


<b>UNITED STATES BANKRUPTCY COURT</b> <b>Northern District of Texas</b>		<b>PROOF OF CLAIM</b>
<b>Name of Debtor:</b> OPUS WEST CORPORATION		<b>Case Number:</b> 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.		
<b>Name of Creditor (the person or other entity to whom the debtor owes money or property):</b> M&I MARSHALL & ILSLEY BANK		<input checked="" type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim.  <b>Court Claim Number:</b> 55 <i>(If known)</i>  <b>Filed on:</b> 11/09/2009
<b>Name and address where notices should be sent:</b>  Robert J. Miller, Esq., Bryce A. Suzuki, Esq., BRYAN CAVE LLP 2 N. Central Avenue, Suite 2200, Phoenix, AZ 85004  <b>Telephone number:</b> (602) 364-7000		
<b>Name and address where payment should be sent (if different from above):</b>  Meredith Lincoln, Sr. Vice President, M&I Marshall & Ilsley Bank 1110 N. Old World Third Street, Suite 320, Milwaukee, Wisconsin 53203  <b>Telephone number:</b>		
<b>1. Amount of Claim as of Date Case Filed:</b> \$ 103,194,056.97 - See Ex "A"  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.  <input type="checkbox"/> 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.		<b>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.</b>  Specify the priority of the claim.  <input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).  <input type="checkbox"/> 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).  <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. §507 (a)(5).  <input type="checkbox"/> 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).  <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. §507 (a)(8).  <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. §507 (a)( ).  <b>Amount entitled to priority:</b> \$ _____  <small>*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.</small>
<b>2. Basis for Claim:</b> <u>See Exhibit "A" attached</u> (See instruction #2 on reverse side.)		
<b>3. Last four digits of any number by which creditor identifies debtor:</b> _____  <b>3a. Debtor may have scheduled account as:</b> _____ (See instruction #3a on reverse side.)		
<b>4. Secured Claim (See instruction #4 on reverse side.)</b> Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.  <b>Nature of property or right of setoff:</b> <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other <b>Describe:</b>  <b>Value of Property:</b> \$ _____ <b>Annual Interest Rate</b> _____ %  <b>Amount of arrearage and other charges as of time case filed included in secured claim,</b> <b>if any:</b> \$ _____ <b>Basis for perfection:</b> _____  <b>Amount of Secured Claim:</b> \$ _____ <b>Amount Unsecured:</b> \$ _____		
<b>6. Credits:</b> The amount of all payments on this claim has been credited for the purpose of making this proof of claim.  <b>7. Documents:</b> 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:		
<b>Date:</b> _____  <b>Signature:</b> 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.  M&I MARSHALL & ILSLEY BANK By: <u>[Signature]</u> Pam Haack, Vice President		<b>FOR COURT USE ONLY</b>  OPUS WEST  00648

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.

2. That certain (i) Guaranty Agreement dated March 27, 2006, executed by Opus West Corporation, a Minnesota corporation ("Debtor") in favor of Richter-Schroeder (the "Initial NVSL Guaranty"), guarantying the payment and performance obligations of NVSL Phoenix, LLC, a Delaware limited liability company ("NVSL"), to Richter-Schroeder pursuant to the Loan Agreement dated March 27, 2006, and the Deed of Trust Note dated March 27, 2006, in the principal sum of \$7,525,000.00 (the "Initial Loan"); and (ii) that certain Environmental Indemnification and Release Agreement dated as of March 27, 2006, executed by NVSL, as Borrower, and Debtor, as Guarantor, in favor of Richter-Schroeder (the "Initial NVSL Agreement"). Richter-Schroeder thereafter assigned and transferred the Initial Loan and Initial Loan Documents to Lender. Lender then made a refinancing and construction loan to NVSL in the maximum principal amount of \$41,200,000, which

1. That certain (i) Guaranty Agreement dated October 30, 2006, executed by Opus West Corporation, a Minnesota corporation ("Debtor") in favor of Richter-Schroeder Company, Inc. ("Richter-Schroeder") (the "Initial HVSL Guaranty"), guarantying the payment and performance obligations of HVSL Tucson, LLC, a Delaware limited liability company ("HVSL"), to Richter-Schroeder pursuant to the Loan Agreement dated October 30, 2006, and the Deed of Trust Note dated October 30, 2006, in the principal sum of \$8,000,000.00 (the "Initial Loan"); and (ii) that certain Environmental Indemnification and Release Agreement dated as of October 30, 2006, executed by HVSL, as Borrower, and Debtor, as Guarantor, in favor of Richter-Schroeder (the "Initial HVSL Agreement"). Richter-Schroeder thereafter assigned and transferred the Initial Loan and Initial Loan Documents to M&I Marshall & Ilsley Bank ("Lender"). Lender then made a refinancing and construction loan to HVSL in the maximum principal amount of \$44,200,000, which amended and restated loan is evidenced by, among other documents, (i) that certain Construction Loan Agreement between HVSL and Lender dated as of June 13, 2007; and (ii) that certain Amended and Restated Deed of Trust Note executed by HVSL to Lender in the sum of \$44,200,000 (the "Amended and Restated Loan"). Debtor executed that certain (i) Amended and Restated Guaranty Agreement dated June 13, 2007, to guaranty the payment and performance of HVSL's obligations under the Amended and Restated Loan (the "Amended and Restated HVSL Guaranty"); and (ii) that certain Amended and Restated Environmental Indemnification and Release Agreement dated as of June 13, 2007, executed by HVSL, as Borrower, and Debtor, as Guarantor, in favor of Lender (the "Amended and Restated HVSL Agreement"). Copies of the Initial HVSL Guaranty, the Amended and Restated HVSL Guaranty, the Initial HVSL Agreement, and the Amended and Restated HVSL Agreement are attached hereto and incorporated herein by reference as Exhibits "B," "C," "G," and "H," respectively.

The following amounts are due pursuant to the following Guaranties and Indemnity Agreements:

**EXHIBIT "A" TO AMENDED AND RESTATED PROOF OF CLAIM  
OF  
M&I MARSHALL & ILSLEY BANK**

In re Opus West Corporation,  
United States Bankruptcy Court for the Northern District of Texas (Dallas)  
Case No. 09-34356-hdh11

\$103,194,056.97 – Total Amount Due as of November 9, 2009, plus accrued and accruing interest, late payment charges, penalties, attorney's fees and costs.

\$20,388,628.88 as of November 9, 2009, with respect to the ICP Guaranty and Amended and Restated Guaranty, plus accrued and accruing interest, late payment charges, penalties, attorney's fees and costs.

\$40,813,886.35 as of November 9, 2009, with respect to the NVSL Guaranty and Amended and Restated Guaranty, plus accrued and accruing interest, late payment charges, penalties, attorney's fees and costs.

\$41,991,541.74 as of November 9, 2009, with respect to the HVSL Guaranty and Amended and Restated Guaranty, plus accrued and accruing interest, late payment charges, penalties, attorney's fees and costs.

