by reason of any alleged obligation or undertaking on its part to observe or perform any of the covenants, terms, conditions and agreements contained in any Lease; provided, however, in no event shall Assignor be liable for any liability, loss or damage which Assignor incurs as a result of Assignee's and the Banks' gross negligence or willful misconduct. Should Assignee or the Banks incur any such liability, loss or damage under any Lease or under or by reason of this Assignment, or in the defense of any such claim or demand, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall become immediately due and payable by Assignor with interest thereon at the Default Rate (as defined in the Loan Agreement) and shall be secured by this Assignment. This Assignment shall not operate to place responsibility upon Assignee for the care, control, management or repair of the Premises or for the carrying out of any of the covenants, terms, conditions and agreements contained in any Lease, nor shall it operate to make Assignee responsible or liable for any waste committed upon the Premises by any tenant, occupant or other party, or for any dangerous or defective condition of the Premises, or for any negligence in the management, upkeep, repair or control of the Premises resulting in loss or injury or death to any tenant, occupant, licensee, employee or stranger. Nothing set forth herein or in the Deed of Trust, and no exercise by Assignee of any of the rights set forth herein or in the Deed of Trust shall constitute or be construed as constituting Assignee a "mortgagee in possession" of the Premises, in the absence of the taking of actual possession of the Premises by Assignee pursuant to the provisions hereof or of the Deed of Trust.

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

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

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

13. **Severability**. If any provision of this Assignment is deemed to be invalid by reason of the operation of law, or by reason of the interpretation placed thereon by any administrative agency or any court, Assignee and Assignor shall negotiate an equitable

adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Assignment and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby and shall remain in full force and effect.

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

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

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

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

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

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

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

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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.

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
Its: Senior Vice President

STATE OF ARIZONA)
) **SS.**
COUNTY OF MARICOPA)

This instrument was acknowledged before me on the 2 day of October, 2006 by Charles Vogel, the Senior Vice President of Opus West Corporation, a Minnesota corporation, on behalf of said corporation, in its capacity as the Manager of Irvine Center Partners III, LLC, a Delaware limited liability company, on behalf of said limited liability company.

Kim A. Hennis
Notary Public in and for the
State of ARIZONA

Printed Name of Notary Public:
Kim A. Hennis

My Commission Expires:
12/08/08

[seal]

OFFICIAL SEAL
KIM A. HENNIS
Notary Public - Arizona
Maricopa County
Comm. Expires Dec. 08, 2008

EXHIBIT "A"

LEGAL DESCRIPTION

Real property in the City of Irvine, County of Orange, State of California, described as follows:

PARCEL A:

PARCEL 2, IN THE CITY OF IRVINE, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON EXHIBIT "B" ATTACHED TO LOT LINE ADJUSTMENT 40088-LL RECORDED SEPTEMBER 14 1999 AS INSTRUMENT NO. 19990660556 OF OFFICIAL RECORDS OF ORANGE COUNTY CALIFORNIA.

PARCEL B:

PARCEL 2, IN THE CITY OF IRVINE, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON PARCEL MAP NO. 2001-215, FILED DECEMBER 17, 2002 IN BOOK 329, PAGES 22 TO 24 INCLUSIVE, OF PARCEL MAPS OF ORANGE COUNTY, CALIFORNIA.

EXCEPTING FROM THE HEREINABOVE DESCRIBED PARCELS A AND B ALL OIL, OIL RIGHTS MINERALS, MINERAL RIGHTS, NATURAL GAS, NATURAL GAS RIGHTS AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOWN THAT MAY BE WITHIN OR UNDER THE PARCEL OF LAND HEREINABOVE DESCRIBED, TOGETHER WITH THE PERPETUAL RIGHT OF DRILLING, MINING, EXPLORING AND OPERATING THEREFOR, AND STORING IN AND REMOVING THE SAME FROM SAID LAND OR ANY OTHER LAND, INCLUDING THE RIGHT TO WHIPSTOCK OR DIRECTIONALL Y DRILL AND MINE FROM LANDS OTHER THAN THOSE HEREINABOVE DESCRIBED, OIL OR GAS WELLS, TUNNELS AND SHAFTS INTO, THROUGH OR ACROSS THE SUBSURFACE OF THE LAND HEREINABOVE DESCRIBED, AND TO BOTTOM SUCH WHIPSTOCKED OR DIRECTIONALLY DRILLED WELLS, TUNNELS AND SHAFTS UNDER AND BENEATH OR BEYOND THE EXTERIOR LIMITS THEREOF, AND TO REDRILL, RETUNNEL, EQUIP MAINTAIN, REPAIR, DEEPEN AND OPERATE ANY SUCH WELLS OR MINES, WITHOUT HOWEVER, THE RIGHT TO DRILL, MINE, STORE, EXPLORE AND OPERATE THROUGH THE SURFACE OF THE UPPER 500 FEET OF THE LAND, AS RESERVED IN THE DEED FROM IRVINE INDUSTRIAL COMPLEX, A CORPORATION, RECORDED JANUARY 21, 1974 IN BOOK 11060, PAGE 213 OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA.

PARCEL C:

NON-EXCLUSIVE EASEMENTS FOR VEHICULAR AND PEDESTRIAN INGRESS AND EGRESS PURPOSES, AS SAID EASEMENTS ARE SET FORTH IN THAT CERTAIN AMENDED AND RESTATED DECLARATION OF ESTABLISHMENT OF COVENANTS, CONDITIONS AND RESTRICTIONS AND GRANT OF EASEMENTS FOR KOLL CENTER IRVINE NORTH RECORDED FEBRUARY 9, 1987 AS INSTRUMENT NO. 87-074459 OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA.

PARCEL D:

NON-EXCLUSIVE EASEMENTS FOR VEHICULAR AND PEDESTRIAN INGRESS AND EGRESS UTILITIES, DRAINAGE AND OTHER PURPOSES, AS SAID EASEMENTS ARE SET FORTH IN ARTICLE IV OF THAT CERTAIN AMENDED AND RESTATED DECLARATION ESTABLISHING EASEMENTS, COVENANTS AND RESTRICTIONS FOR KCIN PARKING FACILITIES RECORDED SEPTEMBER 1, 1998 AS INSTRUMENT NO. 19980582940 OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA.

PARCEL E:

A TEMPORARY NON-EXCLUSIVE ACCESS EASEMENT FOR VEHICULAR AND PEDESTRIAN ACCESS AND A TEMPORARY CONSTRUCTION EASEMENT AS SET FORTH IN THAT CERTAIN "TEMPORARY ACCESS EASEMENT AND SUPPLEMENT TO TEMPORARY PARKING EASEMENT" RECORDED OCTOBER 6, 2004 AS INSTRUMENT NO. 2004000897997, OF OFFICIAL RECORDS.

APN: 435-161-72 (PARCEL A) and 435-161-75 (PARCEL B)

ATTACHMENT 6

ASSIGNMENT AND SUBORDINATION OF MANAGEMENT AGREEMENT

This **ASSIGNMENT AND SUBORDINATION OF MANAGEMENT AGREEMENT** dated as of October 11, 2006 (the "Assignment"), is executed by **IRVINE CENTER PARTNERS III, L.L.C.**, a Delaware limited liability company (the "Assignor"), to and for the benefit of **LASALLE BANK NATIONAL ASSOCIATION,** a national banking association, and its successors and assigns, as Agent for itself and the other Banks (as defined in the Loan Agreement referenced below) (the "Assignee").

RECITALS:

A. The Assignor is the owner of certain real estate situated in Orange County, California legally described on Exhibit "A" attached hereto and by this reference made a part hereof (the "Premises").

B. The Assignor has entered into that certain Property Management Agreement dated March 10, 2006 (the "Management Agreement") with Opus West Management Corporation, an Arizona corporation (the "Property Manager"), a true, correct and complete copy of which the Assignor represents and warrants is attached hereto as Exhibit "B", to manage the Premises.

C. 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 loans (the "Loans") to the Assignor in the aggregate principal amount of Ninety Three Million Three Hundred Thousand and 00/100 Dollars ($93,300,000.00). The Loans are evidenced by that certain Promissory Note in the principal amount of $93,300,000.00 in favor of LaSalle, as a Bank, (as amended, modified, restated or replaced from time to time, the "Note"). The Note is secured by, among other things, that certain Construction Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing of even date herewith (the "Deed of Trust"), executed by the Assignor to and for the benefit of the Assignee, granting a lien on the Premises and to be recorded in the Office of the Recorder of Deeds of Orange County, California. The Assignor has also executed certain other instruments and agreements as additional security for repayment of the Loans (collectively, the "Loan Documents").

D. The Banks require, as a condition precedent to their making the Loans, that the indebtedness, including Indebtedness as defined in the Deed of Trust, evidenced by the Note and the lien and security interests created by the Deed of Trust and the other Loan Documents (the "Senior Liens") be paramount and prior to any and all obligations, expenses and indebtedness owing to the Property Manager which arise from the Management Agreement (collectively, the "Junior Liabilities") and any and all existing liens and security interests or future rights to liens and security interests of the Property Manager or anyone claiming by, through or under the Property Manager which arise from the Junior Liabilities (collectively, the "Junior Liens").

E. As additional security for the Note, the Banks have also required an assignment of the interest of the Assignor in, to and under the Management Agreement.

F. The Assignor is willing to transfer, assign and convey its rights, privileges, powers and interest in, to and under the Management Agreement to Assignee, subject to the terms and conditions herein contained.

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. Assignment. The Assignor hereby transfers, assigns and conveys all of its rights, powers, privileges and interests in, to and under the Management Agreement to the Assignee, its successors and assigns, fully intending that the Assignee, its successors and assigns, shall have the rights and powers and be entitled to the benefits thereunder to the same degree and extent as though the Management Agreement had been made between the Assignee and the Property Manager.

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 the 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 Deed of Trust). Upon the occurrence of an Event of Default, the Assignee shall have the right (but not the obligation) to (i) terminate the Management Agreement upon written notice to the Property Manager and thereafter, the Management Agreement shall be of no further force or effect, or (ii) assume all obligations of the Assignor under the Management Agreement. 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. Assignee's Right to Cure. In the event of any default by the Assignor under the Management Agreement or the occurrence of an Event of Default and during the continuation thereof, the Assignee shall have the right, upon notice to the Assignor and the Property Manager, and until such default is cured, to cure any default and take any action under the Management Agreement to preserve the same. The Assignor hereby grants to the Assignee the right of access to the Premises for this purpose, if such action is necessary. Such action by the Assignee shall not be deemed an election by the Assignee as provided in Section 2 hereof. The Assignor hereby authorizes the Property Manager to accept the performance of the Assignee in such event, without question. Any advances made by the Assignee to cure a default hereunder shall bear interest at the Default Rate under the Note and shall be secured by the Deed of Trust and the other Loan Documents.

4. Representations and Warranties of Assignor. The Assignor hereby represents and warrants to the Assignee that (a) it has not executed any prior assignment of the Management Agreement, nor has it performed any acts or executed any other instrument which might prevent the Assignee from operating under any of the terms and conditions of this Assignment, or which would limit the Assignee in such operation, (b) it has not executed or granted any modification whatsoever of the Management Agreement, either orally or in writing, and (c) the Management

Agreement 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.

5. Other Agreements. The Assignee shall not be obligated to perform or discharge any obligation, duty or liability under the Management Agreement by reason of this Assignment, until its election as provided in Section 2 hereof, and that this Assignment or the Assignee's performance hereunder shall not release the Assignor of any liability under the Management Agreement.

6. Covenants of Assignor. The Assignor agrees not to do, or suffer to be done, any of the following acts without the prior written consent of the Assignee first being had and obtained, to-wit: (a) cancel, terminate or surrender the Management Agreement; (b) forgive any obligation thereunder; (c) materially modify the Management Agreement; (d) assign the Assignor's interest in the Management Agreement or any portion thereof; or (e) fail to perform any obligation of the Assignor in accordance with the provisions thereof, which failure would constitute a default under the Management Agreement and which failure shall continue beyond any applicable cure period provided under the Management Agreement. Any of said acts, if done or suffered to be done without the Assignee's prior written consent, shall constitute an Event of Default.

7. Election of Remedies. The provisions set forth in this Assignment shall be deemed a special remedy given to the Assignee and shall not be deemed exclusive of any of the remedies granted in the Note or the Loan Documents but shall be deemed an additional remedy and shall be cumulative with the remedies therein and elsewhere granted the Assignee, all of which remedies shall be enforceable concurrently or successively. No exercise by the Assignee of any of its rights hereunder shall cure, waive or affect any default hereunder or any Event of Default under the Deed of Trust or the other Loan Documents. No inaction or partial exercise of rights by the Assignee shall be construed as a waiver of any of its such rights and remedies, and no waiver by the Assignee of any such rights and remedies shall be construed as a waiver by the Assignee of any of its other rights and remedies.

8. Notices. Any notice, demand or other communication required or permitted hereunder 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 the Assignee:	LaSalle Bank National Association 135 South LaSalle Street Suite 1225 Chicago, Illinois 60603 Attn: Thomas G. Jeffery, Senior 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 to:	Schwartz Cooper Chartered 180 North LaSalle Street Suite 2700 Chicago, Illinois 60601 Attn: Michael S. Kurtzon, Esq.
To the Assignor:	Irvine Center Partners III, L.L.C. 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
and to:	Gallagher & Kennedy, P.A. 2575 East Camelback Road, 11th Floor Phoenix, Arizona 85016 Attn: Gregory L. Mast, Esq.
To the Property Manager:	Opus West Management Corporation 2555 East Camelback Road Suite 840 Phoenix, Arizona 85016 Attn: Director of Property Management
With a copy to:	Opus West Corporation 2555 East Camelback Road Suite 800 Phoenix, Arizona 85016 Attn: Legal Department

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. Except as otherwise specifically required herein, no notice of the exercise of any right or option granted to the Assignee herein is required to be given.

9. Power of Attorney. The Assignor hereby irrevocably appoints the Assignee as the Assignor's attorney-in-fact to exercise any or all of the Assignor's rights in, to, and under the Management Agreement as provided herein, to give appropriate receipts, releases, and satisfactions on behalf of the Assignor in connection with the Property Manager's performance under the Management Agreement, and to do any or all other acts, in the Assignor's name or in the Assignee's own name, that the Assignor could do under the Management Agreement with the same force and effect as if this Assignment had not been made. This power of attorney is coupled with an interest and can not be revoked, modified or amended without the written consent of the Assignee. Notwithstanding the foregoing, the Assignee agrees that it shall not exercise its rights under this Section 9 unless or until an Event of Default has occurred under the Deed of Trust or the other Loan Documents.

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

11. Counterparts; Facsimile Signatures. This Assignment may be executed in any number of counterparts, all of which shall be taken to be one and the same instrument, for the same effect as if all parties hereto had signed the same signature page. Receipt of an executed signature page to this Assignment by facsimile or other electronic transmission shall constitute effective delivery thereof.

IN WITNESS WHEREOF, the Assignor has caused this Assignment and Subordination of Management Agreement to be executed as of the day and year first above written.

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

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

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

CONSENT TO ASSIGNMENT AND SUBORDINATION OF MANAGEMENT AGREEMENT AND ESTOPPEL

This **CONSENT TO ASSIGNMENT AND SUBORDINATION OF MANAGEMENT AGREEMENT AND ESTOPPEL** dated as of October 11, 2006 (the "Consent"), is executed by **OPUS WEST MANAGEMENT CORPORATION**, an Arizona corporation (the "Property Manager"), to and for the benefit of **LASALLE BANK NATIONAL ASSOCIATION,** a national banking association, and its successors and assigns, as agent for itself and other Banks (as defined in the Loan Agreement referenced below) (the "Assignee").

RECITALS:

A. Irvine Center Partners III, L.L.C., a Delaware limited liability company (the "Assignor") is the owner of certain real estate situated in Orange County, California, legally described on Exhibit "A" attached hereto and by this reference made a part hereof (the "Premises").

B. The Assignor and the Property Manager have entered into that certain Property Management Agreement dated March 10, 2006 (the "Management Agreement"), a true, correct and complete copy of which the Property Manager represents and warrants is attached hereto as Exhibit "B", to manage the Premises.

C. In connection with, and as collateral for, the loans (the "Loans") from the Banks to the Assignor in accordance with 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 Assignee has required an assignment of the interest of the Assignor in, to and under the Management Agreement under and pursuant to that certain Assignment and Subordination of Management Agreement dated as of even date herewith, executed by and between the Assignor and the Assignee (the "Assignment").

D. The Property Manager acknowledges that the execution and delivery of this Consent is required by the Assignee prior to making any disbursements of the Loans and, without the execution and delivery of this Consent, the Banks will not make the Loans.

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

AGREEMENTS:

1. Capitalized words and phrases not otherwise defined herein shall have the meanings assigned to such terms in the Assignment.

2. As of the date hereof, the Management Agreement is in full force and effect and has not been amended or modified as of the date hereof.

3. The Junior Liabilities and the Junior Liens are hereby subordinated to each and every one of the Note, the Deed of Trust, and the other Loan Documents and the Senior Liens and all indebtedness, liabilities and obligations of any kind whatsoever (whether now existing or hereafter arising and regardless of the aggregate amount thereof) owing by the Assignor to the Assignee with respect to the Property (collectively, the "Senior Liabilities"). No default exists as of the date hereof with respect to the Junior Liabilities. The payment of all Junior Liabilities shall be subordinated to the payment in full of all Senior Liabilities. No payment in respect of any Junior Liabilities shall be made at any time on or after the date the Property Manager has been notified by the Assignee of any default in the payment or performance of any of the Senior Liabilities. If the Property Manager receives any such payment, the same shall be received in trust for the Assignee and immediately turned over by the Property Manager to the Assignee.

4. The Property Manager hereby consents to the foregoing Assignment by the Assignor of the Management Agreement. The Property Manager agrees that, if the Assignee delivers written notice to the Property Manager that the Assignee is exercising its rights under the Assignment, (a) the Property Manager will continue at the Assignee's direction to perform services for the Assignee pursuant to and in and in accordance with the terms of the Management Agreement provided that the Assignee pays to the Property Manager the fees due and performs the other obligations of the Assignor in accordance with the Management Agreement from and after the date such notice is given, irrespective of any contrary instructions, direction or requests from the Assignor, (b) the Property Manager will perform its obligations under the Management Agreement for the Assignee notwithstanding any counterclaim, right of set-off, defense or like right of the Property Manager against the Assignor or the Assignor's default under or breach of the Management Agreement and the Assignee shall not be liable for any act or omission of the Assignor, and (c) the Assignee shall have the right, upon written notice to the Property Manager of same, to terminate the Management Agreement without premium or penalty and upon such termination, the Management Agreement shall be of no further force and effect.

5. There exists no default by the Assignor or otherwise under the terms, covenants or provisions of the Management Agreement, nor any state of facts which, with the giving of notice, passage of time or both, would constitute a default thereunder.

6. The Property Manager has not assigned its interest in the Management Agreement and has no notice of any prior assignment, hypothecation or pledge of the Assignor's interest under the Management Agreement.

7. The Property Manager hereby agrees that, upon its receipt of a notice that there has been an Event of Default by the Assignor under any of the documents evidencing or securing the Loan, all accounts receivable in connection with the operation of the Premises and/or the proceeds thereof (including all monies held by the Property Manager under the Management Agreement) which would otherwise have been paid to the Assignor thereunder shall be paid to the Assignee or as the Assignee shall direct. However, nothing contained in the foregoing sentence shall prevent the Property Manager from making expenditures for expenses of operation, management fees and other fixed charges in accordance with the Management Agreement.

8. No changes or modifications shall be made to the Management Agreement, nor shall the Management Agreement be surrendered or cancelled by agreement between the Assignor and the Property Manager, except pursuant to any termination rights specifically set forth in of the Management Agreement, without the prior written consent of the Assignee.

9. The Assignee neither assumes nor has any obligations to the Property Manager to exercise its rights under the Assignment or to declare an Event of Default, but that the option to exercise such rights or declare an Event of Default rests in the sole and absolute discretion of the Assignee. If the Assignee exercises its rights under the foregoing Assignment, the Property Manager agrees that the Assignee shall have no personal obligations or liabilities to the Property Manager under the Management Agreement or this Consent, the Property Manager's recourse being limited to the Assignee's interest in the Premises.