Amounts due pursuant to the above-described Guaranties, Amended and Restated Guaranties, Agreements and Amended and Restated Agreements, are as follows:

3. That certain (i) Guaranty of Payment and Completion dated October 11, 2006, executed by Opus West Corporation, a Minnesota corporation ("Debtor") to and for the benefit of LaSalle Bank National Association, a national banking association, as Agent for itself and the other Banks ("Lenders") (the "ICP Guaranty"), guarantying the payment and performance obligations of Irvine Center Partners III, LLC, a Delaware limited liability company ("ICP"), to the Lenders pursuant to that certain Construction Loan Agreement dated October 11, 2006, as amended and restated, and the Promissory Note dated October 11, 2006, in the principal sum of \$93,300,000.00, as amended, modified, restated or replaced from time to time (the "Loan"); and (ii) that certain Environmental Indemnity Agreement dated as of October 11, 2006, executed by ICP, as Borrower, and Debtor, as Guarantor, in favor of Lenders (the "ICP Agreement"). Copies of the ICP Guaranty and the ICP Agreement are attached hereto and incorporated herein by reference as Exhibits "F" and "K," respectively.

amended and restated loan is evidenced by, among other documents, (i) that certain Construction Loan Agreement between NVSL and Lender dated as of December 28, 2006; and (ii) that certain Amended and Restated Deed of Trust Note executed by NVSL to Lender in the sum of \$41,200,000 (the "Amended and Restated Loan"). Debtor executed that certain (i) Amended and Restated Guaranty Agreement dated December 28, 2006, to guaranty the payment and performance of NVSL's obligations under the Amended and Restated Loan (the "Amended and Restated NVSL Guaranty"); and (ii) that certain Amended and Restated Environmental Indemnification and Release Agreement dated as of December 28, 2006, executed by NVSL, as Borrower, and Debtor, as Guarantor, in favor of Lender (the "Amended and Restated NVSL Agreement"). Copies of the Initial NVSL Guaranty, the Amended and Restated NVSL Guaranty, the Initial NVSL Agreement, and the Amended and Restated NVSL Agreement are attached hereto and incorporated herein by reference as Exhibits "D," "E," "I," and "J," respectively.

## EXHIBIT "B"



## GUARANTY AGREEMENT

(Hermosa Village Senior Living Apartments, Tucson, Arizona - Land Loan)

THIS GUARANTY AGREEMENT (this "Guaranty") is made as of the 30<sup>th</sup> day of October, 2006, by OPUS WEST CORPORATION, a Minnesota corporation ("Guarantor"), in favor of RICHTER-SCHROEDER COMPANY, INC., a Wisconsin corporation (together with its successors and assigns "Lender").

### PRELIMINARY STATEMENTS

Lender and HVSL TUCSON, L.L.C., a Delaware limited liability company ("Borrower"), have entered into, are entering into concurrently herewith, or contemplate entering into, that certain Loan Agreement of even date herewith (herein called, as it may hereafter be modified, supplemented, restated, extended, or renewed and in effect from time to time, the "Loan Agreement"), which Loan Agreement sets forth the terms and conditions of a loan (the "Loan") to Borrower for the cost of Improvements on the Land located in Phoenix, Arizona, as more particularly described in the Loan Agreement and identified therein as the Project.

A condition precedent to Lender's obligation to make the Loan to Borrower is Guarantor's execution and delivery to Lender of this Guaranty.

The Loan is, or will be, evidenced by that certain Deed of Trust Note of even date with the Loan Agreement, executed by Borrower and payable to the order of Lender in the principal face amount of EIGHT MILLION AND NO/100 DOLLARS (\$8,000,000.00) (such note, as it may hereafter be renewed, extended, supplemented, increased or modified and in effect from time to time, and all other notes given in substitution therefor, or in modification, renewal, or extension thereof, in whole or in part, is herein called the "Note").

Any capitalized term used and not defined in this Guaranty shall have the meaning given to such term in the Loan Agreement. This Guaranty is one of the Loan Documents described in the Loan Agreement.

### STATEMENT OF AGREEMENTS

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and as a material inducement to Lender to extend credit to Borrower, Guarantor hereby guarantees to Lender the prompt and full payment and performance of the indebtedness and obligations described below in this Guaranty (collectively called the "Guaranteed Obligations"), this Guaranty being upon the following terms and conditions:

1. Guaranty of Payment. Guarantor hereby unconditionally and irrevocably guarantees to Lender the punctual payment when due, whether by lapse of time, by acceleration of maturity, or otherwise, of all principal, interest (including interest accruing after the commencement of any bankruptcy or insolvency proceeding by or against Borrower, whether or not allowed in such proceeding), fees, late charges, costs, expenses, indemnification indebtedness, and other sums of money now or hereafter due and owing, or which Borrower is obligated to pay, pursuant to (a) the terms of the Note, the Loan Agreement, the Deed of Trust,

the Environmental Agreement, any application, agreement, note or other document executed and delivered in connection with any Loan Documents, including the making of required Borrower's Deposits, and any indemnifications contained in the Loan Documents, now or hereafter existing, and (b) all renewals, extensions, refinancings, modifications, supplements or amendments of such indebtedness, or any of the Loan Documents, or any part thereof (the indebtedness described in clauses (a) and (b) above in this Section 1 is herein collectively called the "Indebtedness"). This Guaranty covers the Indebtedness, whether presently outstanding or arising subsequent to the date hereof, including all amounts advanced by Lender in stages or installments. The guaranty of Guarantor as set forth in this Section 1 is a continuing guaranty of payment and not a guaranty of collection.

2. Guaranty of Performance. Guarantor additionally hereby unconditionally and irrevocably guarantees to Lender the timely performance of all other obligations of Borrower under all of the Loan Documents, including, without limiting the generality of the foregoing, that Borrower will duly and punctually perform and observe all other terms, covenants, and conditions of the Note, the Deed of Trust, the Loan Agreement, the Environmental Agreement or any other Loan Document whether according to the present terms thereof, at any earlier or accelerated date or dates as provided therein, or pursuant to any extension of time or to any change or changes in the terms, covenants, or conditions thereof now or hereafter made or granted.

3. Primary Liability of Guarantor.

(a) This Guaranty is an absolute, irrevocable and unconditional guaranty of payment and performance. Guarantor shall be liable for the payment and performance of the Guaranteed Obligations as a primary obligor. This Guaranty shall be effective as a waiver of, and Guarantor hereby expressly waives, any and all rights to which Guarantor may otherwise have been entitled under any suretyship laws in effect from time to time, including any right or privilege, whether existing under statute, at law or in equity, to require Lender to take prior recourse or proceedings against any collateral, security or Person (hereinafter defined) whatsoever.

(b) Guarantor hereby agrees that in the event of (i) default by Borrower in payment or performance of the Guaranteed Obligations, or any part thereof, when such indebtedness or performance becomes due, either by its terms or as the result of the exercise of any power to accelerate; (ii) the failure of Guarantor to perform completely and satisfactorily the covenants, terms and conditions of any of the Guaranteed Obligations after the expiration of all applicable cure and grace periods; (iii) the death, incompetency, dissolution or insolvency of Guarantor; (iv) the inability of Guarantor to pay debts as they mature; (v) an assignment by Guarantor for the benefit of creditors; (vi) the institution of any proceeding by or against Guarantor in bankruptcy or for a reorganization or an arrangement with creditors, or for the appointment of a receiver, trustee or custodian for any of them or for any of their respective properties; (vii) the determination by Lender in good faith that a material adverse change has occurred in the financial condition of Guarantor that materially affects the Guarantor's ability to perform the Guaranteed Obligations; (viii) the entry of a judgment against Guarantor that materially affects its ability to pay or perform the Guaranteed Obligations and that is not discharged or bonded against within a period of thirty (30) days; (ix) a writ or order of