10. As of the date hereof, the Property Manager represents that it has no counterclaim, right of set-off, defense or like right against the Assignor and that the Property Manager has been paid all amounts due under the Management Agreement.

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

12. Each entity, person and/or officer executing this certification is duly empowered to do so on behalf of the Property Manager.

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IN WITNESS WHEREOF, the Property Manager has caused this Consent of Assignment and Subordination of Management Agreement and Estoppel to be executed as of the day and year first above written.

OPUS WEST MANAGEMENT CORPORATION, an Arizona corporation

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

EXHIBIT "A"

LEGAL DESCRIPTION

Real property in the City of Irvine, County of Orange, State of California, described as follows:

PARCEL A:

PARCEL 2, IN THE CITY OF IRVINE, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON EXHIBIT "B" ATTACHED TO LOT LINE ADJUSTMENT 40088-LL RECORDED SEPTEMBER 14 1999 AS INSTRUMENT NO. 19990660556 OF OFFICIAL RECORDS OF ORANGE COUNTY CALIFORNIA.

PARCEL B:

PARCEL 2, IN THE CITY OF IRVINE, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON PARCEL MAP NO. 2001-215, FILED DECEMBER 17, 2002 IN BOOK 329, PAGES 22 TO 24 INCLUSIVE, OF PARCEL MAPS OF ORANGE COUNTY, CALIFORNIA.

EXCEPTING FROM THE HEREINABOVE DESCRIBED PARCELS A AND B ALL OIL, OIL RIGHTS MINERALS, MINERAL RIGHTS, NATURAL GAS, NATURAL GAS RIGHTS AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOWN THAT MAY BE WITHIN OR UNDER THE PARCEL OF LAND HEREINABOVE DESCRIBED, TOGETHER WITH THE PERPETUAL RIGHT OF DRILLING, MINING, EXPLORING AND OPERATING THEREFOR, AND STORING IN AND REMOVING THE SAME FROM SAID LAND OR ANY OTHER LAND, INCLUDING THE RIGHT TO WHIPSTOCK OR DIRECTIONALL Y DRILL AND MINE FROM LANDS OTHER THAN THOSE HEREINABOVE DESCRIBED, OIL OR GAS WELLS, TUNNELS AND SHAFTS INTO, THROUGH OR ACROSS THE SUBSURFACE OF THE LAND HEREINABOVE DESCRIBED, AND TO BOTTOM SUCH WHIPSTOCKED OR DIRECTIONALLY DRILLED WELLS, TUNNELS AND SHAFTS UNDER AND BENEATH OR BEYOND THE EXTERIOR LIMITS THEREOF, AND TO REDRILL, RETUNNEL, EQUIP MAINTAIN, REPAIR, DEEPEN AND OPERATE ANY SUCH WELLS OR MINES, WITHOUT HOWEVER, THE RIGHT TO DRILL, MINE, STORE, EXPLORE AND OPERATE THROUGH THE SURFACE OF THE UPPER 500 FEET OF THE LAND, AS RESERVED IN THE DEED FROM IRVINE INDUSTRIAL COMPLEX, A CORPORATION, RECORDED JANUARY 21, 1974 IN BOOK 11060, PAGE 213 OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA.

PARCEL C:

NON-EXCLUSIVE EASEMENTS FOR VEHICULAR AND PEDESTRIAN INGRESS AND EGRESS PURPOSES, AS SAID EASEMENTS ARE SET FORTH IN THAT CERTAIN AMENDED AND RESTATED DECLARATION OF ESTABLISHMENT OF COVENANTS, CONDITIONS AND RESTRICTIONS AND GRANT OF EASEMENTS FOR KOLL CENTER IRVINE NORTH RECORDED FEBRUARY 9, 1987 AS INSTRUMENT NO. 87-074459 OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA.

PARCEL D:

NON-EXCLUSIVE EASEMENTS FOR VEHICULAR AND PEDESTRIAN INGRESS AND EGRESS UTILITIES, DRAINAGE AND OTHER PURPOSES, AS SAID EASEMENTS ARE SET FORTH IN ARTICLE IV OF THAT CERTAIN AMENDED AND RESTATED DECLARATION ESTABLISHING EASEMENTS, COVENANTS AND RESTRICTIONS FOR KCIN PARKING FACILITIES RECORDED SEPTEMBER 1, 1998 AS INSTRUMENT NO. 19980582940 OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA.

PARCEL E:

A TEMPORARY NON-EXCLUSIVE ACCESS EASEMENT FOR VEHICULAR AND PEDESTRIAN ACCESS AND A TEMPORARY CONSTRUCTION EASEMENT AS SET FORTH IN THAT CERTAIN "TEMPORARY ACCESS EASEMENT AND SUPPLEMENT TO TEMPORARY PARKING EASEMENT" RECORDED OCTOBER 6, 2004 AS INSTRUMENT NO. 2004000897997, OF OFFICIAL RECORDS.

APN: 435-161-72 (PARCEL A) and 435-161-75 (PARCEL B)

EXHIBIT "B"

COPY OF PROPERTY MANAGEMENT AGREEMENT

[TO BE ATTACHED BY PROPERTY MANAGER]

03/09/06

PROPERTY MANAGEMENT AGREEMENT

THIS PROPERTY MANAGEMENT AGREEMENT (the "Agreement") is made and entered into as of the 10th day of March, 2006, by and between IRVINE CENTER PARTNERS III, L.L.C., a Delaware limited liability company ("Owner"), and OPUS WEST MANAGEMENT CORPORATION, an Arizona corporation ("Agent").

RECITALS:

A. Owner is the owner of that certain unimproved real property located in Orange County, California legally described as set forth in Exhibit A attached hereto, upon which unimproved real property Owner is constructing an office building (the "Building"). The real property and the Building and other improvements constructed hereafter by Owner thereon are hereinafter collectively referred to as the "Subject Property".

B. Owner and Agent desire to set out in writing the terms and conditions under which Agent will manage, operate and supervise the operation and maintenance of the Subject Property and to cooperate with Owner's leasing broker in such broker's efforts to rent and lease space in the Subject Property.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing, and in consideration of the mutual terms, covenants, conditions and agreements herein contained, the parties hereto agree as follows:

1. **Employment of Agent**. Owner hereby retains Agent as the sole and exclusive managing agent to manage, operate and supervise the operation and maintenance of the Subject Property, and to cooperate with Owner's leasing broker in such broker's efforts to rent and lease space in the Subject Property upon the conditions and for the term and compensation hereinafter set forth.

2. **Term of Agency**. The term of this Agreement shall be for a period of one year commencing with the date hereof, subject to renewal as provided in this paragraph 2, and shall be subject to the terms of paragraph 17 hereof. On or before that date which is ninety (90) days before the expiration of the then term of this Agreement, either Owner or Agent shall have the right to give the other party written notice of such party's intent to terminate this Agreement as of the expiration date of the then term of this Agreement. In the absence of such timely written notice of termination, this Agreement shall be automatically renewed and shall continue in effect after the expiration of the then term of this Agreement for an additional one (1) year period.

Notwithstanding the foregoing, Owner's right to terminate this Agreement pursuant to the preceding paragraph shall be conditioned upon Agent's uncured default

under this Agreement or upon Agent's failure to operate the Building as a Class A office building (provided Owner shall have made available to Agent sufficient funds pursuant to the Budget referenced in paragraph 6) or upon other just and reasonable cause under this Agreement due to Agent's repeated failure to comply with this Agreement.

3. **Acceptance of Agency and Duties of Agent.** Agent hereby accepts the agency described in this Agreement and agrees to perform all services reasonably necessary in connection with the care, protection, maintenance and operation of the Subject Property. Agent shall perform the following duties at the expense of Owner except as otherwise set forth herein:

(a) Cooperate with Owner's leasing broker in such broker's efforts to keep the Subject Property rented by tenants. In addition, subject to the terms of this Agreement, Agent shall have the right to negotiate leases for space in the Subject Property, including re-leasing and extending the terms of existing leases. Agent shall not commence any lease negotiations without securing the prior written consent of Owner if such lease calls for a rental amount of less than shown on the Rental Schedule approved by Owner under paragraph 4 hereof or if such lease calls for a form of lease which is not in substantial conformity with the lease approved by Owner. Agent shall not have the right to cancel, amend or modify any lease without securing the prior written consent of Owner.

(b) Collect all rentals and other income from the Subject Property; provided, however, that nothing herein contained shall constitute a guarantee by Agent of the payment of rent or any other sum due from tenants.

(c) Make all necessary disbursements for the operation of the Subject Property; provided, however, without Owner's prior consent, Agent shall not make disbursements for tenant improvements, leasing commissions, tenant inducements or other capital expenditures not specifically included in the Budget approved by Owner in accordance with paragraph 6 hereof.

(d) Agent shall pay all real estate taxes and special assessments levied against the Subject Property; provided, however, all statements, bills or invoices for real estate taxes and special assessments shall be addressed by the taxing authority to Owner, and Owner shall forward all such statements, bills and invoices to Agent.

(e) Provide management staff sufficient to manage the Subject Property, to maintain adequate books and records of account,

and to collect all rental income and make all necessary disbursements.

(f) Secure services, supervise, discharge and pay on behalf of Owner all servants or contractors necessary to be employed in the maintenance, operation and care of the Subject Property, Agent agreeing to use reasonable efforts to cause each service contract to be cancelable on thirty (30) days prior notice. Agent shall execute such contracts as Owner may approve, and said contractors shall be deemed to be the contractors of Owner. Any employees secured and deemed necessary by Agent shall be Agent's employees and shall not be deemed to be Owner's employees. For purposes of this Agreement, Agent's Operating Personnel shall be deemed to mean all building operating engineers, building maintenance personnel, service coordinators, building security personnel, janitorial service personnel and other personnel whose activities are engaged in the operation, maintenance, care and protection of the Subject Property. Owner shall reimburse Agent for the cost of salaries and fringe benefits (including workers' compensation insurance) of such Operating Personnel and shall pay that portion of the salary and fringe benefits of other servants and employees of Agent who may from time to time be engaged in the maintenance, operation and care of the Subject Property to the extent that such servants and employees are so engaged in the maintenance, operation and care of the Subject Property. No part of Agent's central office overhead expense or general or administrative expense incurred by Agent in the performance of its duties shall be deemed to be an expense of Owner subject to reimbursement hereunder.

(g) Purchase, on behalf of Owner, all equipment, tools, appliances, materials, supplies and similar items necessary for the maintenance and operation of the Subject Property.

(h) Contract, on behalf of Owner, for materials, services and supplies necessary for the proper care, maintenance and operation of the Subject Property; provided, however, that Agent shall not contract for any item exceeding Five Thousand and no/100 Dollars ($5,000.00) without the prior written approval of Owner, except under the following circumstances:

(i) in the case of emergency;

(ii) where such item is included in the Budget previously approved by Owner in accordance with the provisions of paragraph 6 hereof; or

(iii) where such item is incurred in the ordinary operation of the Subject Property (i.e., insurance premiums, utility charges or similar operating expenses).

(i) Enter into contracts for water, gas, electricity, sewer and other services and commodities necessary in the operation of the Subject Property, which contracts shall be in accordance with the Budget or shall otherwise be approved by the Owner.

(j) [Intentionally Deleted.]

(k) At Agent's expense, install and maintain proper and suitable records and books of account in which there shall be properly recorded all receipts and disbursements connected with the management and operation of the Subject Property. All books of account shall at all times (during normal business hours) be open to the inspection and audit by Owner. Upon termination of this Agreement, all such records and books of account shall be delivered to Owner by Agent. Agent agrees to establish a separate bank account to which all monies received pursuant hereto shall be deposited and from which disbursements made pursuant hereto shall be made.

(l) [Intentionally Deleted.]

(m) At Agent's expense, maintain books and records sufficient to enable Agent to provide the information described in paragraph 15 to Owner.

(n) Provide for the making of all repairs, alterations, improvements, replacements, restorations and maintenance in and about the Subject Property (provided, however, any of the foregoing costing in excess of $7,500 (as increased by CPI hereafter) shall not be made without Owner's prior consent thereto except in accordance with the Budget or in the event of an emergency), and institute and implement a reasonable preventative maintenance program requested by Owner and provided for in the Budget.

(o) Apply for all municipal, state or governmental licenses, permits, inspection fees or other governmental fees that may be required in the operation of the Subject Property subject to receiving from Owner all funds necessary for such compliance.

(p) At the expense of Owner, but only upon the prior approval of Owner, institute all necessary legal action or proceedings for the collection of rent or other income from the Subject Property, for the ousting or dispossession of tenants or other persons

therefrom, for any other remedies to be taken against a Building tenant, or for all other matters requiring legal attention.

(q) Conduct environmental inspections of the Subject Property as may be requested by Owner. Upon completion of each inspection, Agent shall complete and submit to Owner an inspection form which Owner may provide to Agent.

(r) Agent shall, at its expense, prepare, timely file and pay all federal, state and local returns or information reports required in connection with the operation of the Subject Property, including but not limited to Sales or Use Tax, Personal Property Tax and IRS Form 1099 reporting. Agent shall pay, at its expense, all penalties, additional tax and/or interest incurred as a result of failure to file said returns or reports or to pay any tax due thereunder, so long as Owner provided to Agent all sums that were necessary to timely pay such taxes.

(s) Agent shall procure from tenants and maintain appropriate certificates of insurance required under leases. Agent shall obtain replacement certificates from tenants if necessary to meet the insurance requirements under the leases.

(t) Without any liability to Agent, implement any security plan or program of Owner which Owner proposes to Agent and which is funded through the Budget.

(u) Maintain in accordance with law all licenses required of Agent in order to perform Agent's duties hereunder.

(v) Perform such other duties as are customarily performed by agents managing similar properties in the area surrounding the location of the Building.

Except as otherwise stated in paragraphs 3(e), 3(k) and 3(m) above, Agent shall be obligated to perform the responsibilities and obligations of Agent hereunder only to the extent funds of Owner are available therefor. Notwithstanding any other provision herein, Agent shall be liable only for its gross negligence, intentional misconduct or bad faith in acting under this Agreement, but in other respects shall not be liable for mistakes of judgment.

4. **Rental Schedule**. Agent shall, from time to time, and at least annually, prepare and submit to Owner a schedule of suggested rental rates for various spaces in the Subject Property with the Budget as required under paragraph 6.

5. **Leasing Activity**. Agent shall provide Owner with the following items on a monthly basis:

(a) A report covering (i) leases terminating in the preceding month; and (ii) leases terminating in the succeeding 18 months and negotiations in progress;

(b) Current rent roll, including appropriate notes; and

(c) Current lease document list.

When the schedule of suggested rental rates has been approved in writing by Owner, it shall form the basis on which leases of space in the Subject Property shall be negotiated by Agent. Such approval is not intended to constitute an inflexible requirement, but rather to form a basis for the negotiation of such leases by Agent and may be modified in particular instances with the written consent of Owner.

6. **Budget**. Agent shall prepare and submit to Owner for its consideration, 45 days before the beginning of each fiscal year, a proposed operating and capital budget, including a tenant improvement budget (the "Budget"), setting forth the estimated receipts and expenditures of the Subject Property for the period covered by the Budget. When approved by Owner, which approval will be provided no later than 15 days prior to the beginning of each fiscal year, Agent shall, in good faith, use reasonable efforts to abide by and implement the Budget and shall be authorized, without the need for further approval by Owner, to make the expenditures and incur the obligations provided for in the Budget. Without the prior consent of Owner, Agent shall not make expenditures or incur obligations under any one line item of the Budget which would cause such line item to exceed by more than fifteen percent the amounts set forth in the Budget for such line item or which would cause the overall Budget to be exceeded by more than ten percent.

7. **Exclusiveness of Agency**. Agent shall be the exclusive agent for the management of the Subject Property. Agent shall have the right to display on the Subject Property suitable signs of Agent to the effect that Agent is the managing agent of the Subject Property.

8. **Insurance**. The parties hereto agree to obtain the following insurance:

(a) Owner shall procure, at its sole cost and expense, the following insurance:

(i) Policies of insurance covering the Building when substantially constructed and any other improvements constructed, installed or located on the Subject Property (the "Improvements") for the benefit of Owner, as the named insured, against (a) loss or damage by fire; (b) loss or damage from such other risks or hazards now or hereafter embraced by an "Extended Coverage Endorsement", including, but not limited to, windstorm,

hail, explosion, vandalism, riot and civil commotion, damage from vehicles, smoke damage, water damage and debris removal; (c) loss for flood if the Subject Property is in a designated flood or flood insurance area; (d) loss from so-called explosion, collapse and underground hazards; and (e) loss or damage from such other risks or hazards of a similar or dissimilar nature which are now or may hereafter be customarily insured against with respect to improvements similar in construction, design, general location, use and occupancy to the Improvements. At all times, such insurance coverage shall be in an amount equal to one hundred percent (100%) of the then "full replacement cost" of the Building when constructed and any other Improvements on the Subject Property.

(ii) Comprehensive general liability insurance against any loss, liability or damage on, about or relating to the Subject Property, or any portion thereof, with limits of not less than Five Million Dollars ($5,000,000.00) single limit coverage on an occurrence basis. Any such insurance shall name both Owner and Agent as named insureds therein and shall be obtained and maintained from and with a reputable and financially sound insurance company authorized to issue such insurance in the state in which the Subject Property is located. Such insurance shall specifically insure (by contractual liability endorsement) Owner's obligations under this Agreement.

(b) Agent shall procure statutory workers' compensation insurance covering servants and employees engaged in the performance of this Agreement and the care, maintenance, operation and protection of the Subject Property. Agent shall have no obligation to procure or maintain insurance other than as set forth in this paragraph 8.

9. **Working Capital**. Owner agrees to advance to Agent the sum of Ten Thousand and No/100 Dollars ($10,000.00) as working capital. Agent shall deposit said sum in a special account in a bank to be designated by Owner in the name of Agent, as agent for Owner. Said sum shall be considered as working capital for Agent for the Subject Property. At any time that the aforesaid working capital decreases to the sum of Five Thousand and No/100 Dollars ($5,000.00) or less, Owner agrees to deposit such additional funds as may be necessary to restore said working capital to the sum of Five Thousand and No/100 Dollars ($5,000.00). Agent will make all deposits of rental income or other income to said account and will make all disbursements from said account by checks drawn thereon. All funds in excess of Ten Thousand and No/100 Dollars ($10,000.00) in the working capital account shall be wire transferred by Agent to Owner on a weekly basis.

The books and records in respect to such account shall be open (during normal business hours) at all times to the inspection of Owner. Owner shall have the reasonable right to direct the location (bank) at which such account is maintained and to direct all investments of funds subject to this agency, and Owner shall be entitled to all income resulting therefrom (including Owner's pro rata share of compensating balance credit, if any).

10. **Fidelity Bond**. Agent, upon the written request of Owner, shall furnish to Owner a fidelity bond with an insurance company satisfactory to Owner, in a penal sum to be reasonably acceptable to Owner, insuring that Agent and its employees shall perform and comply with all the conditions and provisions of this Agreement and faithfully account to and pay over to Owner all sums collected by Agent or held by Agent which are due Owner. All bond premiums and any costs incurred in connection therewith shall be paid by Owner.

11. **Indemnification**. Owner shall save Agent harmless from all suits for damages in connection with the management, care, operation and maintenance of the Subject Property, and from all suits or claims for damages arising from liability for injuries suffered by any person while in or about the Subject Property, unless any such damages are based on Agent's gross negligence, bad faith or breach of this Agreement. Agent shall be a named insured on Owner's general comprehensive liability and casualty insurance policies. Agent shall save Owner harmless from all suits for damages based on Agent's gross negligence, intentional misconduct or bad faith.

12. **Extraordinary Services**. If Agent is called upon by Owner to perform services not customarily a part of the usual services performed by a managing agent, Agent shall be entitled to receive as additional compensation therefor an amount commensurate with such services, if Agent notifies Owner that an additional charge will be made for such service prior to providing the same and Owner agrees to such charge; if Owner does not agree to such additional charge, then Agent shall have no obligation whatsoever to perform any such additional or extraordinary services.