attachment, levy or garnishment is issued against Guarantor; (x) the falsity in any material respect of, or any material omission in, any representation made to Lender by Guarantor; or (xi) any transfer of assets of Guarantor that would materially and adversely affect Guarantor's obligations hereunder, without the Lender's prior consent (except for transfers of assets for estate planning purposes valued at less than \$50,000 per year, customary political and charitable contributions, and transfers for which the Guarantor receives consideration substantially equivalent to the fair market value of the transferred asset) (individually and collectively an "Event of Default"); then upon the occurrence of such Event of Default, the Guaranteed Obligations, for purposes of this Guaranty, shall be deemed immediately due and payable at the election of Lender, and Guarantor shall, on demand and without presentment, protest, notice of protest, further notice of nonpayment or of dishonor, default or nonperformance, or notice of acceleration or of intent to accelerate, or any other notice whatsoever, without any notice having been given to Guarantor previous to such demand of the acceptance by Lender of this Guaranty, and without any notice having been given to Guarantor previous to such demand of the creating or incurring of such indebtedness or of such obligation to perform, all such notices being hereby waived by Guarantor, pay the amount due to Lender or perform or observe the agreement, covenant, term or condition, as the case may be, and pay all damages and all costs and expenses that may arise in consequence of such Event of Default (including, without limitation, all attorneys' fees and expenses, investigation costs, court costs, and any and all other costs and expenses incurred by Lender in connection with the collection and enforcement of the Note or any other Loan Document), whether or not suit is filed thereon, or whether at maturity or by acceleration, or whether before or after maturity, or whether in connection with bankruptcy, insolvency or appeal. It shall not be necessary for Lender, in order to enforce such payment or performance by Guarantor, first to institute suit or pursue or exhaust any rights or remedies against Borrower or others liable on such indebtedness or for such performance, or to enforce any rights against any security that shall ever have been given to secure such indebtedness or performance, or to join Borrower or any others liable for the payment or performance of the Guaranteed Obligations or any part thereof in any action to enforce this Guaranty, or to resort to any other means of obtaining payment or performance of the Guaranteed Obligations; provided, however, that nothing herein contained shall prevent Lender from judicially or non-judicially foreclosing the Deed of Trust or from exercising any other rights thereunder. If such foreclosure or other remedy is availed of, Guarantor agrees, subject only to conflicting applicable law which may not be waived by Guarantor, that only the net proceeds therefrom, after deduction of all charges and expenses of every kind and nature whatsoever, shall be applied in reduction of the amount due on the Note and Deed of Trust, and Lender shall not be required to institute or prosecute proceedings to recover any deficiency as a condition of payment hereunder or enforcement hereof. At any sale of the Property or other collateral given for the Indebtedness or any part thereof, whether by foreclosure or otherwise, Lender may at its discretion purchase all or any part of the Property or collateral so sold or offered for sale for its own account and may, in payment of all or any portion of the amount bid therefor, credit bid all or any portion of the Indebtedness in accordance with applicable law and deduct any successful credit bid from the balance due it pursuant to the terms of the Note and Deed of Trust.

(c) Suit may be brought or demand may be made against Borrower or against all parties who have signed this Guaranty or any other guaranty covering all or any part of the Guaranteed Obligations, or against any one or more of them, separately or together, without impairing the rights of Lender against any party hereto. Any time that Lender is entitled to

exercise its rights or remedies hereunder, it may in its discretion elect to demand payment and/or performance. If Lender elects to demand performance, it shall at all times thereafter have the right to demand payment until all of the Guaranteed Obligations have been paid and performed in full. If Lender elects to demand payment, it shall at all times thereafter have the right to demand performance until all of the Guaranteed Obligations have been paid and performed in full.

4. Certain Agreements and Waivers by Guarantor.

(a) Guarantor hereby agrees that neither Lender's rights or remedies nor Guarantor's obligations under the terms of this Guaranty shall be released, diminished, impaired, reduced or affected by any one or more of the following events, actions, facts, or circumstances, and the liability of Guarantor under this Guaranty shall be absolute and unconditional irrespective of:

(i) any limitation of liability or recourse in any other Loan Document or arising under any law;

(ii) any claim or defense that this Guaranty was made without consideration or is not supported by adequate consideration;

(iii) the taking or accepting of any other security or guaranty for, or right of recourse with respect to, any or all of the Guaranteed Obligations;

(iv) any homestead exemption or any other exemption under applicable law;

(v) any release, surrender, abandonment, exchange, alteration, sale or other disposition, subordination, deterioration, waste, failure to protect or preserve, impairment, or loss of, or any failure to create or perfect any lien or security interest with respect to, or any other dealings with, any collateral or security at any time existing or purported, believed or expected to exist in connection with any or all of the Guaranteed Obligations, including any impairment of Guarantor's recourse against any Person or collateral;

(vi) whether express or by operation of law, any partial release of the liability of Guarantor hereunder, or if one or more other guaranties are now or hereafter obtained by Lender covering all or any part of the Guaranteed Obligations, any complete or partial release of any one or more of such guarantors under any such other guaranty, or any complete or partial release of Borrower or any other party liable, directly or indirectly, for the payment or performance of any or all of the Guaranteed Obligations;

(vii) the death, insolvency, bankruptcy, disability, dissolution, liquidation, termination, receivership, reorganization, merger, consolidation, change of form, structure or ownership, sale of all assets, or lack of corporate, partnership or other power of Borrower or any other party at any time liable for the payment or performance of any or all of the Guaranteed Obligations;

(viii) either with or without notice to or consent of Guarantor, and on one or more occasions: any renewal, extension, modification, supplement, subordination or rearrangement of the terms of any or all of the Guaranteed Obligations and/or any of the Loan Documents, including, without limitation, material alterations of the terms of payment (including changes in maturity date(s) and interest rate(s)) or performance (including changes in the Plans and other terms or aspects of construction of the Improvements) or any other terms thereof, or any waiver, termination, or release of, or consent to departure from, any of the Loan Documents or any other guaranty of any or all of the Guaranteed Obligations, or any adjustment, indulgence, forbearance, or compromise that may be granted from time to time by Lender to Borrower, Guarantor, and/or any other Person at any time liable for the payment or performance of any or all of the Guaranteed Obligations;

(ix) any neglect, lack of diligence, delay, omission, failure, or refusal of Lender to take or prosecute (or in taking or prosecuting) any action for the collection or enforcement of any of the Guaranteed Obligations, or to foreclose or take or prosecute any action to foreclose (or in foreclosing or taking or prosecuting any action to foreclose) upon any security therefor, or to exercise (or in exercising) any other right or power with respect to any security therefor, or to take or prosecute (or in taking or prosecuting) any action in connection with any Loan Document, or any failure to sell or otherwise dispose of in a commercially reasonable manner any collateral securing any or all of the Guaranteed Obligations;

(x) any failure of Lender to notify Guarantor of any creation, renewal, extension, rearrangement, modification, supplement, subordination, or assignment of the Guaranteed Obligations or any part thereof, or of any Loan Document, or of any release of or change in any security, or of any other action taken or refrained from being taken by Lender against Borrower or any security or other recourse, or of any new agreement between Lender and Borrower, it being understood that Lender shall not be required to give Guarantor any notice of any kind under any circumstances with respect to or in connection with the Guaranteed Obligations, any and all rights to notice Guarantor may have otherwise had being hereby waived by Guarantor, and the Guarantor shall be responsible for obtaining for itself information regarding the Borrower, including, but not limited to, any changes in the business or financial condition of the Borrower, and the Guarantor acknowledges and agrees that the Lender shall have no duty to notify the Guarantor of any information which the Lender may have concerning the Borrower.

(xi) if for any reason Lender is required to refund any payment by Borrower to any other party liable for the payment or performance of any or all of the Guaranteed Obligations or pay the amount thereof to someone else;

(xii) the making of advances by Lender to protect its interest in the Property, preserve the value of the Property or for the purpose of performing any term or covenant contained in any of the Loan Documents;

(xiii) the existence of any claim, counterclaim, set-off or other right that Guarantor may at any time have against Borrower, Lender, or any other Person, whether or not arising in connection with this Guaranty, the Note, the Loan Agreement, or any other Loan Document;

(xiv) the unenforceability of all or any part of the Guaranteed Obligations against Borrower, whether because the Guaranteed Obligations exceed the amount permitted by law or violate any usury law, or because the act of creating the Guaranteed Obligations, or any part thereof, is ultra vires, or because the officers or Persons creating the Guaranteed Obligations acted in excess of their authority, or because of a lack of validity or enforceability of or defect or deficiency in any of the Loan Documents, or because Borrower has any valid defense, claim or offset with respect thereto, or because Borrower's obligation ceases to exist by operation of law, or because of any other reason or circumstance, it being agreed that Guarantor shall remain liable hereon regardless of whether Borrower or any other Person be found not liable on the Guaranteed Obligations, or any part thereof, for any reason (and regardless of any joinder of Borrower or any other party in any action to obtain payment or performance of any or all of the Guaranteed Obligations); or

(xv) any order, ruling or plan of reorganization emanating from proceedings under Title 11 of the United States Code with respect to Borrower or any other Person, including any extension, reduction, composition, or other alteration of the Guaranteed Obligations, whether or not consented to by Lender.

(b) In the event any payment by Borrower or any other Person to Lender is held to constitute a preference, fraudulent transfer or other voidable payment under any bankruptcy, insolvency or similar federal or state law or theory, including any equitable remedy, or if for any other reason Lender is required to refund such payment or pay the amount thereof to any other party, such payment by Borrower or any other party to Lender shall not constitute a release of Guarantor from any liability hereunder, and this Guaranty shall continue to be effective or shall be reinstated (notwithstanding any prior release, surrender or discharge by Lender of this Guaranty or of Guarantor), as the case may be, with respect to, and this Guaranty shall apply to, any and all amounts so refunded by Lender or paid by Lender to another Person (which amounts shall constitute part of the Guaranteed Obligations), and any interest paid by Lender and any attorneys' fees, costs and expenses paid or incurred by Lender in connection with any such event. It is the intent of Guarantor and Lender that the obligations and liabilities of Guarantor hereunder are absolute and unconditional under any and all circumstances and that until the Guaranteed Obligations are fully and finally paid and performed, and not subject to refund or disgorgement, the obligations and liabilities of Guarantor hereunder shall not be discharged or released, in whole or in part, by any act or occurrence that might, but for the provisions of this Guaranty, be deemed a legal or equitable discharge or release of a guarantor. Lender shall be entitled to continue to hold this Guaranty in its possession for the longer of

(i) the period after which any performance of obligations under the Environmental Agreement shall accrue, or (ii) a period of five years from the date the Guaranteed Obligations are paid and performed in full and for so long thereafter as may be necessary to enforce any obligation of Guarantor hereunder and/or to exercise any right or remedy of Lender hereunder.

(c) If acceleration of the time for payment of any amount payable by Borrower under the Note, the Loan Agreement, or any other Loan Document is stayed or delayed by any law or tribunal, all such amounts shall nonetheless be payable by Guarantor on demand by Lender.

(d) Guarantor hereby waives any and all rights to which Guarantor may otherwise have been entitled under any suretyship laws in effect from time to time, including any right or privilege, whether existing under statute, at law or in equity, to require Lender to take prior recourse or proceedings against any collateral, security or Person (as such term is defined in Section 24 below) whatsoever. By way of illustration and not limitation of the waiver in the preceding sentence, Guarantor waives and agrees not to assert or take advantage of the provisions of any of Arizona Revised Statutes Sections 12-1641 through 12-1646, 47-3419 and 47-3605, Rule 17(f) of the Arizona Rules of Civil Procedure, or any similar or analogous other present or future statutory or common law or procedural rule of any jurisdiction relating to guarantors, indemnitors, sureties, co-makers or accommodation parties.

(e) Without limiting the foregoing, or anything else contained in this Guaranty, Guarantor waives all rights and defenses that Guarantor may have because the Guaranteed Obligations are secured by real property. This means, among other things:

(i) That Lender may collect from Guarantor without first foreclosing on any real or personal property collateral pledged by Borrower; and

(ii) If Lender forecloses on any real property collateral pledged by Borrower: (A) the amount of the Guaranteed Obligations may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price; and (B) Lender may collect from Guarantor even if Lender, by foreclosing on the real property collateral, has destroyed any right Guarantor may have to collect from Borrower.

This is an unconditional and irrevocable waiver of any rights and defenses that Guarantor may have because the Guaranteed Obligations are secured by real property.

5. Subordination. If, for any reason whatsoever, Borrower is now or hereafter becomes indebted to Guarantor:

(a) such indebtedness and all interest thereon and all liens, security interests and rights now or hereafter existing with respect to property of Borrower securing such indebtedness shall, at all times, be subordinate in all respects to the Guaranteed Obligations and to all liens, security interests and rights now or hereafter existing to secure the Guaranteed Obligations;

(b) Guarantor shall not be entitled to enforce or receive payment, directly or indirectly, of any such indebtedness of Borrower to Guarantor until the Guaranteed Obligations have been fully and finally paid and performed;

(c) Guarantor hereby assigns and grants to Lender a security interest in all such indebtedness and security therefor, if any, of Borrower to Guarantor now existing or hereafter arising, including any dividends and payments pursuant to debtor relief or insolvency proceedings referred to below. In the event of receivership, bankruptcy, reorganization, arrangement or other debtor relief or insolvency proceedings involving Borrower as debtor, Lender shall have the right to prove its claim in any such proceeding so as to establish its rights hereunder and shall have the right to receive directly from the receiver, trustee or other custodian (whether or not a Default shall have occurred or be continuing under any of the Loan Documents), dividends and payments that are payable upon any obligation of Borrower to Guarantor now existing or hereafter arising, and to have all benefits of any security therefor, until the Guaranteed Obligations have been fully and finally paid and performed. If, notwithstanding the foregoing provisions, Guarantor should receive any payment, claim or distribution that is prohibited as provided above in this Section 5, Guarantor shall pay the same to Lender immediately, Guarantor hereby agreeing that it shall receive the payment, claim or distribution in trust for Lender and shall have absolutely no dominion over the same except to pay it immediately to Lender; and

(d) Guarantor shall promptly upon request of Lender from time to time execute such documents and perform such acts as Lender may require to evidence and perfect its interest and to permit or facilitate exercise of its rights under this Section 5, including, but not limited to, execution and delivery of financing statements, proofs of claim, further assignments and security agreements, and delivery to Lender of any promissory notes or other instruments evidencing indebtedness of Borrower to Guarantor. All promissory notes, accounts receivable ledgers or other evidences, now or hereafter held by Guarantor, of obligations of Borrower to Guarantor shall contain a specific written notice thereon that the indebtedness evidenced thereby is subordinated under and is subject to the terms of this Guaranty.

6. Other Liability of Guarantor or Borrower. If Guarantor is or becomes liable, by endorsement or otherwise, for any indebtedness owing by Borrower to Lender other than under this Guaranty, such liability shall not be in any manner impaired or affected hereby, and the rights of Lender hereunder shall be cumulative of any and all other rights that Lender may have against Guarantor. If Borrower is or becomes indebted to Lender for any indebtedness other than or in excess of the Indebtedness for which Guarantor is liable under this Guaranty, any payment received or recovery realized upon such other indebtedness of Borrower to Lender may, except to the extent paid by Guarantor on the Indebtedness or specifically required by law or agreement of Lender to be applied to the Indebtedness, in Lender's sole discretion, be applied upon indebtedness of Borrower to Lender other than the Indebtedness. This Guaranty is independent of (and shall not be limited by) any other guaranty now existing or hereafter given. Further, Guarantor's liability under this Guaranty is in addition to any and all other liability Guarantor may have in any other capacity, including without limitation, its capacity as a general partner.



7. **Lender Assigns.** This Guaranty is for the benefit of Lender and Lender's successors and assigns, and in the event of an assignment of the Guaranteed Obligations, or any part thereof, the rights and benefits hereunder, to the extent applicable to the Guaranteed Obligations so assigned, may be transferred with such Guaranteed Obligations. Guarantor waives notice of any transfer or assignment of the Guaranteed Obligations, or any part thereof, and agrees that failure to give notice of any such transfer or assignment will not affect the liabilities of Guarantor hereunder.