13. **Outside Services**. Should (in the discharge of its duties) Agent require the services of any professional, including but not limited to an attorney, accountant, surveyor or real estate appraiser, Agent shall first ask Owner for its recommendation for the provider of such services, and with the concurrence of Owner, retain such party on an agreed fixed fee service or at a billing rate approved by Owner. All services performed shall be outlined before any action is taken, except in an emergency.

14. **Forms**. Owner reserves the right to adopt such lease forms, or other forms, as it may deem appropriate or necessary, and shall furnish Agent with such approved lease forms and other forms, and, if Agent negotiates any lease which would result in a leasing commission to Agent, Agent shall thereafter use such lease forms and other forms in the negotiation and execution of all such leases or other matters requiring formal legal documents.

15. **Books and Records**. Agent shall provide Owner with the following:

(a) Within 25 days after the end of each month, a monthly reporting package for the previous month including (i) Balance Sheet, (ii) Operating Statement/Accrual Basis, (iii) General Ledger, (iv) Journal Entry Listing/Monthly Audit Listing, (v) Bank Statement and Reconciliation (including list of bank service charges and/or Client Analysis Statement), (vi) Statement of Charges and Collections/Rental Property Receivable, (vii) Rent Roll, (viii) Voucher Check Register, (ix) narrative Variance Report for the preceding month and year to date, (x) Cash Basis Operating Statement, (xi) Delinquency Report/narrative Status of Outstanding Receivables, (xii) Tenant Aging Report, and (xiii) Net Cash Flow Statement for the preceding month and year-to-date to the end of such preceding month. Agent and Owner shall have the right to amend the foregoing requirements upon mutual consent of each party.

(b) Within 40 days after the end of each calendar quarter, a 12-month projection of cash flow.

(c) By facsimile transmission on the first business day of each week, a weekly cash status report.

The books, accounts and records relating to the Subject Property shall at all times be maintained at the principal office of Agent in Phoenix, Arizona, except as otherwise agreed to by Owner.

16. **Compensation**. Compensation for Agent's services shall be determined and paid as follows:

(a) **Management Fee**. A management fee at the applicable rate set forth in Exhibit B computed on the Rental Income (as defined in Exhibit B) derived from the Subject Property ("Management Fee"). The Management Fee shall be payable by Owner to Agent on the first day of each month from and after the effective date of this Agreement and shall continue thereafter until the termination of this Agreement. Agent is authorized to pay the Management Fee from the bank account referred to in paragraph 9.

(b) **Leasing Commission**. For the leases specified in Exhibit B, a Leasing Commission at the rate set forth in Exhibit B, computed in accordance with the provisions of Exhibit B. The Leasing Commission shall be payable as provided in said Exhibit B and shall be paid directly by Owner to Agent.

17. **Termination**. Notwithstanding the provisions contained in paragraph 2, this Agreement shall be terminated and the obligations of the parties hereto shall thereupon cease upon the occurrence of any of the following circumstances or events:

(a) Upon consummation of a bona fide sale of the Building and delivery of possession to the new owner. Such sale could include a sale to one or more of the members of Owner or their affiliates.

(b) Upon substantial destruction of the Building and the failure of Owner to restore the same within a period of two (2) years thereafter.

(c) Upon a taking under eminent domain or other like proceedings, this Agreement shall terminate with respect to the portion of the Building so taken, but shall remain in full force and effect with respect to the balance of the Subject Property; provided, however, that if the taking is of a substantial portion of the Building so as to render the same unfit for continued use as an office building, this Agreement shall terminate on the date when said taking occurs.

(d) If Agent files for bankruptcy, or if Agent shall make an assignment for the benefit of creditors or seek relief from its creditors under any insolvency act, or if a receiver is appointed on account of its insolvency and such appointment is not rescinded within ninety days, this Agreement shall be deemed terminated unless both members of Owner agree otherwise in writing.

(e) Upon the mutual agreement or consent of Owner and Agent expressed in writing.

(f) Upon the election of Owner upon any material breach of this Agreement by Agent which Agent does not cure or commence to cure within thirty days after receipt of written notice of such breach from Owner to Agent; provided, however, with respect to any non-monetary breach, if Agent has commenced cure of such non-monetary breach within such thirty-day period, such thirty-day period shall be extended for an additional sixty days, up to an aggregate total of ninety days, so long as Agent is diligently pursuing such cure to completion.

(g) Upon the election of Agent upon any material breach of this Agreement by Owner which Owner does not cure or commence to cure within thirty days after receipt of written notice of such breach from Agent to Owner; provided, however, with respect to

any non-monetary breach, if Owner has commenced cure of such non-monetary breach within such thirty-day period, such thirty-day period shall be extended for an additional sixty days, up to an aggregate total of ninety days, so long as Owner is diligently pursuing such cure to completion.

(h) Upon the expiration of the term set forth in paragraph 2 hereof.

Upon termination, Agent shall submit a final accounting to Owner and Agent shall reasonably cooperate with Owner in Owner's transition to another managing agent of the Subject Property. Upon removal of the Building from this Agreement, Agent shall submit a final accounting to Owner for the Building.

18. **Arbitration.** Should Owner and Agent disagree on any question as to the true construction of any provision in this Agreement, or concerning any alleged violation of any such provision, or should there be any dispute of any kind or character between the parties hereto, such question shall be submitted to a Board of Arbitration of one or more competent and wholly disinterested persons. The party demanding such arbitration shall give the other party written notice of such demand, stating specifically such question or questions to be submitted for their decision, and within twenty days thereafter the parties shall agree on one arbitrator to act as the Board of Arbitration hereunder. If for any reason the parties cannot agree upon the one arbitrator within such twenty-day period, then the Board of Arbitration shall consist of three arbitrators, and within ten days after the expiration of the twenty-day period, the party requesting arbitration shall nominate a person to act as its arbitrator. Within ten days after receipt of such notice, the recipient shall appoint the second arbitrator and give notice of such appointment to the other party. Within ten days after the appointment of the second arbitrator, the two arbitrators shall appoint a third arbitrator and the three arbitrators so appointed shall constitute the Board of Arbitration. The arbitrator (or the third arbitrator, in the event the Board of Arbitration consists of three persons) shall have the power to set the time and place when and at which the arbitrators shall proceed, but in so doing shall give due consideration to the reasonable convenience of their parties and their witnesses.

Upon such Board of Arbitration being instituted, it shall proceed with reasonable diligence to inquire into the question or questions at issue, as disclosed in such notice, and may take such evidence as it may deem necessary, or as either party may submit without requiring witnesses to be sworn, and may hear arguments of counsel or others. After the parties have been heard, it shall proceed to make its determination in writing and the same, when issued by the sole arbitrator (or when signed by two or more of the arbitrators in the event of a three-person Board), shall be final, binding and conclusive upon the parties hereto. The books and records of the parties, insofar as they relate to any matter subject to arbitration, shall be open to examination of the arbitrator(s). In the event of a three-person Board in which the arbitrators are unable to formulate a majority report within 30 days after the selection of the three arbitrators, either party may make application to the senior judge of the United States District Court for the Division and State where the Subject Property is located and such judge shall prepare a report after taking such

evidence as he deems necessary and proper, and, in such event, the report of such judge shall be final, binding and conclusive upon the parties hereto.

Owner and Agent shall each pay one-half of the fees and expenses of the arbitrators and all fees and expenses of its own witnesses and counsel.

If either party hereto shall refuse to abide by the determination made by the Board of Arbitration, the adverse party may enforce the same by appropriate proceedings in any court of law or equity, the costs of which shall be paid for by the non-abiding party.

In the event that the parties cannot agree upon a single arbitrator and the party receiving such notice of demand for arbitration has not notified, in writing, the other party demanding arbitration of its nomination of a second arbitrator having the required qualifications within ten days as provided therefor, the party demanding such arbitration may apply to the senior judge of the United States District Court for the Division and State where the Subject Property is located. Such judge shall appoint a second arbitrator within ten days after the application is made. In the event the third arbitrator is not appointed within the time herein allowed, either party may apply to the senior judge of the United States District Court, and such judge shall appoint the third arbitrator within ten days after the application is made.

19. **No Restrictions; Limitation on Responsibility.**

(a) Nothing contained in this Agreement shall be construed to prohibit Agent, or any firm, individual or corporation controlled by, under common control with or controlling Agent, or any shareholder of Agent or of a corporation controlling Agent, or of a corporation owned or controlled directly or indirectly by such shareholder(s), or any partner of Agent, or any other directly or indirectly related or affiliated party, from acquiring, owning, financing, operating, leasing, providing asset management services to, providing property and construction management services to, providing leasing services to, developing, investing in, or disposing of any real estate or mortgage interests therein not owned or operated by Owner; provided, however, without the prior approval of Owner and Irvine Holdings, LP, a Texas limited partnership ("Irvine"), Agent shall be prohibited from (i) providing lease brokerage services to any project located within, or (ii) otherwise owning (directly or indirectly) any interest in an office building project which has or will have (if developed) office space for lease (the activities described in these clauses (i) and (ii) are referred to as the "Prohibited Activities") located in the area designated on Exhibit C attached hereto (the "Non-Competition Area") until the earlier of (y) such time as the Building is, or at any prior time has been, at least ninety percent (90%) leased or (z) this Agreement is terminated (the "Non-Competition Period"). Owner agrees and consents that Agent,

or any person or entity directly or indirectly controlling, controlled by or under common control with Agent or any shareholder, director or partner of Agent, or any other directly or indirectly related or affiliated party, may engage in or possess an interest in another business venture or ventures of any nature and description, independently or with others, including but not limited to, any venture established to acquire, own, finance, lease, provide asset management services to, provide property and construction management services to, provide leasing services to, operate, manage, syndicate, broker and develop real property or mortgage interests therein, other than any venture which would undertake the Prohibited Activities in the Non-Competition Area during the Non-Competition Period except with the prior approval of Owner and Irvine, and neither Owner nor its members nor their affiliates, as such, shall have any rights by virtue of this Agreement, or otherwise, in and to said independent ventures or to the income or profits derived therefrom or to any claims against Agent or any such other parties alleging or claiming conflict of interest, breach of this Agreement or breach of any fiduciary duty as a result thereof. Notwithstanding the foregoing Prohibited Activities located in the Non-Competition Area during the Non-Competition Period, at any and all times hereafter Agent shall have the unfettered right to take any action and provide any services described in the first 13 lines of this paragraph 19(a) with respect to any real property described in that certain Agreement dated February 4, 1998, as amended by that certain First Amendment to Master Agreement dated August 24, 1998, that certain Second Amendment to Master Agreement and First Amendment to Contribution Agreement and Escrow Instructions dated as of August 28, 1998, that certain Third Amendment to Master Agreement and Second Amendment to Contribution Agreement and Escrow Instructions dated October 31, 2000, that certain Fourth Amendment to Master Agreement and Third Amendment to Contribution Agreement and Escrow Instructions dated May 23, 2001, that certain Fifth Amendment to Master Agreement and Fourth Amendment to Contribution Agreement and Escrow Instructions dated September 16, 2003, that certain Sixth Amendment to Master Agreement and Fifth Amendment to Contribution Agreement and Escrow Instructions dated September 30, 2004, that certain Seventh Amendment to Master Agreement and Sixth Amendment to Contribution Agreement and Escrow Instructions dated June 29, 2005 and that certain Eighth Amendment to Master Agreement and Seventh Amendment to Contribution Agreement and Escrow Instructions dated January 27, 2006 (as amended, the "Master Agreement").

(b) Owner acknowledges that Agent has previously entered into and will continue to enter into other agreements with other parties for the provision of property management, leasing and/or construction management services. Nothing contained in this Agreement shall be construed to prohibit Agent or its affiliates from entering into any such other agreements, other than any such agreements which would constitute a Prohibited Activity in the Non-Competition Area during the Non-Competition Period except with the prior approval of Owner and Irvine or except as permitted by the last sentence of paragraph 19(a), and the execution and performance of such other agreements shall in no way be considered a default hereunder or a breach of Agent's duties hereunder, nor shall Agent be subject to any claim of conflict of interest or breach of fiduciary duty as a result of the execution and performance of any such other agreements.

(c) Owner acknowledges that it is intended that Agent hire in certain circumstances independent third parties to provide certain services and perform certain work in connection with Agent's duties hereunder, including without limitation providing janitorial services, providing security services, providing tenant improvement and capital improvement services, providing repairs and providing other services to the Subject Property. In no event shall Agent have any responsibility or liability in connection with the performance or provision of the work and services rendered by third parties.

20. **Notices.** Any notices, demands or requests provided for or permitted to be given pursuant to this Agreement must be in writing and may be served by depositing the same in the United States mail, addressed to the party to be notified, postage prepaid, and registered or certified, with a return receipt requested, or by hand delivery, facsimile transmission or express mail service. When giving any notices or demands or making any requests hereunder, the addresses shall be as follows:

(a) If to Owner: Irvine Center Partners III, L.L.C.
c/o Opus West Corporation
2555 East Camelback Road, Suite 800
Phoenix, Arizona 85016-9267
Attn: President
Facsimile No.: (602) 468-7045

With a Copy to: Opus West Corporation
2555 East Camelback Road, Suite 800
Phoenix, Arizona 85016-9267
Attn: Legal Department
Facsimile No.: (602) 468-7045

With a Copy to: Opus West Corporation
2020 Main Street, Suite 800
Irvine, California 92614
Attn: Senior Vice President
Facsimile No.: (949) 622-1951

With a Copy to: Irvine Holdings, LP
4229 Cochran Chapel Road
Dallas, Texas 75209
Attn: Richard D. Squires
Facsimile No.: (214) 352-6287

With a Copy to: SPI Holdings, LLC
650 California, Suite 1288
San Francisco, California 94108
Attn: Mr. Dennis Wong
Facsimile No.: (415) 391-9142

(b) If to Agent: Opus West Management Corporation
2555 East Camelback Road, Suite 800
Phoenix, Arizona 85016-9267
Attn: President
Facsimile No.: (602) 468-7045

With a Copy to: Opus West Corporation
2555 East Camelback Road, Suite 800
Phoenix, Arizona 85016-9267
Attn: Legal Department
Facsimile No.: (602) 468-7045

Each notice given by registered or certified mail shall be deemed delivered three business days after deposit as aforesaid, and each notice delivered in any other manner shall be deemed to be effective at the time of actual delivery. Each party hereto may change its address for notice by giving notice thereof in the manner hereinabove provided.

21. **Governing Law**. This Agreement shall be governed by the laws of the State of California.

22. **Complete Agreement**. This Agreement supersedes all previous agreements, proposals and understandings, either oral or written, between the parties hereto in connection with the work called for herein, and this Agreement may not be modified except by an instrument in writing signed by both parties. This Agreement shall be binding upon the parties hereto and their respective representatives, successors and assigns. No rights, remedies or warranties under this Agreement are waived or modified unless expressly waived or modified in writing by the party to be charged.

23. **Survival**. All terms and conditions of this Agreement shall survive the expiration or earlier termination of this Agreement.

[The remainder of this page is intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

OWNER:

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

By Opus West Corporation
Its Manager

By_____
Name: Thomas W. Roberts
Title: President

By Irvine Holdings, L.P., a Texas limited partnership
Its Member

By RS III, LP, a limited partnership
Its General Partner

By RDS Holdings, Inc.
Its General Partner

By_____
Richard D. Squires
Its President

AGENT:

OPUS WEST MANAGEMENT CORPORATION, an Arizona corporation

By_____
Name: Thomas W. Roberts
Title: President

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

OWNER:

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

By Opus West Corporation
Its Manager

By_____
Name:_____
Title:_____

By Irvine Holdings, L.P., a Texas limited partnership
Its Member

By RS III, LP, a limited partnership
Its General Partner

By RDS Holdings, Inc.
Its General Partner

By_____
Richard D. Squires
Its President

AGENT:

OPUS WEST MANAGEMENT CORPORATION, an Arizona corporation

By_____
Name:_____
Title:_____

EXHIBIT A
TO
PROPERTY MANAGEMENT AGREEMENT

The Subject Property described in the attached Property Management Agreement consists of the Building to be constructed on that certain real property legally described as follows:

Parcel A:

Parcel 2, in the City of Irvine, County of Orange, State of California, as shown on Exhibit "B" attached to Lot Line Adjustment 40088-LL, recorded September 14, 1999 as Instrument No. 19990660556 of Official Records of Orange County, California.

Parcel B:

Parcel 2, in the City of Irvine, County of Orange, State of California, as shown on Parcel Map No. 2001-215, filed December 17, 2002 in Book No. 329, Pages 22-24, inclusive, of Parcel Maps of Orange County, California.

Excepting from a portion of said land, all oil, oil rights, minerals, mineral rights, natural gas, natural gas rights and other hydrocarbons by whatsoever name known that may be within or under the parcel of land hereinabove described, together with the perpetual right of drilling, mining, exploring and operating therefor, and storing in and removing the same from said land or any other land, including the right to whipstock or directionally drill and mine from lands other than those hereinabove described, oil or gas wells, tunnels and shafts into, through or across the subsurface of the land hereinabove described, and to bottom such whipstocked or directionally drilled wells, tunnels and shafts under and beneath or beyond the exterior limits thereof, and to redrill, retunnel, equip, maintain, repair, deepen and operate any such wells or mines, without, however, the right to drill, mine, store, explore and operate through the surface of the upper 500 feet of the land hereinabove described, as reserved in the Deed from Irvine Industrial Complex, a corporation, recorded April 15, 1971 in Book 9606, Page 441 of Official Records, and recorded January 21, 1974 in Book 11060, Page 213 of Official Records.

Parcel C:

Non-exclusive easements for vehicular and pedestrian ingress and egress purposes, as said easements are set forth in that certain Amended and Restated Declaration of Establishment of Covenants, Conditions and Restrictions and Grant of Easements for Koll Center Irvine North recorded February 9, 1987 as Instrument No. 87-074459 of Official Records of Orange County, California.

Parcel D:

Non-exclusive easements for vehicular and pedestrian ingress and egress, utilities, drainage and other purposes, as said easements are set forth in Article IV of that certain Amended and Restated Declaration Establishing Easements, Covenants and Restrictions for KCIN Parking Facilities recorded September 1, 1998 as Instrument No. 19980582940 of Official Records of Orange County, California.

APN: 435-161-72 and 435-161-75

EXHIBIT B
TO
PROPERTY MANAGEMENT AGREEMENT

1. As used in the attached Property Management Agreement, "Rental Income" shall be defined as all rental income received from the Building, together with any other or additional income such as storage, service income, including tenants' shares of all real estate taxes, special assessments and operating expenses of the Building, and any escalations or increases in the same, but excluding therefrom parking revenues, security deposits, termination and cancellation fees (except any such termination or cancellation fee received by Owner shall be amortized over the remaining term of the cancelled or terminated lease and included in monthly Rental Income for the applicable months), insurance proceeds and any one-time lump sum cash payment representing reimbursement to Owner for excess tenant improvement costs incurred by Owner for such tenant.

2. The Management Fee referred to in paragraph 16(a) of the Property Management Agreement shall be at the rate of 3% for the first year of the term of the attached Property Management Agreement, and thereafter such Management Fee shall be adjusted annually, as of the first day of each successive year of such term, to the then market rate therefor for similar improved properties in the area of the Subject Property.

3. The Leasing Commission referred to in paragraph 16(b) of the Property Management Agreement to which this Exhibit B is attached shall be determined and paid as follows and in the following situations:

   (a) Should a lease agreement be executed and no leasing commission be due in connection therewith to a third party, or should the term of a lease agreement be extended/renewed or the tenant occupy additional space by virtue of a provision in the lease agreement or by virtue of a subsequent amendment of the original lease agreement or the execution of a new lease agreement and in either such event no leasing commission shall be due in connection therewith to a third party, a Leasing Commission shall be paid to Agent by Owner equal to fifty percent (50%) of the leasing commission that would then be payable to any third party leasing agent if that third party leasing agent were then entitled to a full leasing commission, or if none, fifty percent (50%) of a then reasonable leasing commission. Any such Leasing Commissions shall be payable fifty percent (50%) upon execution and fifty percent (50%) upon occupancy by the tenant of the premises demised under such lease agreement.

   (b) In the event there is a leasing or listing agreement in effect with a third party leasing agent, and if a lease agreement is executed with a tenant by

Owner pursuant to which the third party leasing agent receives less than a full leasing commission due to the efforts of Agent or its affiliates, then a Leasing Commission shall be paid to Agent by Owner equal to the difference between (i) the full leasing commission which would otherwise be payable to the third party leasing agent under its leasing or listing agreement with Owner and (ii) the reduced leasing commission actually paid by Owner to such third party leasing agent thereunder. Such Leasing Commission shall be payable fifty percent (50%) upon execution and fifty percent (50%) upon occupancy by the tenant of the premises demised under such lease agreement.

4. Notwithstanding any other provisions of the attached Property Management Agreement, in no event shall a Leasing Commission be payable to Agent on any lease extension or renewal that is exercised after the expiration or termination of the attached Property Management Agreement.

EXHIBIT C
TO
PROPERTY MANAGEMENT AGREEMENT

MAP OF NON-COMPETITION AREA

See attached Map.

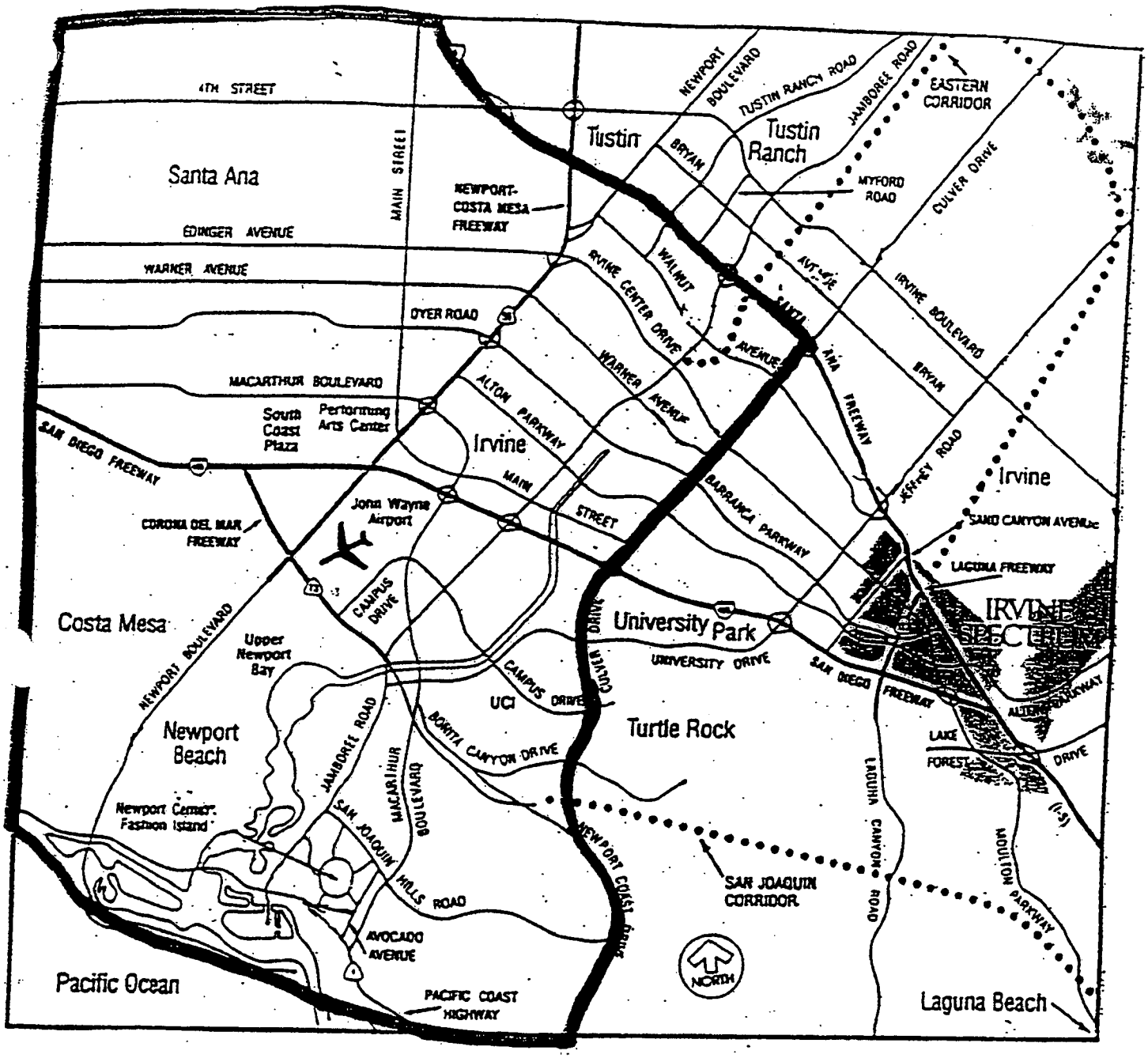

Exhibit C
(Page 2 of 2)

ATTACHMENT 7

ASSIGNMENT OF ARCHITECT'S CONTRACT

THIS ASSIGNMENT OF ARCHITECT'S CONTRACT ("Assignment") is entered into as of this 11th day of October, 2006, by **OPUS ARCHITECTS & ENGINEERS, INC.**, a Minnesota corporation ("Assignor") and **IRVINE CENTER PARTNERS III, L.L.C.**, a Delaware limited liability company ("Assignee").

Whereas, for good and valuable consideration, the sufficiency of which is hereby acknowledged, Assignor hereby sells, transfers, assigns and sets over unto Assignee all of Assignor's right, title and interest in that certain Project Letter Agreement dated July 20, 2006 by and between Assignor and Langdon Wilson, Inc., attached hereto as Exhibit A and made a part hereof (the "Contract") executed in connection with the construction of a certain office building on the real estate commonly known as 2050 Main Street, Irvine, California (the "Project").

This Assignment shall be binding upon and shall inure to the benefit of Assignor and Assignee and their respective beneficiaries, legal representatives, heirs, successors and assigns.

This Assignment may be executed in counterparts, and as so executed shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties intending to be legally bound have executed this Assignment this 11th day of October, 2006.

ASSIGNOR:

OPUS ARCHITECTS & ENGINEERS, INC., a Minnesota corporation

By: _____
Name: Robert Carli
Title: Vice President

ASSIGNEE:

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

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

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

EXHIBIT A

SEE ATTACHED ARCHITECT'S CONTRACT

OPUS.

THE OPUS GROUP
ARCHITECTS
CONTRACTORS
DEVELOPERS

OPUS ARCHITECTS & ENGINEERS, INC.
A member of the Opus Group
10350 Bren Road West
Minnetonka, MN 55343
phone 952-656-4444
fax 952-656-3520
www.opusgroup.com

July 20, 2006

J. Patrick Allen, Partner
Langdon Wilson
18800 Von Karman Ave., Suite 200
Irvine, CA 92612

RE: Project Agreement Letter
Opus Center Irvine, Phase III (OCI-III)

Dear Mr. Allen:

This Project Agreement supplements and is made part of that certain Master Service Agreement Between Architect and Consultant ("Master Agreement") entered into by Opus Architects & Engineers, Inc. ("Architect") and Langdon Wilson ("Consultant") dated April 18, 2005, and sets forth the Project Terms (defined in the Master Agreement) for the Project described below. Capitalized terms that are not defined in this Project Agreement have the meaning ascribed to them in the Master Agreement.

PROJECT
The Project consists of a 13-Story shell and core office building with a total area of approximately 332,000 gross square feet as well as site landscape, hardscape, lighting and accessories to match existing improvements and the master plan configuration. The Project is based on the perimeter configuration and exterior elevations of the OCI-I project and the core configuration of the OCI-II project. The building is based on a modified OCI-I perimeter longitudinal moment frame and the same integrated core transverse braced frame system of OCI-II. The roof top layout, penthouse and emergency helipad shall be similar to the OCI-I project and the ground floor MEP equipment room configuration shall be similar to the OCI-I project. The foundation system shall be based on a soils report provided by the Architect.

The Project also consists of a Phase C-3.2, seven-level build-out of the existing parking structure and a surface parking lot adjacent to the OCI-III office building and a service yard. The parking structure shall have a new fire lane at the easterly side of the structure and an elevator/stair element based on existing core design aesthetics.

PROJECT SITE
The Project Site is located at:
2050 Main Street, Irvine, CA. 92614
Owner: Opus West Development, LLC

DESIGN BUILDER
Opus West Construction is the Design-Builder.

SERVICES
Consultant will perform the following services for the Project:
Conceptual Design through Construction Administration services for the Project, as described in Exhibit C, attached hereto and incorporated herein by reference.

SCHEDULE
Services will be performed and completed in accordance with the following schedule:
Construction is scheduled to commence late August 2006.

COMPENSATION
See attached Exhibit A, B, and C for compensation. Consultant will not exceed the estimated maximum amount without prior written approval of the Architect. Hourly rates are based on the Consultant's attached Rate Schedule for the year 2006 in effect for the duration of this Project. Consultant will send all invoices for Services to Architect at the following address:

Attn: Ms. Sherri Haviken
Opus Architects & Engineers
2020 Main Street, Suite 800
Irvine, California 92614

DESIGNATED REPRESENTATIVES
Consultant's Designated Representative is:
Mr. J. Patrick Allen.

Architect's Designated Representative is:
Ms. Sherri Haviken.

SUBCONSULTANTS
Consultant will engage the following Subconsultants to perform a portion of the Services:

Brandow & Johnston	Structural
DVV Associates	Curtainwall
Ridge Landscape Architects	
Purcell+Noppe+Associates, Inc.	Acoustical
Lerch Bates North America, Inc.	Elevator
Aviation Systems Associates	FAA

Please signify your acceptance of this Project Agreement by signing the enclosed duplicate original of this letter and returning it to us at the address listed above.

Sincerely,

OPUS ARCHITECTS & ENGINEERS, INC.

By: Bob Carli
Its: Vice President

By: Dale Wenkus
Its: Director, Business Services

ACKNOWLEDGED AND ACCEPTED BY:

LANGDON WILSON

C-7181

By: J. PATRICK ALLEN
Its: PARTNER

Enclosures

DESIGN BUDGET FOR OPUS CENTER IRVINE III

Revised July 14, 2006
June 7, 2006
April 8, 2005
Page 1 of 2

BASIC SERVICES FEES

		Office Shell/Core	Site	Parking Str.
I.	ARCHITECTURE			
A.	Conceptual Design (Completed)	$ 28,000	$	$
B.	Schematic Design	$ 34,000	$ 6,000	$
C.	Design Development	$ 105,000	$ 4,000	$ 4,000
D.	Construction Documents	$ 374,000	$ 12,000	$ 8,000
E.	Construction	$ 185,000	$ 6,000	$ 4,000
	Subtotal Architecture		$ 770,000	
II.	STRUCTURAL			
A.	Schematic Design	$ 18,000	$	
B.	Design Development	$ 27,000	$	
C.	Construction Documents	$ 108,000	$	
D.	Construction	$ 27,000	$	
E.	Structural Special Inspections	$	$	
	Subtotal Structural		$ 180,000	
III.	MECHANICAL AND PLUMBING (1) (5)			
~~A.~~	~~Preliminary Design~~	~~$ 12,880~~	~~$~~	
~~B.~~	~~Performance Bid Doc's~~	~~$ 9,200~~	~~$~~	
~~C.~~	~~Bid Review~~	~~$ 1,840~~	~~$~~	
~~D.~~	~~Peer Review~~	~~$ 7,360~~	~~$~~	
~~E.~~	~~Construction Review~~	~~$ 5,520~~	~~$~~	
	~~Subtotal M/P Engineering~~		~~$ 36,800~~	Deleted (6)
IV.	ELECTRICAL (1)			
~~A.~~	~~Space Requirements, Design/ Build Criteria & Bid Review~~	~~$ 9,775~~	~~$ 1,725~~	
~~B.~~	~~Peer & Construction Review~~	~~$ 7,760~~	~~$ 1,725~~	
	~~Subtotal Elect. Engineering~~		~~$ 20,985~~	Deleted (6)
V.	LANDSCAPE/IRRIGATION (1)			
A.	Schematic Design	$	$ 4,600	
B.	Design Development	$	$ 4,600	
C.	Construction Documents	$	$ 10,925	
D.	Construction		$ 2,300	
	Subtotal Landscape		$ 22,425	

EXHIBIT A

DESIGN BUDGET FOR ORUS CENTER IRVINE II

Revised July 14, 2006
June 7, 2006
April 8, 2006
Page 2 of 2

		Office Shell/Core	Site	
VI.	ACOUSTICAL CONSULTANT (1)			
A.	Schematic Design	$ 3,450	$	
B.	Design Development	$ 5,175	$	
C.	Construction Documents	$ 4,025	$	
D.	Construction	$ 5,520	$	
	Subtotal Acoustical		$ 18,170	
VII.	ELEVATOR CONSULTANT (1)			
A.	Schematic Design	$ 2,530	$	
B.	Design Development	$ 4,370	$	
C.	Construction Documents	$ 7,475	$	
D.	Construction (3)	$ 15,870	$	
	Subtotal Elevator		$ 30,245	
	TOTAL BASIC SERVICES FIXED PRICE FEE		$ 1,020,840	
	SUPPLEMENTAL SERVICES (1)(2)			
	Curtainwall (4)	$ 11,500	$	(Allowance)
	~~Smoke Control Review~~	~~$ 3,000~~	$	(Allowance) Deleted (6)
	Aviation Consultant	$ 2,500	$	(Allowance)
	Subtotal Supplemental Services		$ 14,000	
	TOTAL FEES WITH ALLOWANCES		$ 1,034,840	
	Reimbursable Allowance		$ 75,000	
	TOTAL BUDGET		$ 1,109,840	

(1) Fee includes 1.15 multiplier.

(2) Specialty Consultants will not exceed allowance for each without written authorization.

(3) If desired, add $3,680 for Elevator Consultant's optional Warranty Review. See attached Exhibit C for description of this optional Additional Service.

(4) Curtainwall Consultant's allowance based on similar Scope of Services provided on OCI-II for the Walters & Wolf unitized system. If another curtainwall design/build subcontractor is selected, the scope/fee will likely increase. DVV's flat rate for field visits and follow-up report is $750.

(5) TKSC recommends, based on the new energy Title 24 requirements that will take effect October 2005 that a fee of $5,750 be added to the above preliminary Design Fee to provide this analysis prior to issuing the design/build performance bid package.

(6) Services to be contracted for directly by Architect or Design/Builder.

LANGDON
WILSON
ARCHITECTURE
PLANNING
INTERIORS

2006 HOURLY RATE SCHEDULE

Partner	$225
Project Director	$155 - 190
Senior Project Architect Senior Project Manager Senior Project Designer Senior Project Planner	$130 - 160
Project Architect Project Manager Project Designer Project Planner	$90 - 135
Job Captain Senior Designer Senior Draftsperson Senior Planner Senior Interior Designer Senior Graphics Designer Senior CADD Operator	$75 - 100
Designer Draftsperson Planner Interior Designer Graphics Designer CADD Operator	$65 - 95
Junior Designer Junior Draftsperson Junior Planner Junior Interior Designer Junior Graphics Designer Junior CADD Operator	$55 - 70
Intern	$30 - 45
Word Processing	$50 - 60

LW/NB

The above rates are subject to annual adjustments.

EXHIBIT B

EXHIBIT C

To Project Agreement Letter for
Opus Center Irvine, Phase III (OCI-III)

SCOPE OF CONSULTANT'S BASIC SERVICES

1.1 The Consultant's Basic Services consist of those described in Paragraphs 1.2 through 1.6 and any other services identified in Section 5 as part of Basic Services.

1.2 SCHEMATIC DESIGN PHASE

1.2.1 The Consultant shall review the program furnished by the Architect, Design Builder and Owner to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the Architect, Design Builder and Owner.

1.2.2 Develop alternative concept studies for building massing and location, from the selected concept, develop conceptual floor plans, elevations, site plan and preliminary BOMA calculations.

1.2.3 Based on the mutually agreed-upon program, concept and schedule, the Consultant shall prepare, for approval by the Architect, Schematic Design Documents consisting of drawings and other documents illustrating the scale and relationship of Project components.

1.3 DESIGN DEVELOPMENT PHASE

1.3.1 Based on the approved Schematic Design Documents and any adjustments authorized by the Architect in the program or schedule, the Consultant shall prepare, for approval by the Architect, Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the Project as to architectural, structural, materials and such other elements as may be appropriate.

1.4 CONSTRUCTION DOCUMENTS PHASE

1.4.1 Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the construction budget authorized by the Architect, the Consultant shall prepare, for approval by the Architect, Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Project.

1.4.2 The Consultant shall assist the Architect in connection with the Architect's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project, including incorporation and processing of the design-build mechanical, electrical and plumbing construction documents with the Consultant's plan check submittals.

1.5 BIDDING OR NEGOTIATION PHASE

1.5.1 The Design-Builder shall establish the categories and schedule for sequential phased bid packages for the Project. The Consultant shall prepare for the Design-Builder documents for the following sequential bids:

.1 Schematic Design architectural and structural drawings for selecting mechanical, electrical, plumbing, and fire protection design-build subcontractors.

.2 Structural foundation and superstructure.

.3 Curtainwall.

.4 Vertical transportation.

.5 Balance of Project's Construction Documents relating to Consultant's portion of the Project.

1.5.2 Consultant shall respond to requests for information and issue updated drawings or information as requested by Architect or Design-Builder during the sequential subcontractor bid process.

1.6 CONSTRUCTION ADMINISTRATION PHASE

1.6.1 The Consultant's responsibility to provide Basic Services for the Construction Phase under this Project Agreement commences with the award of the initial Contract for Construction and terminates 60 days after the date of Substantial Completion of the Work.

1.6.2 The Consultant shall provide administration of the Contract for Construction as set forth below. Architect's or Design-Builder's General Conditions for this Project, when adopted as part of the Contract Documents, shall be enforceable under this Agreement only to the extent that they are consistent with this Agreement or approved in writing by the Consultant.

1.6.3 Duties, responsibilities and limitations of authority of the Consultant under 1.6 shall not be restricted, modified or extended without written agreement of the Architect and Consultant.

1.6.4 The Consultant shall be a representative of and shall advise and consult with the Architect during the administration of the Contract for Construction. The Consultant shall have authority to act on behalf of the Architect only to the extent provided in this Agreement unless otherwise modified by written amendment.

1.6.5 The Consultant, as a representative of the Architect, shall visit the site at intervals appropriate to the stage of the Design-Builder's operations, (1) to become generally familiar with and to keep the Architect informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Architect against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Consultant shall not be required to make exhaustive or

continuous on-site inspections to check the quality or quantity of the Work. The Consultant shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures or for safety precautions and programs in connection with the Work, since these are solely the Design-Builder's rights and responsibilities under the Contract Documents.

1.6.6 The Consultant shall report to the Architect known deviations from Consultant's portion of the Contract Documents. However, the Consultant shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Contract Documents. The Consultant shall be responsible for the Consultant's negligent acts or omissions but shall not have control over or charge of and shall not be responsible for acts or omissions of the Design-Builder, Subcontractors or their agents or employees, or of any other persons or entities performing portions of the Work.

1.6.7 The Consultant shall at all times have access to the Work wherever it is in preparation or progress.

1.6.8 The Architect and Design-Builder may communicate directly with each other. The Consultant shall be promptly copied by Architect or Design-Builder on all communications relating to the Consultant's portion of the Contract Documents. Communications by and with the Consultant's subconsultants shall be through the Consultant.