8. **Binding Effect.** This Guaranty is binding not only on Guarantor, but also on Guarantor's heirs, personal representatives, successors and assigns. Upon the death of Guarantor, if Guarantor is a natural person, this Guaranty shall continue against Guarantor's estate as to all of the Guaranteed Obligations, including that portion incurred or arising after the death of Guarantor and shall be provable in full against Guarantor's estate, whether or not the Guaranteed Obligations are then due and payable. If this Guaranty is signed by more than one Person, then all of the obligations of Guarantor arising hereunder shall be jointly and severally binding on each of the undersigned, and their respective heirs, personal representatives, successors and assigns, and the term "Guarantor" shall mean all of such Persons and each of them individually.

9. **Governing Law; Forum; Consent to Jurisdiction.** The validity, enforcement, and interpretation of this Guaranty, shall for all purposes be governed by and construed in accordance with the laws of the State of Arizona and applicable United States federal law, and is intended to be performed in accordance with, and only to the extent permitted by, such laws. All obligations of Guarantor hereunder are payable and performable at the place or places where the Guaranteed Obligations are payable and performable. Guarantor hereby irrevocably submits generally and unconditionally for Guarantor and in respect of Guarantor's property to the nonexclusive jurisdiction of any state court, or any United States federal court, sitting in the state specified in the first sentence of this Section and to the jurisdiction of any state or United States federal court sitting in the state in which any of the Land is located, over any suit, action or proceeding arising out of or relating to this Guaranty or the Guaranteed Obligations. Guarantor hereby irrevocably waives, to the fullest extent permitted by law, any objection that Guarantor may now or hereafter have to the laying of venue in any such court and any claim that any such court is an inconvenient forum. Final judgment in any such suit, action or proceeding brought in any such court shall be conclusive and binding upon Guarantor and may be enforced in any court in which Guarantor is subject to jurisdiction. To the extent permitted by applicable law, Guarantor hereby agrees and consents that, in addition to any methods of service of process provided for under applicable law, all service of process in any such suit, action or proceeding in any state court, or any United States federal court, sitting in the state specified in the first sentence of this Section may be made by certified or registered mail, return receipt requested, directed to Guarantor at the address set forth at the end of this Guaranty, or at a subsequent address of which Lender receives actual notice from Guarantor in accordance with the notice provisions hereof, and service so made shall be complete five (5) days after the same shall have been so mailed. Nothing herein shall affect the right of Lender to serve process in any manner permitted by law or limit the right of Lender to bring proceedings against Guarantor in any other court or jurisdiction. Guarantor hereby releases, to the extent permitted by applicable law, all errors and all rights of exemption, appeal, stay of execution, inquisition, and other rights to which the Guarantor may otherwise be entitled under the laws of the United States of America or

any State or possession of the United States of America now in force or which may hereinafter be enacted.

10. **Invalidity of Certain Provisions.** If any provision of this Guaranty or the application thereof to any Person or circumstance shall, for any reason and to any extent, be declared to be invalid or unenforceable, neither the remaining provisions of this Guaranty nor the application of such provision to any other Person or circumstance shall be affected thereby, and the remaining provisions of this Guaranty, or the applicability of such provision to other Persons or circumstances, as applicable, shall remain in effect and be enforceable to the maximum extent permitted by applicable law.

11. **Attorneys' Fees and Costs of Collection.** Guarantor shall pay on demand all attorneys' fees and all other costs and expenses incurred by Lender in the enforcement of or preservation of Lender's rights under this Guaranty including, without limitation, all attorneys' fees and expenses, investigation costs, and all court costs, whether or not suit is filed hereon, or whether at maturity or by acceleration, or whether before or after maturity, or whether in connection with bankruptcy, insolvency or appeal, or whether in connection with the collection and enforcement of this Guaranty against any other Guarantor, if there be more than one. Guarantor agrees to pay interest on any expenses or other sums due to Lender under this Section 11 that are not paid when due, at a rate per annum equal to the interest rate provided for in the Note. Guarantor's obligations and liabilities under this Section 11 shall survive any payment or discharge in full of the Guaranteed Obligations.

12. **Payments.** All sums payable under this Guaranty shall be paid in lawful money of the United States of America that at the time of payment is legal tender for the payment of public and private debts.

13. **Controlling Agreement.** Guarantor hereby agrees and contracts in writing to pay all interest required by this Guaranty, and that all such interest will constitute interest paid at an agreed rate. It is not the intention of Lender or Guarantor to obligate Guarantor to pay interest in excess of that lawfully permitted to be paid by Guarantor under applicable law. Should it be determined that any portion of the Guaranteed Obligations or any other amount payable by Guarantor under this Guaranty constitutes interest in excess of the maximum amount of interest that Guarantor, in Guarantor's capacity as guarantor, may lawfully be required to pay under applicable law, the obligation of Guarantor to pay such interest shall automatically be limited to the payment thereof in the maximum amount so permitted under applicable law. The provisions of this Section 13 shall override and control all other provisions of this Guaranty and of any other agreement between Guarantor and Lender.

14. **Representations, Warranties, and Covenants of Guarantor.**

(a) Guarantor hereby represents, warrants, and covenants that (a) Guarantor has a financial interest in the Borrower and will derive a material and substantial benefit, directly or indirectly, from the making of the Loan to Borrower and from the making of this Guaranty by Guarantor; (b) this Guaranty is duly authorized and valid, and is binding upon and enforceable against Guarantor; (c) Guarantor is not, and the execution, delivery and performance by Guarantor of this Guaranty will not cause Guarantor to be, in violation of or in default with

respect to any law or in default (or at risk of acceleration of indebtedness) under any material agreement or restriction by which Guarantor is bound or affected; (d) Guarantor has full power and authority to enter into and perform this Guaranty; (e) Guarantor will indemnify Lender from any loss, cost or expense as a result of any representation or warranty of the Guarantor being false, incorrect, incomplete or misleading in any material respect; (f) there is no litigation pending or, to the knowledge of Guarantor, threatened before or by any tribunal against or affecting Guarantor which could materially interfere with Guarantor's performance of the Guaranteed Obligations; (g) all financial statements and information heretofore furnished to Lender by Guarantor do, and all financial statements and information hereafter furnished to Lender by Guarantor will, fully and accurately present the condition (financial or otherwise) of Guarantor as of their dates and the results of Guarantor's operations for the periods therein specified, and, since the date of the most recent financial statements of Guarantor heretofore furnished to Lender, no material adverse change has occurred in the financial condition of Guarantor, nor, except as heretofore disclosed in writing to Lender, has Guarantor incurred any material liability, direct or indirect, fixed or contingent; (h) after giving effect to this Guaranty, Guarantor is solvent, is not engaged or about to engage in business or a transaction for which the property of Guarantor is an unreasonably small capital, and does not intend to incur or believe that it will incur debts that will be beyond its ability to pay as such debts mature; (i) Lender has no duty at any time to investigate or inform Guarantor of the financial or business condition or affairs of Borrower or any change therein, and Guarantor will keep fully apprised of Borrower's financial and business condition; (j) Guarantor acknowledges and agrees that Guarantor may be required to pay and perform the Guaranteed Obligations in full without assistance or support from Borrower or any other Person; and (k) Guarantor has read and fully understands the provisions contained in the Note, the Loan Agreement, the Deed of Trust, the Environmental Agreement, and the other Loan Documents. Guarantor's representations, warranties and covenants are a material inducement to Lender to enter into the other Loan Documents and shall survive the execution hereof and any bankruptcy, foreclosure, transfer of security or other event affecting Borrower, Guarantor, any other party, or any security for all or any part of the Guaranteed Obligations.

(b) Guarantor hereby agrees as follows:

(i) to maintain during the life of the Loan at the end of each fiscal quarter, unpledged cash equivalents as determined by generally accepted accounting principles, and marketable securities ("Liquidity") of not less than One Million And No/100 Dollars (\$1,000,000.00); and

(ii) to maintain at the end of each fiscal quarter a Tangible Net Worth equal to at least Fifty Million And No/100 Dollars (\$50,000,000.00). "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 organization expense, treasury stock, unamortized debt discount and expense, deferred research and development costs, deferred marketing expenses, and other like intangibles) plus subordinated debt, less total liabilities, including but not limited to accrued and deferred income taxes, and any reserves against assets; and

(iii) to provide to Lender, within forty-five (45) days after the close of each fiscal quarter, a covenant compliance certificate, in form and detail satisfactory to Lender, certifying Guarantor's compliance with the covenants described in subparagraph (i)-(ii) above.

15. Not ces. All notices, requests, consents, demands and other communications required or which any party desires to give hereunder or under any other Loan Document shall be in writing and, unless otherwise specifically provided in such other Loan Document, shall be deemed sufficiently given or furnished if delivered by personal delivery, by courier, or by registered or certified United States mail, postage prepaid, addressed to the party to whom directed at the addresses specified in this Guaranty (unless changed by similar notice in writing given by the particular party whose address is to be changed) or by telegram, telex, or facsimile. Any such notice or communication shall be deemed to have been given either at the time of personal delivery or, in the case of courier or mail, as of the date of first attempted delivery at the address and in the manner provided herein, or, in the case of telegram, telex or facsimile, upon receipt; provided that, service of a notice required by any applicable statute shall be considered complete when the requirements of that statute are met. Notwithstanding the foregoing, no notice of change of address shall be effective except upon actual receipt. This Section shall not be construed in any way to affect or impair any waiver of notice or demand provided in this Guaranty or in any Loan Document or to require giving of notice or demand to or upon any Person in any situation or for any reason.

16. Cumulative Rights. The exercise by Lender of any right or remedy hereunder or under any other Loan Document, or at law or in equity, shall not preclude the concurrent or subsequent exercise of any other right or remedy. Lender shall have all rights, remedies and recourses afforded to Lender by reason of this Guaranty or any other Loan Document or by law or equity or otherwise, and the same (a) shall be cumulative and concurrent, (b) may be pursued separately, successively or concurrently against Guarantor or others obligated for the Guaranteed Obligations, or any part thereof, or against any one or more of them, or against any security or otherwise, at the sole and absolute discretion of Lender, (c) may be exercised as often as occasion therefor shall arise, it being agreed by Guarantor that the exercise of, discontinuance of the exercise of or failure to exercise any of such rights, remedies, or recourses shall in no event be construed as a waiver or release thereof or of any other right, remedy, or recourse, and (d) are intended to be, and shall be, nonexclusive. No waiver of any default on the part of Guarantor or of any breach of any of the provisions of this Guaranty or of any other document shall be considered a waiver of any other or subsequent default or breach, and no delay or omission in exercising or enforcing the rights and powers granted herein or in any other document shall be construed as a waiver of such rights and powers, and no exercise or enforcement of any rights or powers hereunder or under any other document shall be held to exhaust such rights and powers, and every such right and power may be exercised from time to time. The granting of any consent, approval or waiver by Lender shall be limited to the specific instance and purpose therefor and shall not constitute consent or approval in any other instance or for any other purpose. No notice to or demand on Guarantor in any case shall of itself entitle Guarantor to any other or further notice or demand in similar or other circumstances. No provision of this Guaranty or any right, remedy or recourse of Lender with respect hereto, or any default or breach, can be waived, nor can this Guaranty or Guarantor be released or discharged in any way

or to any extent, except specifically in each case by a writing intended for that purpose (and which refers specifically to this Guaranty) executed, and delivered to Guarantor, by Lender.

17. **Term of Guaranty.** This Guaranty shall continue in effect until all the Guaranteed Obligations are fully and finally paid, performed and discharged, except that, and notwithstanding any return of this Guaranty to Guarantor, this Guaranty shall continue in effect (i) with respect to any of the Guaranteed Obligations that survive the full and final payment of the indebtedness evidenced by the Note, (ii) with respect to all obligations and liabilities of Guarantor under Section 11 and (iii) as provided in Section 4(b).

18. **Financial Statements.** As used in this Section, "Financial Statements" means (i) for each reporting party other than an individual, a balance sheet, income statement and amount and sources of contingent liabilities, a reconciliation of changes in equity and liquidity verification, and, unless Lender otherwise consents, consolidated and consolidating statements if the reporting party is a holding company or a parent of a subsidiary entity; and (ii) for each reporting party who is an individual, a balance sheet, statements of amount and sources of contingent liabilities. Each party for whom Financial Statements are required is a "reporting party" and a specified period to which the required Financial Statements relate is a "reporting period". Guarantor shall provide or cause to be provided to Lender the following:

(a) If requested by Lender, for each fiscal year of such reporting party, as soon as reasonably practicable and in any event within one hundred twenty (120) days after the close of each fiscal year unqualified audited financial statements of Guarantor, and for each fiscal quarter, as soon as reasonably practicable and in any event within forty-five (45) days after the close of each such reporting period company prepared financial statements of Guarantor.

(b) From time to time promptly after Lender's request, such additional information, reports and statements regarding the business operations and financial condition of each reporting party as Lender may reasonably request.

All Financial Statements shall be in form and detail satisfactory to Lender and shall contain or be attached to the signed and dated written certification of the reporting party in form satisfactory to Lender to certify that the Financial Statements are furnished to Lender in connection with the extension of credit by Lender and constitute a true and correct statement of the reporting party's financial position. All certifications and signatures on behalf of corporations, partnerships or other entities shall be by a representative of the entity satisfactory to Lender. All Financial Statements for a reporting party who is an individual shall be on Lender's then-current personal financial statement form or in another form satisfactory to Lender, and shall clearly designate any sole and separate or community property. All Financial Statements shall be audited or certified, as required by Lender, without any qualification or exception not acceptable to Lender, by independent certified public accountants acceptable to Lender, and shall contain all reports and disclosures required by generally accepted accounting principles for a fair presentation.

All assets shown on the Financial Statements provided by Guarantor, unless clearly designated to the contrary shall, be conclusively deemed to be free and clear of any exemption or any claim of exemption of Guarantor at the date of the Financial Statements and at all times thereafter. Acceptance of any Financial Statement by Lender, whether or not in the form prescribed herein,

shall be relied upon by Lender in the administration, enforcement, and extension of the Guaranteed Obligations.

19. **Disclosure of Information.** Lender may sell or offer to sell the Loan or interests in the Loan to one or more assignees or participants and may disclose to any such assignee or participant or prospective assignee or participant, to Lender's affiliates, to any regulatory body having jurisdiction over Lender and to any other parties as necessary or appropriate in Lender's reasonable judgment, any information Lender now has or hereafter obtains pertaining to the Guaranteed Obligations, this Guaranty, or Guarantor, including, without limitation, information regarding any security for the Guaranteed Obligations or for this Guaranty, credit or other information on Guarantor, Borrower, and/or any other party liable, directly or indirectly, for any part of the Guaranteed Obligations. Notwithstanding the foregoing, the disclosure of information regarding the Guarantor shall be subject to the confidentiality provisions of Section 6.7 of the Loan Agreement.

20. **Right of Set-Off.** Upon the occurrence and during the continuance of any Default, however defined, in the payment or performance when due of any of the Guaranteed Obligations, Lender is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law, without notice to any Person (any such notice being expressly waived by Guarantor to the fullest extent permitted by applicable law), to set off and apply any and all deposits, funds, or assets at any time held and other indebtedness at any time owing by Lender to or for the credit or the account of Guarantor against any and all of the obligations of Guarantor now or hereafter existing under this Guaranty, whether or not Lender shall have made any demand under this Guaranty or exercised any other right or remedy hereunder. Lender will promptly notify Guarantor after any such set-off and application made by Lender, provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of Lender under this Section 20 are in addition to the other rights and remedies (including other rights of set-off) that Lender may have and every right of setoff and lien shall continue in full force and effect until such right of setoff or lien is specifically waived or released by an instrument in writing executed by Lender.