1.6.9 The Consultant shall have no responsibility to review and certify the amounts due the Design-Builder.

1.6.10 The Consultant shall not have authority to reject Work which does not conform to the Contract Documents, but shall advise the Architect and Design-Builder and recommend rejection of Work that does not conform to the Consultant's portion of the Contract Documents. Whenever the Consultant considers it necessary or advisable, the Consultant shall recommend that the Architect require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this responsibility of the Consultant nor a decision made in good faith either to exercise or not to exercise such responsibility shall give rise to a duty or responsibility of the Consultant to the Design-Builder, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

1.6.11 The Consultant shall review and approve or take other appropriate action upon the Design-Builder's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with such reasonable promptness as to cause no delay in the Work or in the activities of the Design-Builder, while allowing sufficient time in the Consultant's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the

responsibility of the Design-Builder as required by the Contract Documents. The Consultant's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Consultant, of any construction means, methods, techniques, sequences or procedures. The Consultant's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

1.6.12 When professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Design-Builder or its subcontractors by the Contract Documents, the Design-Builder, in consultation with Consultant shall specify appropriate performance and design criteria that such services shall satisfy. Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Design-Builder or Design-Builder's Subcontractors shall bear such professional's written approval when submitted to the Consultant. The Consultant shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals. Such design-build systems include, but are not limited to the following:

- .1 Mechanical
- .2 Electrical
- .3 Plumbing
- .4 Fire sprinkler system
- .5 Fire life safety systems including smoke evacuation
- .6 Curtainwall
- .7 Pre-engineered stairs

1.6.13 The Consultant shall respond to Design-Builder's requests for information and bulletins with supporting documentation and data if deemed necessary by the Consultant for the Architect's and Design-Builder's approval and execution in accordance with the Contract Documents.

1.6.14 The Consultant shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion of the Work relating to the Consultant's portion of the Contract Documents.

1.6.15 Interpretations, recommendations and decisions of the Consultant shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations, recommendations and initial decisions, the Consultant shall not be liable for results of interpretations, recommendations or decisions so rendered in good faith.

1.6.16 If requested by Architect, the Consultant shall render initial recommendations to the Architect on claims, disputes or other matters in question between the Architect and Design-Builder as provided in the Contract Documents. The Consultant's recommendations on matters relating to aesthetic effect shall be consistent with the intent expressed in the Contract Documents.

ARCHITECT'S RESPONSIBILITIES

2.1 The Architect and/or Design-Builder shall provide full information in a timely manner regarding requirements for and limitations on the Project and Architect's, Design-Builder's and Owner's objectives, schedule, constraints, criteria and architectural requirements.

2.2 The Architect or Design-Builder shall retain professional consulting services for the Project such as:

.1 Geotechnical

.2 Civil

.3 Parking

.4 Roofing and Waterproofing

2.3 The Architect and Design-Builder shall each designate a representative authorized to act on their respective behalf with respect to the Project. The designated representatives shall render decisions in a timely manner pertaining to documents submitted by the Consultant in order to avoid unreasonable delay in the orderly and sequential progress of the Consultant's services.

2.4 The Architect or Design-Builder shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions; boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

2.5 The Architect or Design-Builder shall furnish the services of geotechnical engineers. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate recommendations.

2.6 The Design-Builder shall furnish structural, mechanical and chemical tests; tests for air and water pollution; tests for hazardous materials; and other laboratory and environmental tests, inspections and reports required by law or the Contract Documents.

2.7 The services, information, surveys and reports required by Paragraphs 2.4 through 2.6 shall be furnished at the Architect or Design-Builder's expense, and the Consultant shall be entitled to rely upon the accuracy and completeness thereof.

2.8 The Architect and Design-Builder shall provide prompt written notice to the Consultant if the Architect or Design-Builder becomes aware of any fault or defect in the Project, including any errors, omissions or inconsistencies in the Consultant's Instruments of Service.

PAYMENTS TO THE CONSULTANT

3.1 REIMBURSABLE EXPENSES

3.1.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Consultant and Consultant's employees and subconsultants directly related to the Project, as identified in the following Clauses:

.1 Transportation in connection with the Project, authorized out-of-town travel and subsistence, and electronic communications;

.2 Fees paid for securing approval of authorities having jurisdiction over the Project;

.3 Reproductions, plots, postage, handling and delivery;

.4 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Architect;

.5 Renderings, models and mock-ups requested by the Architect;

.6 Other similar direct Project-related expenditures.

3.2 PAYMENTS ON ACCOUNT OF BASIC SERVICES

3.2.1 Payments for Basic Services shall be made monthly and shall be in proportion to services performed within each phase of service, on the basis set forth in Exhibit A to Project Agreement Letter.

3.2.2 If and to the extent that the time initially established in Subparagraph 4.4.1 of this Agreement is exceeded or extended through no fault of the Consultant, compensation for any services rendered during the additional period of time shall be computed in the manner set forth in Subparagraph 4.2.

3.3 PAYMENTS ON ACCOUNT OF ADDITIONAL SERVICES

Payments on account of the Consultant's authorized Additional Services and for Reimbursable Expenses shall be made monthly upon presentation of the Consultant's statement of services rendered or expenses incurred.

3.4 PAYMENTS WITHHELD

No deduction shall be made from the Consultant's compensation on account of penalty, liquidated damages or other sums withheld from payments to Design-Builder, or on account of the cost of changes in the Work other than those for which the Consultant has been adjudged to be liable.

3.5 CONSULTANT'S ACCOUNTING RECORDS

Records of Reimbursable Expenses and expenses pertaining to Additional Services and services performed on the basis of hourly rates shall be available to the Architect and the Architect's authorized representative at mutually convenient times.

BASIS OF COMPENSATION

The Architect shall compensate the Consultant as follows:

4.1 BASIC COMPENSATION

For Basic Services, as described in Section 1, and any other services included in Article 5 as part of Basic Services, Basic Compensation shall be a fixed price of $1,020,840. In addition, payment for Supplemental Services described in Subparagraphs 5.2.4 and 5.2.5 shall not exceed a $14,000 allowance without written authorization. See Project Agreement Letter Exhibit A for the allocation of fees by phase for Consultant and subconsultants.

4.2 ADDITIONAL SERVICES

4.2.1 Additional Services of the Consultant, as described in the Agreement Between Architect and Consultant, but excluding services of subconsultants, compensation shall be computed as follows:

.1 Hourly per the Hourly Rate Schedule, Exhibit 'B' to Project Agreement Letter, or;

.2 a negotiated fixed price.

4.2.2 For Additional Services of subconsultants, a multiple of 1.15 times the amounts billed to the Consultant for such services.

4.3 REIMBURSABLE EXPENSES

For Reimbursable Expenses, as described in Paragraph 3.1, a multiple of 1.10 times the expenses incurred by the Consultant, the Consultant's employees and subconsultants directly related to the Project.

4.4 ADDITIONAL PROVISIONS

4.4.1 If the Basic Services covered by this Agreement have not been completed within 34 months of the date hereof, through no fault of the Consultant, extension of the Consultant's and Consultant's subconsultants services beyond that time shall be compensated as provided in Paragraph 4.2.

OTHER CONDITIONS OF SERVICE

5.1 OTHER BASIC AND SUPPLEMENTAL SERVICES

5.1.1 Consultant's Basic Services for the OCI-III parking structure are:

.1 Attend meetings with Design-Builder, Architect and Design-Builder's parking structure consultant relating to schematic concepts for the final phase addition to the existing parking structure.

.2 Develop schematic concept for a single elevator and stair core.

.3 Review parking design and construction documents prepared by others for general site placement and aesthetic consistency of exterior elevations and stair/elevator core to existing parking structure. Except as expressly stated herein, Consultant shall have no involvement in or responsibility for establishing performance design criteria or reviewing the functional, technical or engineering aspects of the parking structure's construction documents or construction.

.4 Assist Architect with preparation of an aesthetic punch list upon substantial completion.

5.1.2 Design-Builder shall be responsible for preparing the Project's General Conditions, Supplemental General Conditions and Specifications. Consultant will review and provide input to those specification sections submitted for review by Design-Builder.

5.1.3 Design-Builder shall be responsible for providing estimates of construction cost. Consultant shall have no responsibility to provide or review estimates of construction cost.

5.1.4 Consultant shall develop preliminary schematic level area measurements and BOMA calculations for the Project. Such area measurements provided by Consultant are not intended to be used as the basis of calculation for rent or other such purposes.

5.1.5 Consultant shall prepare a set of reproducible record drawings incorporating significant changes in the Work made during construction based on marked-up prints, drawings and other data furnished by the Design-Builder to the Consultant. Consultant shall have no responsibility to verify the accuracy or completeness of such information provided by others.

5.2 SUBCONSULTANTS

5.2.1 The Basic Services for the Consultant's structural engineering and landscape architecture subconsultants shall include all the phases and applicable tasks outlined in Section 1.

5.2.2 Lerch, Bates & Associates, Inc. – Elevator Consulting Group (LBA) shall provide the following Basic Services as described under 5.2.2.1 through 5.2.2.5 and if requested, the Optional Additional Service described under 5.2.2.6.

.1 Schematic Design Phase

Review the project program to establish design requirements with the Consultant, Architect and Design-Builder. Unique requirements of the

building, the anticipated occupancy and their influence on the vertical transportation equipment are identified at this time.

Establish the analysis design criteria. Design criteria shall consider peak traffic patterns, average interval and handling capacity, average system response time and average time to destination.

Utilize the anticipated occupancy and preliminary planning indicated on architectural drawings to conduct an equipment application analysis. The analysis shall determine the number of units, capacities and speeds required for compliance with the selected design criteria.

Submit a written report based upon the analysis results. Report shall include:

a. Summary of the project program.
b. Criteria to obtain appropriate levels of service.
c. Results of the analysis calculations.
d. Recommended solution and/or viable alternative.
e. Outline specifications.

.2 Design Development Phase

Provide design drawings and information for the arrangement of the equipment application. Information shall include:

a. Scaled equipment drawings on electronic backgrounds provided by the Architect and/or LBA standard AutoCadd 2000 files for incorporation into the project construction drawings.
b. Core dimensions and arrangements on 8-1/2" x 11" data sheets. (Not-to-scale)
c. Information for interface with structural, electrical and mechanical engineering disciplines.
d. Information for interface with related work not to be provided in Division 14.

Verify conformance with prevailing Codes directly related to the equipment application selected.

Review the architectural drawings for conformance with the Design Information provided by LBA. Provide written comments, advice, assistance or information.

.3 Construction Documents Phase

Provide scaled final drawings via electronic medium in LBA standard AutoCadd 2000 files for incorporation into project construction drawings.

Review and provide input to Design-Builder's Division 14 specifications.

If requested, prepare an after installation contuning Preventive Maintenance Contract, in the standard LBA format.

4 Bidding Assistance

Evaluate bids received from Design Builder.

Provide a spreadsheet comparing bids.

Attend or conduct a bid review meeting.

Assist with Contract negotiations.

5 Construction Administration Phase

Review the Elevator Contractor's submittal for compliance with the construction documents and Design Information provided by LBA. Review comments shall be incorporated on one reproducible sepia and a blueline drawing. Reviews shall be limited to the initial submittal and a revision.

Conduct a general progress review during installation to determine that work is proceeding in accordance with the Construction Documents and design information provided by LBA. Submit a written report. Report shall include:

a. Field observations.
b. Items not in conformance.
c. Percentage of equipment delivered, stored or installed.
d. Percentage of overall completion.
e. Equipment not on the jobsite which could affect the completion schedule.

Review Requests for Information from Design-Builder forwarded through Consultant.

Assist with the resolution of equipment installation problems.

Review and comment on Change Orders related to the specification and design information provided by LBA.

Conduct a final installation review for equipment and performance compliance in accordance with the Construction Documents and design information provided by LBA and the approved submittals. Submit a written report. Report shall include:

a. Measured performance data.
b. Itemized deficiencies.

Conduct a follow-up review to verify compliance with the final installation review deficiency report. The installation should then be complete and the equipment operating in accordance with specified performance criteria.

Review contract close-out documents and warranties.

.6 Warranty Review – OPTIONAL Additional Services

Conduct a warranty installation review nine (9) months after completion and beneficial use. Provide the Consultant, Architect and Design-Builder with any deficiencies or warranty items.

5.2.3 Acoustic Consultant shall provide the following Basic Services:

.1 Review and comment on noise and vibration performance criteria portions of the specifications provided by Design-Builder.

.2 Review architectural, structural and design-build mechanical, electrical and plumbing construction documents and provide noise and vibration control comments and recommendations.

.3 Review building envelope construction drawings and prepare external noise analysis and report required by the City of Irvine. The report and analysis shall be based on agency published noise contours for the site and excludes any field measurements, or analysis of actual on-site conditions or locations within the building where interior noise levels might potentially exceed the City of Irvine's criteria.

.4 Review relevant mechanical, electrical and plumbing shop drawings and submittals for consistency with noise and vibration design performance criteria.

.5 Conduct two (2) field observations during construction and issue written reports. One observation of core area construction and one after start-up, testing and balancing of HVAC equipment.

5.2.4 Curtainwall Consultant's services are anticipated to be similar in scope to those provided for Opus Center Irvine, Phase II. An estimated hourly fee allowance is provided for the Curtainwall Consultant's services as indicated on Exhibit "A." The anticipated services include:

.1 Review and comment on applicable sections of the specifications provided by Design-Builder.

.2 Review and comment on Consultant's curtainwall related construction documents.

.3 Review and comment on Curtainwall subcontractor's request for information and qualifications.

.4 Review curtainwall shop drawings and submittals.

.5 Conduct observation of curtainwall fabrication and installation when authorized by Architect.

.6 Observe curtainwall field water test(s) and submit a written report as authorized by Architect.

5.2.5 FAA Consultant shall provide FAA submittal and processing assistance on an hourly fee basis against the allowance indicated on Exhibit "A".

ATTACHMENT 8

CONTRACTOR'S CONSENT AGREEMENT

THIS CONSENT AGREEMENT is entered into as of this 11 day of October, 2006, by **OPUS WEST CONSTRUCTION CORPORATION**, a Minnesota corporation ("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 $93,300,000.00 to Irvine Center Partners III, L.L.C., a Delaware limited liability company ("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 Irvine, California, and legally described in Exhibit A attached hereto.

C. Borrower, as owner, has entered into a written agreement ("Contract") with Contractor dated March 10, 2006 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 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) Contractor 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. 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 (as defined in the Loan Agreement) 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 Contractor of such 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 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 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 1225
135 South LaSalle Street
Chicago, Illinois 60603

	Attn: Thomas G. Jeffery, Senior Vice President
With a copy to:	LaSalle Bank National Association Suite 1425 135 South LaSalle Street Chicago, Illinois 60603 Attn: Commercial Real Estate Syndications
And:	Schwartz Cooper Chartered Suite 2700 180 North LaSalle Street Chicago, IL 60601 Attention: Michael S. Kurtzon, Esq.
To Contractor:	Opus West Construction Corporation 2555 East Camelback Road, Suite 800 Phoenix, AZ 85016-9267

6. This Agreement shall be binding upon and inure to the benefit of Agent and Contractor 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: _____

Name: **Charles Vogel**

Title: **Vice President**

EXHIBIT "A"

LEGAL DESCRIPTION

Real property in the City of Irvine, County of Orange, State of California, described as follows:

PARCEL A:

PARCEL 2, IN THE CITY OF IRVINE, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON EXHIBIT "B" ATTACHED TO LOT LINE ADJUSTMENT 40088-LL RECORDED SEPTEMBER 14 1999 AS INSTRUMENT NO. 19990660556 OF OFFICIAL RECORDS OF ORANGE COUNTY CALIFORNIA.

PARCEL B:

PARCEL 2, IN THE CITY OF IRVINE, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON PARCEL MAP NO. 2001-215, FILED DECEMBER 17, 2002 IN BOOK 329, PAGES 22 TO 24 INCLUSIVE, OF PARCEL MAPS OF ORANGE COUNTY, CALIFORNIA.

EXCEPTING FROM THE HEREINABOVE DESCRIBED PARCELS A AND B ALL OIL, OIL RIGHTS MINERALS, MINERAL RIGHTS, NATURAL GAS, NATURAL GAS RIGHTS AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOWN THAT MAY BE WITHIN OR UNDER THE PARCEL OF LAND HEREINABOVE DESCRIBED, TOGETHER WITH THE PERPETUAL RIGHT OF DRILLING, MINING, EXPLORING AND OPERATING THEREFOR, AND STORING IN AND REMOVING THE SAME FROM SAID LAND OR ANY OTHER LAND, INCLUDING THE RIGHT TO WHIPSTOCK OR DIRECTIONALL Y DRILL AND MINE FROM LANDS OTHER THAN THOSE HEREINABOVE DESCRIBED, OIL OR GAS WELLS, TUNNELS AND SHAFTS INTO, THROUGH OR ACROSS THE SUBSURFACE OF THE LAND HEREINABOVE DESCRIBED, AND TO BOTTOM SUCH WHIPSTOCKED OR DIRECTIONALLY DRILLED WELLS, TUNNELS AND SHAFTS UNDER AND BENEATH OR BEYOND THE EXTERIOR LIMITS THEREOF, AND TO REDRILL, RETUNNEL, EQUIP MAINTAIN, REPAIR, DEEPEN AND OPERATE ANY SUCH WELLS OR MINES, WITHOUT HOWEVER, THE RIGHT TO DRILL, MINE, STORE, EXPLORE AND OPERATE THROUGH THE SURFACE OF THE UPPER 500 FEET OF THE LAND, AS RESERVED IN THE DEED FROM IRVINE INDUSTRIAL COMPLEX, A CORPORATION, RECORDED JANUARY 21, 1974 IN BOOK 11060, PAGE 213 OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA.

PARCEL C:

NON-EXCLUSIVE EASEMENTS FOR VEHICULAR AND PEDESTRIAN INGRESS AND EGRESS PURPOSES, AS SAID EASEMENTS ARE SET FORTH IN THAT CERTAIN AMENDED AND RESTATED DECLARATION OF ESTABLISHMENT OF COVENANTS, CONDITIONS AND RESTRICTIONS AND GRANT OF EASEMENTS FOR KOLL CENTER IRVINE NORTH RECORDED FEBRUARY 9, 1987 AS INSTRUMENT NO. 87-074459 OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA.

PARCEL D:

NON-EXCLUSIVE EASEMENTS FOR VEHICULAR AND PEDESTRIAN INGRESS AND EGRESS UTILITIES, DRAINAGE AND OTHER PURPOSES, AS SAID EASEMENTS ARE SET FORTH IN ARTICLE IV OF THAT CERTAIN AMENDED AND RESTATED DECLARATION ESTABLISHING EASEMENTS, COVENANTS AND RESTRICTIONS FOR KCIN PARKING FACILITIES RECORDED SEPTEMBER 1, 1998 AS INSTRUMENT NO. 19980582940 OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA.

PARCEL E:

A TEMPORARY NON-EXCLUSIVE ACCESS EASEMENT FOR VEHICULAR AND PEDESTRIAN ACCESS AND A TEMPORARY CONSTRUCTION EASEMENT AS SET FORTH IN THAT CERTAIN "TEMPORARY ACCESS EASEMENT AND SUPPLEMENT TO TEMPORARY PARKING EASEMENT" RECORDED OCTOBER 6, 2004 AS INSTRUMENT NO. 2004000897997, OF OFFICIAL RECORDS.

APN: 435-161-72 (PARCEL A) and 435-161-75 (PARCEL B)

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 11 day of October, 2006 by **IRVINE CENTER PARTNERS III, L.L.C.**, a Delaware limited liability company ("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 Ninety Three Million Three Hundred Thousand and 00/100 Dollars ($93,300,000.00) in accordance with the terms, provisions and conditions of that certain Construction Loan Agreement by and among Debtor, Secured Party, as agent, and the Banks of even date herewith (as amended, modified, replaced or restated from time to time, "Loan Agreement"). The Loans are evidenced by that certain Promissory Note in the principal amount of $93,000,000.00 in favor of LaSalle Bank National Association, as a Bank, of even date herewith (as amended from time to time, the "Note").