21. **Subrogation.** Notwithstanding anything to the contrary contained herein, Guarantor shall not have any right of subrogation in or under any of the Loan Documents or to participate in any way therein, or in any right, title or interest in and to any security or right of recourse for the Indebtedness or any right to reimbursement, exoneration, contribution, indemnification or any similar rights, until the Indebtedness has been fully and finally paid. This waiver is given to induce Lender to make the Loan to Borrower.

22. **Further Assurances.** Guarantor at Guarantor's expense will promptly execute and deliver to Lender upon Lender's request all such other and further documents, agreements, and instruments in compliance with or accomplishment of the agreements of Guarantor under this Guaranty.

23. **No Fiduciary Relationship.** The relationship between Lender and Guarantor is solely that of lender and guarantor. Lender has no fiduciary or other special relationship with or duty to Guarantor and none is created hereby or may be inferred from any course of dealing or act or omission of Lender.

24. **Interpretation.** If this Guaranty is signed by more than one Person as "Guarantor," then the term "Guarantor" as used in this Guaranty shall refer to all such Persons, jointly and severally, and all promises, agreements, covenants, waivers, consents, representations, warranties and other provisions in this Guaranty are made by and shall be binding upon each and every such Person, jointly and severally, and, with respect to any Guarantors constituting a marital community, their sole and separate and community property, and Lender may pursue any Guarantor hereunder without being required (i) to pursue any other Guarantor hereunder or (ii) pursue rights and remedies under the Deed of Trust and/or applicable law with respect to the Property or any other Loan Documents. The term "Lender" shall be deemed to include any subsequent holder(s) of the Note. Whenever the context of any provisions hereof shall require it, words in the singular shall include the plural, words in the plural shall include the singular, and pronouns of any gender shall include the other gender. Captions and headings in the Loan Documents are for convenience only and shall not affect the construction of the Loan Documents. All references in this Guaranty to Schedules, Articles, Sections, Subsections, paragraphs and subparagraphs refer to the respective subdivisions of this Guaranty, unless such reference specifically identifies another document. The terms "herein," "hereof," "hereto," "hereunder" and similar terms refer to this Guaranty and not to any particular Section or subsection of this Guaranty. The terms "include" and "including" shall be interpreted as if followed by the words "without limitation." All references in this Guaranty to sums denominated in dollars or with the symbol "\$" refer to the lawful currency of the United States of America, unless such reference specifically identifies another currency. For purposes of this Guaranty, "Person" or "Persons" shall include firms, associations, partnerships (including limited partnerships), joint ventures, trusts, corporations, limited liability companies, and other legal entities, including governmental bodies, agencies, or instrumentalities, as well as natural persons.

25. **Time of Essence.** Time shall be of the essence in this Guaranty with respect to all of Guarantor's obligations hereunder.

26. **Counterparts.** This Guaranty may be executed in multiple counterparts, each of which, for all purposes, shall be deemed an original, and all of which taken together shall constitute but one and the same agreement.

27. **Guarantor.** The obligations hereunder of Guarantor in such capacities shall be fully enforceable against all assets now or hereafter held by Guarantor.

28. **Entire Agreement.** This Guaranty embodies the entire agreement between Lender and Guarantor with respect to the guaranty by Guarantor of the Guaranteed Obligations. This Guaranty supersedes all prior agreements and understandings, if any, with respect to the guaranty by Guarantor of the Guaranteed Obligations. No condition or conditions precedent to the effectiveness of this Guaranty exist. This Guaranty shall be effective upon execution by Guarantor and delivery to Lender. This Guaranty may not be modified, amended or superseded except in a writing signed by Lender and Guarantor referencing this Guaranty by its date and specifically identifying the portions hereof that are to be modified, amended or superseded.

29. **WAIVER OF JURY TRIAL.** GUARANTOR HEREBY WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH GUARANTOR AND LENDER MAY BE PARTIES ARISING OUT OF, IN CONNECTION WITH, OR IN

ANY WAY PERTAINING TO, THIS GUARANTY, THE NOTE, THE DEED OF TRUST, THE LOAN AGREEMENT AND ANY OTHER LOAN DOCUMENT. IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS GUARANTY. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY GUARANTOR, AND GUARANTOR HEREBY REPRESENTS THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. GUARANTOR FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS GUARANTY AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

30. Mandatory Arbitration. Any controversy or claim between or among the parties hereto including but not limited to those arising out of or relating to this Guaranty or any related agreements or instruments, including any claim based on or arising from an alleged tort, shall be determined by binding arbitration in accordance with the Federal Arbitration Act (or if not applicable, the applicable state law), the Rules of Practice and Procedure for the Arbitration of Commercial Disputes of Endispute, Inc., doing business as "J.A.M.S./Endispute" ("J.A.M.S."), as amended from time to time, and the "Special Rules" set forth below. In the event of any inconsistency, the Special Rules shall control. Judgment upon any arbitration award may be entered in any court having jurisdiction. Any party to this Guaranty may bring an action, including a summary or expedited proceeding, to compel arbitration of any controversy or claim to which this agreement applies in any court having jurisdiction over such action.

(a) Special Rules. The arbitration shall be conducted in Phoenix, Arizona, administered by J.A.M.S. who will appoint an arbitrator; if J.A.M.S. is unable or legally precluded from administering the arbitration, then the American Arbitration Association will serve. All arbitration hearings will be commenced within ninety (90) days of the demand for arbitration; further, the arbitrator shall only, upon a showing of cause, be permitted to extend the commencement of such hearing for up to an additional sixty (60) days.

(b) Reservations of Rights. Nothing in this Guaranty shall be deemed to (i) limit the applicability of any otherwise applicable statutes of limitation or any waivers contained in this Guaranty; or (ii) be a waiver by Lender of the protection afforded to it by 12 U.S.C. Sec. 91 or any substantially equivalent state law; or (iii) limit the right of Lender (A) to exercise self help remedies such as (but not limited to) setoff, or (B) to foreclose against any real or personal property collateral, or (C) to obtain from a court provisional or ancillary remedies such as (but not limited to) injunctive relief or the appointment of a receiver. Lender may exercise such self help rights, foreclose upon such property, or obtain such provisional or ancillary remedies before, during or after the pendency of any arbitration proceeding brought pursuant to this Guaranty. At Lender's option, foreclosure under a deed of trust or mortgage may be accomplished by any of the following: the exercise of a power of sale under the deed of trust



or mortgage, or by judicial sale under the deed of trust or mortgage, or by judicial foreclosure. Neither the exercise of self help remedies nor the institution or maintenance of an action for foreclosure or provisional or ancillary remedies shall constitute a waiver of the right of any party, including the claimant in any such action, to arbitrate the merits of the controversy or claim occasioning resort to such remedies.

No provision in the Loan Documents regarding waiver of jury trial or submission to jurisdiction and/or venue in any court is intended or shall be construed to be in derogation of the provisions in any Loan Document for arbitration of any controversy or claim.

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

IN WITNESS WHEREOF, Guarantor has duly executed this Guaranty under seal as of the date first written above.

Address of Guarantor:

2555 East Camelback Road, Suite 800  
Phoenix, Arizona 85016-9267  
Attention: Senior Vice President  
Real Estate Finance and Sales

GUARANTOR:

OPUS WEST CORPORATION, a  
Minnesota corporation

By: Charles Vogel

Name: Charles Vogel

Title: Senior Vice President

Address of Lender:

Richter-Schroeder Company, Inc.  
1110 North Old World Third Street  
Suite 320  
Milwaukee, Wisconsin 53203

# EXHIBIT "C"

**AMENDED AND RESTATED GUARANTY AGREEMENT**  
(Hermosa Village Senior Apartments, Tucson, AZ - Construction Loan)

THIS AMENDED AND RESTATED GUARANTY AGREEMENT (this "Guaranty") is made as of the 13th day of June, 2007, by OPUS WEST CORPORATION, a Minnesota corporation ("Guarantor"), in favor of M&I MARSHALL & ILSLEY BANK, a Wisconsin banking corporation ("Lender").