B. The Note is secured, inter alia, by a Construction Deed of Trust, Security Agreement, Assignment of Leases and Rents, and Fixture Filing dated of even date herewith made by Debtor in favor of Secured Party (as amended from time to time "Deed of Trust"), covering certain real estate described in Exhibit "A" attached hereto and made a part hereof, including all buildings, structures and improvements now or hereafter constructed thereon ("Property") and by certain additional collateral as more particularly described in the Loan Agreement (the Loan Agreement, the Deed of Trust and all of the other documents and instruments evidencing, securing or otherwise executed in connection with the Loans, as amended from time to time are hereinafter collectively referred to as "Loan Documents"). All capitalized terms used herein and not otherwise defined shall have the meaning ascribed thereto in the Loan Agreement.

C. The Banks required as a condition precedent to their making the Loans that Debtor enter into this Assignment and Debtor wishes to grant to Secured Party a security interest, mortgage, lien, encumbrance and charge upon the collateral more particularly hereinafter described.

NOW, THEREFORE, in consideration of the making of the Loans and as an inducement to the Banks to do so, and for and in consideration of the mutual promises, covenants and agreements hereinafter set forth, Debtor and Secured Party agree as follows:

1. **Creation of Security Interest**. Debtor hereby grants to Secured Party a security interest in, and does hereby collaterally assign, pledge, mortgage, convey and set over unto Secured Party, any and all of Debtor's right, title and interest in, to and under the following (collectively, "Collateral"):

(a) all plans, specifications, surveys, architectural renderings and drawings, soil test reports, other reports or examinations of the Property, architectural contracts, engineering contracts, construction contracts, subcontracts and contracts with material suppliers;

(b) all service contracts, maintenance contracts, management agreements, warranties, guaranties and the right to use all names now or hereafter used by Debtor in connection with the Property;

(c) all permits, certificates, licenses, approvals, contracts, entitlements and authorizations, however characterized, issued or in any way furnished for the acquisition, construction, development, operation, use and occupancy of the Property, including without limitation, certificates of occupancy; and

(d) all claims, demands, judgments, insurance proceeds, rights of action, awards or damages, compensation and settlements resulting from the taking of all or any part of the Property under the power of eminent domain or for any damage (whether caused by such taking or casualty or otherwise) to all or any part of the Property;

which Debtor has, may have, or may subsequently directly or indirectly enter into, obtain or acquire in connection with the improvement, ownership, operation, leasing or maintenance of the Property, together with the proceeds of all of the foregoing.

2. **Debtor's Liabilities**. This Assignment is made and given as collateral security for the prompt payment when due of any and all indebtedness, including Indebtedness as defined in the Deed of Trust, obligations and liabilities of Debtor to Secured Party, and evidenced by or secured by or otherwise provided in the Loan Agreement, the Note, the Deed of Trust and/or any of the other Loan Documents, all of which have been made by Debtor with or for the benefit of Secured Party, whether such indebtedness, obligations or liabilities are now existing or hereafter created, direct or indirect, absolute or contingent, joint or several, due or to become due, howsoever created, evidenced or arising and howsoever acquired by Secured Party, and any and all renewals, extensions or refinancings thereof (all of the foregoing are hereinafter collectively referred to as "Liabilities"). Upon full payment, performance and observance by Debtor of all Liabilities, this Assignment and the lien or charge created hereby or resulting herefrom shall automatically cease to exist.

3. **Representations, Warranties and Covenants of Debtor**. Debtor represents, warrants and covenants to Secured Party that:

(a) Debtor shall not sell, transfer, assign, pledge, encumber or mortgage all or any portion of the Collateral or any interest therein without the prior written consent of Secured Party, or permit anything to be done that may materially impair the value of any of the Collateral or the security intended to be afforded by this Assignment. Debtor shall not amend, modify or terminate any of the documents or instruments constituting part of the Collateral without the prior written consent of Secured Party.

(b) Debtor shall sign and execute alone or with Secured Party any financing statement or other document or procure any documents and pay any connected costs,

expenses and fees, including court costs and reasonable attorneys' fees, necessary to protect the security interest under this Assignment against the rights, interests or claims of third parties.

(c) Debtor shall reimburse Secured Party for all reasonable costs, expenses and fees, including court costs and reasonable attorneys' fees, incurred for any action taken by Secured Party to remedy an Event of Default (as such term is hereinafter defined) of Debtor under this Assignment, including without limitation, expenses incurred pursuant to Paragraphs 6(c) and 6(d) below, together with interest on all said amounts at an annual rate equal to the Default Rate (as defined in the Loan Agreement) from and after the date which is ten days after Secured Party demands reimbursement until the date reimbursed by Debtor.

(d) Debtor will punctually and promptly perform all covenants, agreements and conditions required to be performed by it under this Assignment, the Loan Agreement, the Note, the Deed of Trust and the other Loan Documents, and all of the documents, instruments, agreements and contracts constituting the Collateral.

(e) Debtor represents, warrants and covenants to Secured Party that it is the sole owner of all right, title and interest of the owner under all of the documents, instruments, agreements and contracts constituting the Collateral, and agrees that so long as any of the Liabilities remain unpaid, Debtor shall remain liable for all costs, fees and expenses which may be or become due and payable under the Collateral and for all responsibilities of the ownership of the Property.

(f) Debtor agrees to take reasonable efforts to enforce performance by the other party to each document, instrument, agreement or contract constituting the Collateral of each and every material obligation, covenant, condition and agreement to be performed by such other party.

(g) Debtor has not performed any act which might prevent Debtor from performing its obligations hereunder or which might prevent Secured Party from enforcing its rights pursuant to the terms and provisions hereof.

(h) Until the Liabilities are paid in full, Debtor agrees promptly to deliver to Secured Party true, complete and correct copies of each agreement or contract comprising the Collateral.

(i) Any management agreement ("Management Agreement") which Debtor has previously entered into or may hereafter enter into with any person or entity with respect to the management of the Property either currently provides or shall provide, among other things, that Secured Party may terminate the Management Agreement at any time after the occurrence of an Event of Default and that any lien for management fees which such manager may have shall be subject and subordinate to the lien of the Deed of Trust. Debtor further covenants and agrees that Debtor shall not change the manager under the Management Agreement or amend or permit the amendment of the Management Agreement without the prior written consent of Secured Party.

4. **Limitation of Secured Party's Liability**. Notwithstanding anything to the contrary contained in any of the Collateral, the interest of Debtor therein is assigned and transferred to Secured Party by way of collateral security only, the Secured Party by its acceptance hereof shall not be deemed to have assumed or become liable for any of the obligations or liabilities of Debtor under the Collateral, whether provided for by the terms thereof, arising by operation of law or otherwise. Debtor hereby acknowledges that Debtor shall remain liable for the due performance of Debtor's obligations under the documents, instruments, agreements and contracts constituting the Collateral to the same extent as though this Assignment had not been made. It is expressly intended, understood and agreed that this Assignment, the Loan Agreement, the Note, the Deed of Trust, and the other Loan Documents are made and entered into for the sole protection and benefit of Secured Party and Debtor, and their respective successors and assigns (but in the case of assigns of Debtor, only to the extent permitted hereunder), and no other person or persons shall have any right of action hereunder or rights to the proceeds of the Loans at any time; that no third party shall under any circumstances be entitled to any equitable lien on the undisbursed proceeds of the Loans at any time. The relationship between Secured Party and Debtor is solely that of a lender and borrower, and nothing contained herein shall in any manner be construed as making the parties hereto partners or joint venturers or creating any other relationship other than lender and borrower.

5. **Events of Default**. An "Event of Default" shall occur under this Assignment upon the occurrence of (a) a breach by Debtor of any of the covenants, agreements, representations, warranties or other provisions hereof that is not cured within the applicable grace or cure period, if any, set forth in the Loan Agreement, or (b) any other Event of Default described in the Loan Agreement, the Note, the Deed of Trust or any of the other Loan Documents. An Event of Default under this Assignment shall constitute an Event of Default under the Loan Agreement, the Note, the Deed of Trust and the other Loan Documents.

6. **Remedies**. At any time upon or following the occurrence of any one or more Events of Default hereunder, Secured Party shall without any further notice or any demand to Debtor: (a) be entitled to declare all indebtedness secured hereby and by the Note and the other Loan Documents to be immediately due and payable; (b) exercise any and all rights and remedies provided hereunder or under the other Loan Documents, as well as all remedies available at law and in equity; (c) cure any default in such manner and to such extent as Secured Party may deem reasonably necessary to protect the security hereof, including without limitation, the right to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Secured Party, and also the right to perform and discharge each and every obligation, covenant and agreement of Debtor under any of the documents, instruments, agreements and contracts constituting the Collateral, and in connection therewith, to pay necessary costs and expenses, employ counsel and incur and pay attorneys' fees and expenses; and/or (d) either in person or by agent, with or without bringing any action or proceedings, or by a receiver to be appointed by a court at any time hereafter, enforce any of the documents, instruments, agreements or contracts constituting the Collateral for its own benefit.

7. **Waiver and Indemnity**. Debtor hereby agrees that no liability shall be asserted or enforced by Debtor against Secured Party in its exercise of the powers and rights herein granted, all such liability being hereby expressly waived and released by Debtor. Debtor hereby agrees to indemnify, defend and hold Secured Party harmless from and against any and all

liability, expense, cost or damage which Secured Party may incur by reason of act or omission of either Debtor under any of the documents, instruments or agreements constituting the Collateral. Notwithstanding anything contained herein to the contrary, the waiver and indemnification contained in this Paragraph 7 shall not apply to any instance in which Secured Party has committed gross negligence or willful misconduct.

8. **Notices**. All notices and demands which are required or permitted to be given or served hereunder shall be deemed sufficiently served when delivered or mailed in the manner and to the persons described in the Loan Agreement.

9. **Miscellaneous**. This Assignment and all rights and liabilities hereunder and in and to any and all Collateral shall inure to the benefit of Secured Party and its successors and assigns, and shall be binding upon Debtor and its members, successors and permitted assigns. This Assignment and all rights and obligations hereunder, including matters of construction, validity and performance, shall be governed by the laws of the State of 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 NOTE, THE DEED OF TRUST, ANY OF THE OTHER LOAN DOCUMENTS, OR THE LOANS EVIDENCED OR SECURED THEREBY, OR ANY RENEWAL, EXTENSION OR MODIFICATION THEREOF, OR ANY CONDUCT OF ANY PARTY RELATING THERETO, AND (B) AGREE THAT ANY SUCH ACTION, CLAIM, SUIT OR PROCEEDING SHALL BE TRIED BEFORE A JUDGE AND NOT BEFORE A JURY. BORROWER AGREES THAT IT WILL NOT ASSERT ANY CLAIM AGAINST SECURED PARTY OR THE BANKS OR ANY OTHER PERSON INDEMNIFIED UNDER THIS AGREEMENT ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES.**

[Signature Page Follows]

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

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

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

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

EXHIBIT "A"

LEGAL DESCRIPTION

Real property in the City of Irvine, County of Orange, State of California, described as follows:

PARCEL A:

PARCEL 2, IN THE CITY OF IRVINE, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON EXHIBIT "B" ATTACHED TO LOT LINE ADJUSTMENT 40088-LL RECORDED SEPTEMBER 14 1999 AS INSTRUMENT NO. 19990660556 OF OFFICIAL RECORDS OF ORANGE COUNTY CALIFORNIA.

PARCEL B:

PARCEL 2, IN THE CITY OF IRVINE, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON PARCEL MAP NO. 2001-215, FILED DECEMBER 17, 2002 IN BOOK 329, PAGES 22 TO 24 INCLUSIVE, OF PARCEL MAPS OF ORANGE COUNTY, CALIFORNIA.

EXCEPTING FROM THE HEREINABOVE DESCRIBED PARCELS A AND B ALL OIL, OIL RIGHTS MINERALS, MINERAL RIGHTS, NATURAL GAS, NATURAL GAS RIGHTS AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOWN THAT MAY BE WITHIN OR UNDER THE PARCEL OF LAND HEREINABOVE DESCRIBED, TOGETHER WITH THE PERPETUAL RIGHT OF DRILLING, MINING, EXPLORING AND OPERATING THEREFOR, AND STORING IN AND REMOVING THE SAME FROM SAID LAND OR ANY OTHER LAND, INCLUDING THE RIGHT TO WHIPSTOCK OR DIRECTIONALL Y DRILL AND MINE FROM LANDS OTHER THAN THOSE HEREINABOVE DESCRIBED, OIL OR GAS WELLS, TUNNELS AND SHAFTS INTO, THROUGH OR ACROSS THE SUBSURFACE OF THE LAND HEREINABOVE DESCRIBED, AND TO BOTTOM SUCH WHIPSTOCKED OR DIRECTIONALLY DRILLED WELLS, TUNNELS AND SHAFTS UNDER AND BENEATH OR BEYOND THE EXTERIOR LIMITS THEREOF, AND TO REDRILL, RETUNNEL, EQUIP MAINTAIN, REPAIR, DEEPEN AND OPERATE ANY SUCH WELLS OR MINES, WITHOUT HOWEVER, THE RIGHT TO DRILL, MINE, STORE, EXPLORE AND OPERATE THROUGH THE SURFACE OF THE UPPER 500 FEET OF THE LAND, AS RESERVED IN THE DEED FROM IRVINE INDUSTRIAL COMPLEX, A CORPORATION, RECORDED JANUARY 21, 1974 IN BOOK 11060, PAGE 213 OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA.

PARCEL C:

NON-EXCLUSIVE EASEMENTS FOR VEHICULAR AND PEDESTRIAN INGRESS AND EGRESS PURPOSES, AS SAID EASEMENTS ARE SET FORTH IN THAT CERTAIN AMENDED AND RESTATED DECLARATION OF ESTABLISHMENT OF COVENANTS, CONDITIONS AND RESTRICTIONS AND GRANT OF EASEMENTS FOR KOLL CENTER IRVINE NORTH RECORDED FEBRUARY 9, 1987 AS INSTRUMENT NO. 87-074459 OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA.

PARCEL D:

NON-EXCLUSIVE EASEMENTS FOR VEHICULAR AND PEDESTRIAN INGRESS AND EGRESS UTILITIES, DRAINAGE AND OTHER PURPOSES, AS SAID EASEMENTS ARE SET FORTH IN ARTICLE IV OF THAT CERTAIN AMENDED AND RESTATED DECLARATION ESTABLISHING EASEMENTS, COVENANTS AND RESTRICTIONS FOR KCIN PARKING FACILITIES RECORDED SEPTEMBER 1, 1998 AS INSTRUMENT NO. 19980582940 OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA.

PARCEL E:

A TEMPORARY NON-EXCLUSIVE ACCESS EASEMENT FOR VEHICULAR AND PEDESTRIAN ACCESS AND A TEMPORARY CONSTRUCTION EASEMENT AS SET FORTH IN THAT CERTAIN "TEMPORARY ACCESS EASEMENT AND SUPPLEMENT TO TEMPORARY PARKING EASEMENT" RECORDED OCTOBER 6, 2004 AS INSTRUMENT NO. 2004000897997, OF OFFICIAL RECORDS.

APN: 435-161-72 (PARCEL A) and 435-161-75 (PARCEL B)

ATTACHMENT 9

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 Vogt
Name: Charles Vogt
Title: Senior Vice President

OPUS WEST CORPORATION, a Minnesota corporation

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

BORROWER

With respect to the Highland Village Condos Agreement and the Highland Village Condos Guaranty:

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

OPUS WEST LP, a Delaware limited partnership, Borrower

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

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

BORROWER

OPUS WEST CORPORATION, a Minnesota corporation

By: _____
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 L.P., 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 27 day of March, 2008

SHOPPES AT CHINO HILLS, INC., a Minnesota corporation

By: Charles Vogel
Name: Charles Vogel
Title: [redacted]

BORROWER

OPUS WEST CORPORATION, a Minnesota corporation

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

GUARANTOR

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

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

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

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

BORROWER

OPUS WEST CORPORATION, a Minnesota corporation

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

GUARANTOR

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

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

PC 101, INC., a Delaware corporation

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

BORROWER

OPUS WEST CORPORATION, a Minnesota corporation

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

GUARANTOR

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

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

PC 101, INC., a Delaware corporation

By: _____
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 Cypress Agreement and the Cypress Guaranty:

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

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

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

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

BORROWER

OPUS WEST CORPORATION, a Minnesota corporation

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

GUARANTOR

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

Acknowledged and Agreed to as of the 7th day of March, 2008

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

BY: OWR Hill Country, 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 Land Note and the Hill Country Apartments Land Guaranty:

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

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

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

By: _____
Name: Charles Vogel
Title: Vice President

BORROWER

OPUS WEST CORPORATION, a Minnesota corporation

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

GUARANTOR

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

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

ARCH ROAD LIMITED PARTNERSHIP, a Delaware limited partnership

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

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

BORROWER

OPUS WEST CORPORATION, a Minnesota corporation

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

GUARANTOR

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

Acknowledged and agreed as of the 24 day of March, 2008.

OPUS WEST CORPORATION, a Minnesota corporation

By: _____
Name: _____
Title: _____

BORROWER

Opus West Corporation
March 21, 2008
Page 32

With respect to the Scripps Ranch Construction Agreement:

Acknowledged and Agreed to as of the 2 day of [illegible], 2008

OPUS WEST CORPORATION, a Minnesota corporation

By: [illegible]
Name: [illegible]
Title: [illegible]

BORROWER

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

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

OPUS WEST CORPORATION, a Minnesota corporation

By: [signature]
Name: [illegible]
Title: [illegible]

BORROWER

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

Acknowledged and Agreed to as of the 7th 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 21 day of March, 2008

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

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

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

BORROWER

OPUS WEST CORPORATION, a Minnesota corporation

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

GUARANTOR

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

Acknowledged and Agreed to as of the 7th day of March, 2008

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

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

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

BORROWER

OPUS WEST CORPORATION, a Minnesota corporation

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

GUARANTOR

With respect to the Broadstone Galleria Construction Agreement and the Broadstone Galleria Construction Guaranty:

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

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

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

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

BORROWER

OPUS WEST CORPORATION, a Minnesota corporation

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

GUARANTOR

With respect to the Opus May RLC Agreement:

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

OPUS WEST CORPORATION, a Minnesota corporation

By: [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 10

[redacted]

Recorded in Official Records, Orange County
Tom Daly, Clerk-Recorder
18.00
2006000674882 01:22pm 10/11/06
113 28 U04 5
0.00 0.00 0.00 0.00 12.00 0.00 0.00 0.00

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional)

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

James J. Ginsburg
Schwartz Cooper Chartered
180 North LaSalle Street
Suite 2700
Chicago, Illinois 60601

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME: IRVINE CENTER PARTNERS III, L.L.C.

OR 1b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME | SUFFIX

1c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
2555 EAST CAMELBACK ROAD, SUITE 800	PHOENIX	AZ	85016	USA

1d. SEE INSTRUCTIONS	ADD'L INFO RE ORGANIZATION DEBTOR	1e. TYPE OF ORGANIZATION	1f. JURISDICTION OF ORGANIZATION	1g. ORGANIZATIONAL ID #, if any
		LLC	DELAWARE	4100907 ☐ NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME

OR 2b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME | SUFFIX

2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

2d. SEE INSTRUCTIONS	ADD'L INFO RE ORGANIZATION DEBTOR	2e. TYPE OF ORGANIZATION	2f. JURISDICTION OF ORGANIZATION	2g. ORGANIZATIONAL ID #, if any
				☐ NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME: LASALLE BANK NATIONAL ASSOCIATION, AS AGENT FOR ITSELF AND OTHER BANKS

OR 3b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME | SUFFIX

3c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
135 S. LASALLE STREET, SUITE 1225	CHICAGO	IL	60603	USA

4. This FINANCING STATEMENT covers the following collateral:

THE COLLATERAL DESCRIBED ON EXHIBIT "B" ATTACHED HERETO, INCLUDING ANY SUCH COLLATERAL LOCATED ON THE PROPERTY LEGALLY DESCRIBED ON EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

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

6. ☒ This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS. Attach Addendum (if applicable) | 7. Check to REQUEST SEARCH REPORT(s) on Debtor(s) (ADDITIONAL FEE) [optional] ☐ All Debtors ☐ Debtor 1 ☐ Debtor 2

8. OPTIONAL FILER REFERENCE DATA
044497-38609 (JJG) FILE WITH ORANGE COUNTY, CA REGISTER OF DEEDS

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

CAUCC1FNAT- 10/01/02 C T Corporation System

EXHIBIT "A"

LEGAL DESCRIPTION

Real property in the City of Irvine, County of Orange, State of California, described as follows:

PARCEL A:

PARCEL 2, IN THE CITY OF IRVINE, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON EXHIBIT "B" ATTACHED TO LOT LINE ADJUSTMENT 40088-LL RECORDED SEPTEMBER 14 1999 AS INSTRUMENT NO. 19990660556 OF OFFICIAL RECORDS OF ORANGE COUNTY CALIFORNIA.

PARCEL B:

PARCEL 2, IN THE CITY OF IRVINE, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON PARCEL MAP NO. 2001-215, FILED DECEMBER 17, 2002 IN BOOK 329, PAGES 22 TO 24 INCLUSIVE, OF PARCEL MAPS OF ORANGE COUNTY, CALIFORNIA.

EXCEPTING FROM THE HEREINABOVE DESCRIBED PARCELS A AND B ALL OIL, OIL RIGHTS MINERALS, MINERAL RIGHTS, NATURAL GAS, NATURAL GAS RIGHTS AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOWN THAT MAY BE WITHIN OR UNDER THE PARCEL OF LAND HEREINABOVE DESCRIBED, TOGETHER WITH THE PERPETUAL RIGHT OF DRILLING, MINING, EXPLORING AND OPERATING THEREFOR, AND STORING IN AND REMOVING THE SAME FROM SAID LAND OR ANY OTHER LAND, INCLUDING THE RIGHT TO WHIPSTOCK OR DIRECTIONALL Y DRILL AND MINE FROM LANDS OTHER THAN THOSE HEREINABOVE DESCRIBED, OIL OR GAS WELLS, TUNNELS AND SHAFTS INTO, THROUGH OR ACROSS THE SUBSURFACE OF THE LAND HEREINABOVE DESCRIBED, AND TO BOTTOM SUCH WHIPSTOCKED OR DIRECTIONALLY DRILLED WELLS, TUNNELS AND SHAFTS UNDER AND BENEATH OR BEYOND THE EXTERIOR LIMITS THEREOF, AND TO REDRILL, RETUNNEL, EQUIP MAINTAIN, REPAIR, DEEPEN AND OPERATE ANY SUCH WELLS OR MINES, WITHOUT HOWEVER, THE RIGHT TO DRILL, MINE, STORE, EXPLORE AND OPERATE THROUGH THE SURFACE OF THE UPPER 500 FEET OF THE LAND, AS RESERVED IN THE DEED FROM IRVINE INDUSTRIAL COMPLEX, A CORPORATION, RECORDED JANUARY 21, 1974 IN BOOK 11060, PAGE 213 OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA.

PARCEL C:

NON-EXCLUSIVE EASEMENTS FOR VEHICULAR AND PEDESTRIAN INGRESS AND EGRESS PURPOSES, AS SAID EASEMENTS ARE SET FORTH IN THAT CERTAIN AMENDED AND RESTATED DECLARATION OF ESTABLISHMENT OF COVENANTS, CONDITIONS AND RESTRICTIONS AND GRANT OF EASEMENTS FOR KOLL CENTER IRVINE NORTH RECORDED FEBRUARY 9, 1987 AS INSTRUMENT NO. 87-074459 OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA.

PARCEL D:

NON-EXCLUSIVE EASEMENTS FOR VEHICULAR AND PEDESTRIAN INGRESS AND EGRESS UTILITIES, DRAINAGE AND OTHER PURPOSES, AS SAID EASEMENTS ARE SET FORTH IN ARTICLE IV OF THAT CERTAIN AMENDED AND RESTATED DECLARATION ESTABLISHING EASEMENTS, COVENANTS AND RESTRICTIONS FOR KCIN PARKING FACILITIES RECORDED SEPTEMBER 1, 1998 AS INSTRUMENT NO. 19980582940 OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA.

PARCEL E:

A TEMPORARY NON-EXCLUSIVE ACCESS EASEMENT FOR VEHICULAR AND PEDESTRIAN ACCESS AND A TEMPORARY CONSTRUCTION EASEMENT AS SET FORTH IN THAT CERTAIN "TEMPORARY ACCESS EASEMENT AND SUPPLEMENT TO TEMPORARY PARKING EASEMENT" RECORDED OCTOBER 6, 2004 AS INSTRUMENT NO. 2004000897997, OF OFFICIAL RECORDS.

APN: 435-161-72 (PARCEL A) and 435-161-75 (PARCEL B)

EXHIBIT B

UCC COLLATERAL DESCRIPTION

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

SECURED PARTY: **LASALLE BANK NATIONAL ASSOCIATION, a national banking association**

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

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

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

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

5. Any and all other personal property of any kind, nature or description, whether tangible or intangible, (including without limitation, any and all goods, contract rights, franchises, licenses, permits, chattel paper (including electronic chattel paper), money, equipment, deposit accounts, documents, investment property, instruments, letter-of-credit rights, supporting obligations, and general intangibles including payment intangibles) of Debtor relating to or used in connection with the operation or maintenance of the Real Estate, whether now

owned or hereafter acquired, or in which Debtor now has or shall hereafter acquire any right, title or interest whatsoever (whether by bill of sale, lease, conditional sales contract, or other title retention document or otherwise);

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

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

ATTACHMENT 11

GUARANTY OF PAYMENT AND COMPLETION

This **GUARANTY OF PAYMENT AND COMPLETION** dated as of October 11, 2006 (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 Ninety Three Million Three Hundred Thousand and No/100 Dollars ($93,300,000.00) (collectively, the "Loans") to Irvine Center Partners III, L.L.C., a Delaware limited liability company ("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 Promissory Note in the principal amount of $93,300,000.00 in favor of LaSalle Bank National Association, as a Bank, (as amended, modified, restated or replaced from time to time, the "Note"), (iii) that certain Construction Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing of even date herewith (as amended from time to time, "Deed of Trust") from Borrower for the benefit of Agent encumbering the real property, improvements and personalty described therein ("Premises"), and (viii) the other Loan Documents (as defined in the Loan Agreement).

C. Guarantor has indirect ownership interest in Borrower and, having a financial interest in the Premises, has agreed to execute and deliver this Guaranty to Agent.

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

AGREEMENTS:

1. Guaranty of Payment. The Guarantor hereby unconditionally, absolutely and irrevocably guaranties to the Banks the punctual payment and performance when due (a) whether at stated maturity or by acceleration or otherwise, the indebtedness and other obligations of the Borrower to the Banks evidenced by the Note and any other amounts that may become owing by the Borrower under the Loan Documents and (b) any obligations of Borrower to Agent as Party "A", under that certain ISDA Master Agreement dated September 25, 2006 between Borrower and Agent and any amendments or modifications thereto or extensions or replacements thereof, and any other swap agreement or other interest rate hedging or protection agreement to which Agent and Borrower are parties with respect to the Loans (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

of the Payment Obligations, or to enforce or resort to any collateral for the repayment of the Payment Obligations or other rights or remedies pertaining thereto, before calling on the Guarantor for payment. If for any reason the Borrower shall fail or be unable to pay, punctually and fully, any of the Payment Obligations, the Guarantor shall pay such obligations to the Agent in full immediately upon demand. One or more successive actions may be brought against the Guarantor, as often as the Agent deems advisable, until all of the Payment Obligations are paid and performed in full. The Payment Obligations, the Construction Obligations (as hereinafter defined) together with all other payment and performance obligations of the Guarantor hereunder, are referred to herein as the "Obligations".

2. Performance Guaranty.

(a) The Guarantor absolutely, unconditionally and irrevocably undertakes and guarantees, for the benefit of the Agent and each and every present and future holder or holders of the Note or assignee or assignees of the Loan Documents, that all construction obligations of the Borrower for completion of the Project in accordance with the Plans and Specifications, and the Loan Documents and other performance obligations of the Borrower under the Loan Documents (referred to herein as the "Construction Obligations") shall be completed prior to the applicable Completion Date specified in the Loan Agreement and in accordance with the other terms and conditions contained in the Loan Agreement, free and clear of any and all liens, charges, security interests and claims of any kind and nature whatsoever except as permitted by the Loan Agreement. The Guarantor shall cause the Construction Obligations to be performed, completed and paid for in the manner and at the applicable times required to be so performed, completed and paid for by the Borrower under the Loan Agreement, to the extent that the Borrower fails to do so at any and all applicable times.

(b) Upon the occurrence of an Event of Default by the Borrower under the Loan Documents, the Guarantor agrees, on not more than fifteen (15) days written demand by the Agent (a "Demand Notice") to commence performance of the Construction Obligations and to diligently pursue performance thereof to completion, as described below. The Guarantor shall indemnify, defend and hold the Agent and Banks harmless for, from and against any and all loss, damage, cost, expense, injury or liability the Agent or Banks may suffer or incur in connection with third party claims brought as a result of the performance of the Construction Obligations by the Guarantor. If the Guarantor fails to commence and pursue diligently the performance of the Construction Obligations within fifteen (15) days after its receipt of a Demand Notice, then either before or after pursuing any other remedy of the Agent against the Guarantor or the Borrower and regardless of whether the Agent shall ever pursue any such other remedy, the Agent shall have the right to complete the Construction Obligations, or call upon any other reputable parties to complete the Construction Obligations, in accordance with the Plans and Specifications (as may be modified in accordance with the terms of the Loan Agreement) and shall have the right to expend such sums as the Agent in its discretion deems proper in order so to complete the Construction Obligations. During the course of any construction undertaken by the Agent or by any other party on behalf of the Agent, the Guarantor shall pay on demand any amounts due to the Contractor, Subcontractors and other material suppliers and for permits and licenses necessary to complete the

Construction Obligations, without regard to any limitation on liability set forth herein. The Agent at any time may require the Guarantor to perform or supervise the performance of such work in lieu of the Agent or any party engaged by the Agent. The obligations of the Guarantor in connection with such work shall not be affected by any errors or omissions of the Borrower, the Contractor, the Architect, any Subcontractor, or any agent or employee of any of them in design, supervision or performance of the work, it being understood that such risk is assumed by the Guarantor. Neither the completion of the Construction Obligations nor failure of said parties to complete the Construction Obligations shall relieve the Guarantor of any liabilities hereunder; rather, such liability shall be continuing, except as otherwise provided herein, and may be enforced by the Agent to the end that the Construction Obligations shall be completed timely as contemplated by the Loan Agreement, the Leases, and the Plans and Specifications, free of any liens except for those which are being contested in accordance with the terms of the Loan Agreement, and without loss, expense, injury or liability of any kind to the Agent and the Banks.

(c) For purposes of this Section 2, the Construction Obligations shall be deemed to be completed upon receipt by the Agent of (i) a certificate of completion from the Architect and Lender's Consultant attesting to substantial completion of the Construction Obligations, (ii) issuance of a final certificate of occupancy or its equivalent with respect to the Project issued by the applicable governmental authority, and (iii) construction date-down and interim mechanics' lien endorsements to the Title Policy, insuring the continuing validity and priority of the Deed of Trust for the full amount of the Loans theretofore disbursed, excepting only such items as shall be permitted under the Loan Agreement, and insuring over mechanics' and materialmen's liens arising (or which may arise) from work performed and materials supplied in connection with the construction of the Construction Obligations prior to the date of satisfaction of the conditions described in clauses (i) and (ii) above.

3. Representations and Warranties. The following shall constitute representations and warranties of the Guarantor, and the Guarantor hereby acknowledges that the Banks intend to make the Loans in reliance thereon:

(a) The Guarantor is not in default, and no event has occurred which, with the passage of time and/or the giving of notice, would constitute a default, under any agreement to which the Guarantor is a party, the effect of which will 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 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.

4. Continuing Guaranty. The Guarantor agrees that performance of the Obligations by the Guarantor shall be a primary obligation, shall not be subject to any counterclaim, set-off, abatement, deferment or defense 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.

5. Waivers. The Guarantor expressly and unconditionally waives (i) notice of any of the matters referred to in Section 4 above, (ii) all notices which may be required by statute, rule of law or otherwise, now or hereafter in effect, to preserve intact any rights against the Guarantor, including, without limitation, any demand, presentment and protest, proof of notice of non-payment under any of the Loan Documents and notice of any Event of Default or any failure on the part of the Borrower, the Guarantor or any other guarantor of the Obligations to perform or comply with any covenant, agreement, term or condition of any of the Loan Documents, (iii) any right to the enforcement, assertion or exercise against the Borrower, the Guarantor or any other guarantor of the Obligations of any right or remedy conferred under any of the Loan Documents, (iv) any requirement of diligence on the part of any person or entity, (v) to the fullest extent permitted by law and except as otherwise expressly provided in this Guaranty or the other Loan Documents, any claims based on allegations that Agent has failed to act in a commercially reasonable manner or failed to exercise Agent's so-called obligation of good faith and fair dealing, (vi) any requirement to exhaust any remedies or to mitigate the damages resulting from any default under any of the Loan Documents and (vii) any notice of any sale, transfer or other disposition of any right, title or interest of the Agent or the Banks under any of the Loan Documents.

6. 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.

7. Subrogation Waiver. Until the Obligations are paid in full and all periods under applicable bankruptcy law for the contest of any payment by the Guarantor or the Borrower as a preferential or fraudulent payment have expired, the Guarantor knowingly, and with advice of counsel, waives, relinquishes, releases and abandons all rights and claims to indemnification, contribution, reimbursement, 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.

8. Reinstatement. The obligations of the Guarantor pursuant to this Guaranty shall continue to be effective or automatically be reinstated, as the case may be, if at any time payment of any of the Obligations or the obligations of the Guarantor under this Guaranty is rescinded or otherwise must be restored or returned by the Agent upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Guarantor or the Borrower or otherwise, all as though such payment had not been made.

9. Financial Statements. The Guarantor represents and warrants to the Agent that (a) the financial statements of the Guarantor previously submitted to the Agent are true, complete and correct in all material respects, disclose all actual and contingent liabilities, and fairly present the financial condition of the Guarantor, and do not contain any untrue statement of a material fact or omit to state a fact material to the financial statements submitted or this Guaranty, and (b) no material adverse 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.

10. 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.

11. Enforcement Costs. If: (a) this Guaranty, is placed in the hands of one or more attorneys for collection or is collected through any legal proceeding; (b) one or more attorneys is retained to represent the Agent or the Banks in any bankruptcy, reorganization, receivership or other proceedings affecting creditors' rights and involving a claim under this Guaranty, or (c) one or more attorneys is retained to represent the Agent or the Banks in any other proceedings whatsoever in connection with this Guaranty, then the Guarantor shall pay to the Agent upon demand all fees, costs and expenses incurred by the Agent or the Banks in connection therewith, including, without limitation, reasonable attorney's fees, court costs and filing fees (all of which are referred to herein as the "Enforcement Costs"), in addition to all other amounts due hereunder.

12. Successors and Assigns; Joint and Several Liability. This Guaranty shall inure to the benefit of the Agent and its successors and assigns. This Guaranty shall be binding on the

Guarantor and the successors and assigns of the Guarantor. It is agreed that the liability of the Guarantor hereunder is several and independent of any other guarantees or other obligations at any time in effect with respect to the Obligations or any part thereof and that the liability of the Guarantor hereunder may be enforced regardless of the existence, validity, enforcement or non-enforcement of any such other guarantees or other obligations.

13. No Waiver of Rights. No delay or failure on the part of the Agent to exercise any right, power or privilege under this Guaranty or any of the other Loan Documents shall operate as a waiver thereof, and no single or partial exercise of any right, power or privilege shall preclude any other or further exercise thereof or the exercise of any other power or right, or be deemed to establish a custom or course of dealing or performance between the parties hereto. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law. No notice to or demand on the Guarantor in any case shall entitle the Guarantor to any other or further notice or demand in the same, similar or other circumstance.

14. Modification. The terms of this Guaranty may be waived, discharged, or terminated only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought. No amendment, modification, waiver or other change of any of the terms of this Guaranty shall be effective without the prior written consent of the Agent.

15. Joinder. Any action to enforce this Guaranty may be brought against the Guarantor without any reimbursement or joinder of the Borrower or any other guarantor of the Obligations in such action.

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

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

18. Notices. All notices, communications and waivers under this Guaranty shall be in writing and shall be (a) delivered in person, (b) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (c) by overnight express carrier, addressed in each case as follows:

To Agent:

LaSalle Bank National Association
Suite 1225
135 South LaSalle Street
Chicago, Illinois 60603
Attn: Thomas G. Jeffery,
Senior Vice President

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

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

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

20. WAIVER OF DEFENSES. OTHER THAN CLAIMS BASED UPON THE FAILURE OF THE AGENT TO ACT IN A COMMERCIALLY REASONABLE MANNER, 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.

21. WAIVER OF JURY TRIAL. THE GUARANTOR AND THE AGENT (BY ACCEPTANCE HEREOF), HAVING BEEN REPRESENTED BY COUNSEL, EACH KNOWINGLY AND VOLUNTARILY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS GUARANTY OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HEREWITH AND AGREES THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. THE GUARANTOR AGREES THAT THE GUARANTOR WILL NOT ASSERT ANY CLAIM AGAINST THE AGENT OR THE BANKS ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES.

22. 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; AND (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.

23. 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 equal to or less than 4.0:1.0. Guarantor's Outstanding Bank Debt Ratio shall be calculated at of the end of each fiscal quarter and fiscal year.

For purposes of this section, (i) "Adjusted Tangible Net Worth" shall mean the sum of all items which, in accordance with generally accepted accounting principals, consistently applied ("GAAP"), would be included as tangible assets plus Subordinated Affiliate Debt, less Indebtedness and all items which, in accordance with GAAP, would be included as minority interests, (ii) "Subordinated Affiliate Debt" shall mean all non-contingent liabilities owed by Guarantor to one or more Affiliates of Guarantor which are junior and subordinate to the liabilities of Guarantor 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.

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

OPUS WEST CORPORATION, a Minnesota corporation

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

ATTACHMENT 12

CERTIFICATE OF GUARANTOR

The undersigned hereby certifies:

1. The undersigned is the Guarantor, as defined in that certain Construction Loan Agreement (the "Loan Agreement") dated as of October 11, 2006 between Irvine Center Partners III, LLC, a Delaware limited liability company ("Borrower") and LaSalle Bank National Association, a national banking association, as Agent for itself and other Banks (as defined in the Loan Agreement) ("Agent").

2. The Guarantor is an affiliated entity of Borrower.

3. In the conduct of our business as Guarantor and as an affiliated entity of Borrower, we do not commingle the assets of the Guarantor with the assets of the Borrower; we take reasonable steps to observe company formalities with respect to the Borrower and corporate formalities with respect to the Guarantor, including the maintenance of books and records adequate to the conduct of their respective businesses.

4. Guarantor understands that Agent has agreed to this limitation in reliance on the separate and valid existence of Borrower and Guarantor and that but for such separate and valid existences, Agent would have required Guarantor to be liable as a principal with respect to the loan described in the Loan Agreement. To the extent permitted by law, each of us waives any right to assert as a basis for any defense any claim or action on the Guaranty that any of the matters set forth in this Certificate is incorrect.

5. Capitalized terms used in this Certificate and not otherwise defined shall have the meanings set forth in the Loan Agreement.

Dated: October 11, 2006.

OPUS WEST CORPORATION,
a Minnesota corporation

By: _____

Its: Senior Vice President

ATTACHMENT 13

CERTIFICATE OF REPRESENTATIONS, WARRANTIES AND COVENANTS

THIS CERTIFICATE OF REPRESENTATIONS, WARRANTIES AND COVENANTS (this "Certificate") is entered into as of the 11th day of October, 2006, by **IRVINE CENTER PARTNERS III, L.L.C.**, a Delaware limited liability company ("Borrower"), and **OPUS WEST CORPORATION,** a Minnesota corporation ("Guarantor") (Borrower and Guarantor are hereinafter referred to individually as an "Obligor" and jointly as the "Obligors"), for the benefit of **LASALLE BANK NATIONAL ASSOCIATION,** a national banking association, its successors and assigns, as Agent for itself and the other Banks (as defined in the Loan Agreement, as hereinafter defined) (the "Agent").

RECITALS:

A. Pursuant to the terms of that certain Construction Loan Agreement of even date herewith by and among Borrower, Agent, as agent, and the Banks (the "Loan Agreement"), the Banks have agreed to make loans in the aggregate principal amount of Ninety Three Million Three Hundred Thousand and No/100 Dollars ($93,300,000.00) (collectively, the "Loans") to Borrower. The Loans are evidenced by that certain Promissory Note in the principal amount of $93,300,000.00 in favor of LaSalle, as a Bank, of even date herewith (as amended, modified, restated or replaced from time to time, the "Note"), and shall be secured by, among other things, that certain Construction Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing of even date herewith (as amended from time to time, the "Deed of Trust"), from Borrower in favor of Agent encumbering real property located in Orange County, California, as described on Exhibit A attached hereto, together with the other collateral as described in the Deed of Trust (the real property and other collateral being collectively referred to as the "Premises") (capitalized terms used and not specifically defined herein shall bear the same meaning as in the Deed of Trust). The Loan Agreement, Note, the Deed of Trust, this Certificate, and all of the other documents now or hereinafter executed in favor or for the benefit of the Agent or Banks which evidence, secure or are otherwise executed in connection with the Loans are hereinafter referred to collectively as the "Loan Documents".

B. A condition precedent to Banks' extension of the Loans to Borrower is the execution and delivery of this Certificate by the Obligors.

NOW, THEREFORE, as a material inducement to the Banks' extension of the Loans, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Obligor hereby represents, warrants and covenants to Agent as follows:

1. **Limited Liability Company Organization**. Borrower is a duly formed limited liability company under the laws of the State of Delaware, validly existing, in good standing and fully qualified to do business in the State of California and has full power and authority to execute the Loan Documents to which it is a party. The certificate of formation and operating agreement of Borrower ("Operating Agreement"), copies of which have been furnished to Agent, are in effect, and amendments thereto, and are the true, correct and complete documents relating to Borrower's creation and governance. Borrower and its members have fully complied with all

applicable securities and other laws, ordinances and regulations in connection with the formation of Borrower and the sale and offer for sale of interests therein.

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

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

4. **Operating Agreement and Interests**. The Operating Agreement of Borrower shall not, without the prior written consent of Agent, be amended or modified if such amendment or modification could have a material adverse effect on Borrower's ability to perform its obligations under any of the Loan Documents, nor shall any partner of Borrower be released or discharged from its or his obligations under the Operating Agreement, nor shall any member of Borrower transfer, pledge or encumber in any way any membership interest in Borrower or the right to receive income or proceeds from Borrower. At all times prior to the repayment of the Loans, Guarantor shall be the sole manager of Borrower.

5. **Continuing Existence**. Neither Borrower nor Guarantor, without the prior written consent of Agent, shall (i) permit themselves to be dissolved or their existence terminated, or (ii) amend or modify their respective organizational documents if such amendment or modification could have a material adverse effect on Borrower's ability to perform its obligations under any of the Loan Documents.

6. **Solvency**. The Obligors represent and warrant to Agent that they are able to pay their respective debts as such debts become due, and they have capital sufficient to carry on their respective present businesses and transactions and all businesses and transactions in which they are about to engage. Neither Borrower nor Guarantor (i) is bankrupt or insolvent, (ii) has made an assignment for the benefit of its or his respective creditors, (iii) has had a trustee or receiver appointed, (iv) has any bankruptcy, reorganization or insolvency proceedings instituted by or against it or him, or (v) shall be rendered insolvent by its or his execution, delivery or performance of the Loan Documents or by the transactions contemplated thereunder.

7. **Defaults**. Execution and delivery of this Certificate and the Loan Documents do not and will not contravene, conflict with, violate or constitute a default under the Operating Agreement or certificate of formation governing Borrower.

8. **Financial Information**. All financial statements and rent rolls submitted to Agent relating to Obligors and the Premises are true, complete and correct in all material respects. The financial statements have been prepared in accordance with generally accepted

accounting principles consistently applied and fairly present the financial condition of the person or entity to which they pertain. Neither the financial statements nor the rent rolls contain any untrue statement of a material fact or fail to state a fact material to such financial statements or rent rolls. No material adverse change has occurred in the financial condition or operations of any Obligor or the Premises since the respective dates of the most recent financial statements and rent roll delivered to Agent.

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

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

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

12. **Successors**. The covenants, representations and warranties of the Obligors under this Certificate shall be binding upon and enforceable against them and their respective successors and permitted assigns and shall inure to the benefit of Agent and its successors and assigns.

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

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

15. **Distributions to Members**. Borrower hereby covenants to Agent that it shall make no distributions to its members of any revenue received by or on behalf of Borrower from the operation or ownership of the Premises.

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

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

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

19. **Waiver of Jury Trial. EACH OBLIGOR AND AGENT (BY ACCEPTANCE HEREOF), HAVING BEEN REPRESENTED BY COUNSEL, KNOWINGLY AND VOLUNTARILY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS (a) UNDER THIS CERTIFICATE OR ANY RELATED AGREEMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HEREWITH OR (b) ARISING FROM ANY BANKING RELATIONSHIP EXISTING IN CONNECTION WITH THIS CERTIFICATE, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. EACH OBLIGOR AGREES THAT IT WILL NOT ASSERT ANY CLAIM AGAINST AGENT, THE**

BANKS OR ANY OTHER PERSON ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES.

20. **Certification of Documents**. Obligors warrant and represent that all documents delivered to Lender in connection with the Loans including, but not limited to, (i) the Construction Contracts (as defined in the Loan Agreement), (ii) that certain Property Management Agreement dated March 10, 2006 between Borrower and Opus West Management Corporation, and (iii) that certain Agreement dated February 4, 1998 between Guarantor and Irvine Holdings, L.P., are true, correct, complete and accurate reproductions of the originals and which have not been replaced or amended and are still in effect as of the date hereof.

[SIGNATURE PAGE FOLLOWS]

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

BORROWER:

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

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

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

GUARANTOR:

OPUS WEST CORPORATION, a Minnesota corporation

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

EXHIBIT "A"

LEGAL DESCRIPTION

Real property in the City of Irvine, County of Orange, State of California, described as follows:

PARCEL A:

PARCEL 2, IN THE CITY OF IRVINE, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON EXHIBIT "B" ATTACHED TO LOT LINE ADJUSTMENT 40088-LL RECORDED SEPTEMBER 14 1999 AS INSTRUMENT NO. 19990660556 OF OFFICIAL RECORDS OF ORANGE COUNTY CALIFORNIA.

PARCEL B:

PARCEL 2, IN THE CITY OF IRVINE, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON PARCEL MAP NO. 2001-215, FILED DECEMBER 17, 2002 IN BOOK 329, PAGES 22 TO 24 INCLUSIVE, OF PARCEL MAPS OF ORANGE COUNTY, CALIFORNIA.

EXCEPTING FROM THE HEREINABOVE DESCRIBED PARCELS A AND B ALL OIL, OIL RIGHTS MINERALS, MINERAL RIGHTS, NATURAL GAS, NATURAL GAS RIGHTS AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOWN THAT MAY BE WITHIN OR UNDER THE PARCEL OF LAND HEREINABOVE DESCRIBED, TOGETHER WITH THE PERPETUAL RIGHT OF DRILLING, MINING, EXPLORING AND OPERATING THEREFOR, AND STORING IN AND REMOVING THE SAME FROM SAID LAND OR ANY OTHER LAND, INCLUDING THE RIGHT TO WHIPSTOCK OR DIRECTIONALL Y DRILL AND MINE FROM LANDS OTHER THAN THOSE HEREINABOVE DESCRIBED, OIL OR GAS WELLS, TUNNELS AND SHAFTS INTO, THROUGH OR ACROSS THE SUBSURFACE OF THE LAND HEREINABOVE DESCRIBED, AND TO BOTTOM SUCH WHIPSTOCKED OR DIRECTIONALLY DRILLED WELLS, TUNNELS AND SHAFTS UNDER AND BENEATH OR BEYOND THE EXTERIOR LIMITS THEREOF, AND TO REDRILL, RETUNNEL, EQUIP MAINTAIN, REPAIR, DEEPEN AND OPERATE ANY SUCH WELLS OR MINES, WITHOUT HOWEVER, THE RIGHT TO DRILL, MINE, STORE, EXPLORE AND OPERATE THROUGH THE SURFACE OF THE UPPER 500 FEET OF THE LAND, AS RESERVED IN THE DEED FROM IRVINE INDUSTRIAL COMPLEX, A CORPORATION, RECORDED JANUARY 21, 1974 IN BOOK 11060, PAGE 213 OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA.

PARCEL C:

NON-EXCLUSIVE EASEMENTS FOR VEHICULAR AND PEDESTRIAN INGRESS AND EGRESS PURPOSES, AS SAID EASEMENTS ARE SET FORTH IN THAT CERTAIN AMENDED AND RESTATED DECLARATION OF ESTABLISHMENT OF COVENANTS, CONDITIONS AND RESTRICTIONS AND GRANT OF EASEMENTS FOR KOLL CENTER IRVINE NORTH RECORDED FEBRUARY 9, 1987 AS INSTRUMENT NO. 87-074459 OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA.

PARCEL D:

NON-EXCLUSIVE EASEMENTS FOR VEHICULAR AND PEDESTRIAN INGRESS AND EGRESS UTILITIES, DRAINAGE AND OTHER PURPOSES, AS SAID EASEMENTS ARE SET FORTH IN ARTICLE IV OF THAT CERTAIN AMENDED AND RESTATED DECLARATION ESTABLISHING EASEMENTS, COVENANTS AND RESTRICTIONS FOR KCIN PARKING FACILITIES RECORDED SEPTEMBER 1, 1998 AS INSTRUMENT NO. 19980582940 OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA.

PARCEL E:

A TEMPORARY NON-EXCLUSIVE ACCESS EASEMENT FOR VEHICULAR AND PEDESTRIAN ACCESS AND A TEMPORARY CONSTRUCTION EASEMENT AS SET FORTH IN THAT CERTAIN "TEMPORARY ACCESS EASEMENT AND SUPPLEMENT TO TEMPORARY PARKING EASEMENT" RECORDED OCTOBER 6, 2004 AS INSTRUMENT NO. 2004000897997, OF OFFICIAL RECORDS.

APN: 435-161-72 (PARCEL A) and 435-161-75 (PARCEL B)

ATTACHMENT 14

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

Irvine Center Partners III, L.L.C.
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 & Sales

RE: ***$93,300,000.00 Loan (the "Loan") made by Bank of America, N.A., national banking association and successor by merger to LaSalle Bank National Association, individually as a Bank and as agent ("Bank of America"), and certain other financial institutions as Banks (together with Bank of America, the "Banks") to Irvine Center Partners III, L.L.C., a Delaware limited liability company ("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 Amended And Restated Construction Loan Agreement dated October 31, 2006 between Borrower and 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 on April 1, 2009 (the "Due Date") 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 an Event of Default under the Loan Agreement. Late charges (as described in and calculated according to Section 4.2(f) of the Loan Agreement) will apply to the defaulted amounts. Interest at the Default Rate (as defined and provided for in, and calculated according to, Sections 4.1 and 12.6 of the Loan Agreement) will commence and will 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 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 the other Banks, is entitled to the exercise of the Banks' rights and remedies under the Loan Documents, at law and in equity, including, without limitation, acceleration of the indebtedness due under the Loan Documents and the imposition of Default Rate interest, 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 the other 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 Guaranty of Payment and Completion dated October 11, 2006 (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
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.
2575 East Camelback Road, 11th Floor
Phoenix, Arizona 85016-9225
Attn: Gregory L. Mast, Esq./Sandy Broadfoot, Esq.

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Attorneys at Law in:
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Naples, Florida
Chicago, Illinois
Milwaukee and Madison, Wisconsin

April 9, 2009

DEFAULT NOTICE

VIA UPS OVERNIGHT

Irvine Center Partners III, L.L.C.
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 & Sales

RE: ***$93,300,000.00 Loan (the "Loan") made by Bank of America, N.A., national banking association and successor by merger to LaSalle Bank National Association, individually as a Bank and as agent ("Bank of America"), and certain other financial institutions as Banks (together with Bank of America, the "Banks") to Irvine Center Partners III, L.L.C., a Delaware limited liability company ("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(r) of the Amended And Restated Construction Loan Agreement dated October 31, 2006 between Borrower and 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 8.14(iii) of the Loan Agreement and under Section 23(a)(iii) of that certain instrument entitled Guaranty of Payment and Completion dated October 11, 2006 (as amended and modified from time to time, the "Guaranty"). Guarantor's failure to meet the requirements of Section 23(a)(iii) of the Guaranty constitutes an immediate Event of Default under Section 11.1(r) 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.

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Attorneys at Law in:
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Naples, Florida
Chicago, Illinois
Milwaukee and Madison, Wisconsin

May 5, 2009

DEFAULT NOTICE

VIA UPS OVERNIGHT

Irvine Center Partners III, L.L.C.
c/o Opus West Corporation
2555 East Camelback Road
Suite 800
Phoenix, Arizona 85016
Attn: Senior Vice President, Real Estate, Finance & Sales

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RE: ***$93,300,000.00 Loan (the "Loan") made by Bank of America, N.A., national banking association and successor by merger to LaSalle Bank National Association, individually as a Bank and as agent ("Bank of America"), and certain other financial institutions as Banks (together with Bank of America, the "Banks") to Irvine Center Partners III, L.L.C., a Delaware limited liability company ("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 Amended And Restated Construction Loan Agreement dated October 31, 2006 between Borrower and 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 on May 1, 2009 (the "Due Date") as required under the Loan Agreement. If payment is not

received in good funds on or before May 8, 2009, then such failure will constitute an Event of Default under the Loan Agreement. Late charges (as described in and calculated according to Section 4.2(f) of the Loan Agreement) will apply to the defaulted amounts. Interest at the Default Rate (as defined and provided for in, and calculated according to, Sections 4.1 and 12.6 of the Loan Agreement) will continue to accrue on any 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 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 the other Banks, is entitled to the exercise of the Banks' rights and remedies under the Loan Documents, at law and in equity, including, without limitation, acceleration of the indebtedness due under the Loan Documents and the imposition of Default Rate interest, 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 the other 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 Guaranty of Payment and Completion dated October 11, 2006 (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
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:
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2575 East Camelback Road, 11th Floor
Phoenix, Arizona 85016-9225
Attn: Gregory L. Mast, Esq./Sandy Broadfoot, Esq.

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Attorneys at Law in:
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Naples, Florida
Chicago, Illinois
Milwaukee and Madison, Wisconsin

June 16, 2009

DEFAULT NOTICE

VIA UPS OVERNIGHT

Irvine Center Partners III, L.L.C.
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 & Sales

RE: ***$93,300,000.00 Loan (the "Loan") made by Bank of America, N.A., national banking association and successor by merger to LaSalle Bank National Association, individually as a Bank and as agent ("Bank of America"), and certain other financial institutions as Banks (together with Bank of America, the "Banks") to Irvine Center Partners III, L.L.C., a Delaware limited liability company ("Borrower")***

Ladies and Gentlemen:

The purpose of this letter is to provide you with notice of the occurrence of an Event of Default (the "Event of Default") under Section 11.1(a) of the Amended And Restated Construction Loan Agreement dated October 31, 2006 between Borrower and 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 on June 1, 2009 (the "Due Date") 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 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 the other Banks, is entitled to the exercise of the Banks' rights and remedies under the Loan Documents, at law and in equity, including, without limitation, acceleration of the indebtedness due under the Loan Documents and the imposition of Default Rate interest, 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 the other 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 Guaranty of Payment and Completion dated October 11, 2006 (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.

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ATTACHMENT 15

Quarles & Brady LLP

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

July 2, 2009

ACCELERATION NOTICE

VIA UPS OVERNIGHT

Irvine Center Partners III, L.L.C.
c/o Opus West Corporation
2555 East Camelback Road
Suite 800
Phoenix, Arizona 85016
Attn: Senior Vice President, Real Estate, Finance & Sales

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RE: ***$93,300,000.00 Loan (the "Loan") made by Bank of America, N.A., national banking association and successor by merger to LaSalle Bank National Association, individually as a Bank and as agent ("Bank of America"), and certain other financial institutions as Banks (together with Bank of America, the "Banks") to Irvine Center Partners III, L.L.C., a Delaware limited liability company ("Borrower")***

Ladies and Gentlemen:

By Default Notice dated June 16, 2009 ("6/16/09 Default Notice"), Bank of America provided formal notice to Borrower that an Event of Default had occurred under the Loan Agreement and the Notes. A copy of the 6/16/09 Default Notice is attached to this letter as **Exhibit A** and incorporated herein by this reference. Capitalized terms used in this letter without definition will have the meanings assigned thereto in the 6/16/09 Default Notice.

The Event of Default identified in the 6/16/09 Default Notice continues to exist (the "Specified Event of Default"). As a result of the Specified Event of Default,

Bank of America and the other Banks are entitled to exercise their rights and remedies, at law and in equity, against Borrower and the collateral and, accordingly, Bank of America hereby declares all amounts due and owing to the Banks under the Loan Documents (the "Indebtedness") to be immediately due and payable in full accordance with Section 12.1(c) of the Loan Agreement. Interest and other fees and charges (including without limitation attorneys' fees) continue to accrue as provided in the Loan Agreement and other Loan Documents. In order to obtain the full payoff amount as of any particular business day, please contact the undersigned.

On behalf of each of the Banks, Bank of America hereby demands that Borrower immediately pay all of the Indebtedness owing as described above, with all additional interest and other amounts that will accrue until payment in full is received by Bank of America. Payment in full of the Indebtedness must be made in readily available funds delivered to my attention. Wire transfer instructions are available upon request to the undersigned. If full payment of the Indebtedness is not received immediately, Bank of America and/or any Bank may exercise all rights and remedies under the terms of the Loan Agreement and other Loan Documents.

Notwithstanding the existence of the Specified 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 Specified Event of Default or performance or cure of the Specified 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 Specified 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 Specified Event of Default Bank of America, on behalf of itself and the other Banks, is entitled to: (i) 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 Event of Default (including attorneys' fees and costs); and (ii) 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.

If you have any questions or concerns, please contact the undersigned.

Very truly yours,

QUARLES & BRADY LLP



Lori L. Winkelman

cc: Casey Carpenter, Bank of America
Daniel Denton, Esq., Bank of America
Brian Sirower, Esq.

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EXHIBIT A

Quarles & Brady LLP

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Attorneys at Law in:
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Milwaukee and Madison, Wisconsin

June 16, 2009

DEFAULT NOTICE

VIA UPS OVERNIGHT

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Ladies and Gentlemen:

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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 amounts outstanding.

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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 the other Banks, is entitled to the exercise of the Banks' rights and remedies under the Loan Documents, at law and in equity, including, without limitation, acceleration of the indebtedness due under the Loan Documents and the imposition of Default Rate interest, 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 the other 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.

owned or hereafter acquired, or in which Debtor now has or shall hereafter acquire any right, title or interest whatsoever (whether by bill of sale, lease, conditional sales contract, or other title retention document or otherwise);

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

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

Opus West Corporation ("Guarantor") guaranteed the payment and performance of the Loan and Borrower's obligations under the Loan Documents under that certain Guaranty of Payment and Completion dated October 11, 2006 (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.

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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: 80** *Original Filed Date*: 11/09/2009 *Original Entered Date*: 11/09/2009	*Status:* *Filed by:* CR *Entered by:* Richter, Katharine *Modified:*
Unsecured claimed: $82215239.55 **Total claimed: $82215239.55**		

History:

Details 80-1 11/09/2009 Claim #80 filed by BANK OF AMERICA, N.A., total amount claimed: $82215239.55 (Richter, Katharine)

Description: (80-1) Irvine Center III

Remarks: (80-1) But see Addendum for possible secured status

Claims Register Summary