**PRELIMINARY STATEMENTS**

HVSL TUCSON, L.L.C., a Delaware limited liability company ("Borrower"), has executed and delivered to Richter-Schroeder Company, Inc., a Wisconsin corporation, a Deed of Trust Note dated October 30, 2006 in the principal amount of \$8,000,000.00 payable by Borrower to the order of Lender, and subsequently assigned to Lender (the "Existing Note") in order to evidence a loan in said principal amount made by Richter-Schroeder Company, Inc., a Wisconsin corporation, to Borrower, and subsequently assigned to Lender ("Land Loan") in order to permit the Borrower to finance its acquisition of certain land in Tucson, Arizona (the "Land").

Pursuant to a Construction Loan Agreement dated as of June 13, 2007 (as the same may be amended from time to time, the "Construction Loan Agreement"), the Borrower has requested, and the Lender has agreed to increase and extend the Land Loan in order to permit the Borrower to construct improvements on the Land, and in connection therewith Borrower has executed and delivered to Lender an Amended and Restated Deed of Trust Note in the principal amount of \$44,200,000.00 payable by Borrower to the order of the Lender (such note, as it may hereafter be renewed, extended, supplemented, increased or modified and in effect from time to time, and all other notes given in substitution therefore, or in modification, renewal, or extension thereof, in whole or in part, is herein called the "Note").

A condition precedent to Lender's obligation to make the increased loan to Borrower pursuant to the Construction Loan Agreement (the "Loan") is Guarantor's execution and delivery to Lender of this Guaranty.

Any capitalized term used and not defined in this Guaranty shall have the meaning given to such term in the Construction Loan Agreement.

NOW THEREFORE the Existing Guaranty is hereby amended, restated and superseded in its entirety as of the date first written above to read as follows and the obligations set forth in the Existing Guaranty are hereby terminated in favor of the obligations set forth herein.

**STATEMENT OF AGREEMENTS**

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and as a material inducement to Lender to extend credit to Borrower, Guarantor hereby guarantees to Lender the prompt and full payment and performance of the indebtedness and obligations described below in this Guaranty (collectively called the "Guaranteed Obligations"), this Guaranty being upon the following terms and conditions:

1. **Guaranty of Payment.** Guarantor hereby unconditionally and irrevocably guarantees to Lender the punctual payment when due, whether by lapse of time, by acceleration of maturity, or otherwise, of all principal, interest (including interest accruing after the commencement of any bankruptcy or insolvency proceeding by or against Borrower, whether or not allowed in such proceeding), fees, late charges, costs, expenses, indemnification indebtedness, and other sums of money now or hereafter due and owing, or which Borrower is obligated to pay, pursuant to (a) the terms of the Note, the Loan Agreement, the Deed of Trust, the Environmental Agreement, any application, agreement, note or other document executed and delivered in connection with any Loan Documents, including the making of required Borrower's Deposits, and any indemnifications contained in the Loan Documents, now or hereafter existing, and (b) all renewals, extensions, refinancings, modifications, supplements or amendments of such indebtedness, or any of the Loan Documents, or any part thereof (the indebtedness described in clauses (a) and (b) above in this Section 1 is herein collectively called the "Indebtedness"). This Guaranty covers the Indebtedness, whether presently outstanding or arising subsequent to the date hereof, including all amounts advanced by Lender in stages or installments. The guaranty of Guarantor as set forth in this Section 1 is a continuing guaranty of payment and not a guaranty of collection.

2. **Guaranty of Performance.** Guarantor additionally hereby unconditionally and irrevocably guarantees to Lender the timely performance of all other obligations of Borrower under all of the Loan Documents, including, without limiting the generality of the foregoing, that Borrower will duly and punctually perform and observe all other terms, covenants, and conditions of the Note, the Deed of Trust, the Loan Agreement, the Environmental Agreement or any other Loan Document whether according to the present terms thereof, at any earlier or accelerated date or dates as provided therein, or pursuant to any extension of time or to any change or changes in the terms, covenants, or conditions thereof now or hereafter made or granted.

3. **Primary Liability of Guarantor.**

(a) This Guaranty is an absolute, irrevocable and unconditional guaranty of payment and performance. Guarantor shall be liable for the payment and performance of the Guaranteed Obligations as a primary obligor. This Guaranty shall be effective as a waiver of, and Guarantor hereby expressly waives, any and all rights to which Guarantor may otherwise have been entitled under any suretyship laws in effect from time to time, including any right or privilege, whether existing under statute, at law or in equity, to require Lender to take prior recourse or proceedings against any collateral, security or Person (hereinafter defined) whatsoever.

(b) Guarantor hereby agrees that in the event of (i) default by Borrower in payment or performance of the Guaranteed Obligations, or any part thereof, when such indebtedness or performance becomes due, either by its terms or as the result of the exercise of any power to accelerate; (ii) the failure of Guarantor to perform completely and satisfactorily the covenants, terms and conditions of any of the Guaranteed Obligations after the expiration of all applicable cure and grace periods; (iii) the death, incompetency, dissolution or insolvency of Guarantor; (iv) the inability of Guarantor to pay debts as they mature; (v) an assignment by Guarantor for the benefit of creditors; (vi) the institution of any proceeding by or against

Guarantor in bankruptcy or for a reorganization or an arrangement with creditors, or for the appointment of a receiver, trustee or custodian for any of them or for any of their respective properties; (vii) the determination by Lender in good faith that a material adverse change has occurred in the financial condition of Guarantor that materially affects the Guarantor's ability to perform the Guaranteed Obligations; (viii) the entry of a judgment against Guarantor that materially affects its ability to pay or perform the Guaranteed Obligations and that is not discharged or bonded against within a period of thirty (30) days; (ix) a writ or order of attachment, levy or garnishment is issued against Guarantor; (x) the falsity in any material respect of, or any material omission in, any representation made to Lender by Guarantor; or (xi) any transfer of assets of Guarantor that would materially and adversely affect Guarantor's obligations hereunder, without the Lender's prior consent (except for transfers of assets for estate planning purposes valued at less than \$50,000 per year, customary political and charitable contributions, and transfers for which the Guarantor receives consideration substantially equivalent to the fair market value of the transferred asset) (individually and collectively an "Event of Default"); then upon the occurrence of such Event of Default, the Guaranteed Obligations, for purposes of this Guaranty, shall be deemed immediately due and payable at the election of Lender, and Guarantor shall, on demand and without presentment, protest, notice of protest, further notice of nonpayment or of dishonor, default or nonperformance, or notice of acceleration or of intent to accelerate, or any other notice whatsoever, without any notice having been given to Guarantor previous to such demand of the acceptance by Lender of this Guaranty, and without any notice having been given to Guarantor previous to such demand of the creating or incurring of such indebtedness or of such obligation to perform, all such notices being hereby waived by Guarantor, pay the amount due to Lender or perform or observe the agreement, covenant, term or condition, as the case may be; and pay all damages and all costs and expenses that may arise in consequence of such Event of Default (including, without limitation, all attorneys' fees and expenses, investigation costs, court costs, and any and all other costs and expenses incurred by Lender in connection with the collection and enforcement of the Note or any other Loan Document), whether or not suit is filed thereon, or whether at maturity or by acceleration, or whether before or after maturity, or whether in connection with bankruptcy, insolvency or appeal. It shall not be necessary for Lender, in order to enforce such payment or performance by Guarantor, first to institute suit or pursue or exhaust any rights or remedies against Borrower or others liable on such indebtedness or for such performance, or to enforce any rights against any security that shall ever have been given to secure such indebtedness or performance, or to join Borrower or any others liable for the payment or performance of the Guaranteed Obligations or any part thereof in any action to enforce this Guaranty, or to resort to any other means of obtaining payment or performance of the Guaranteed Obligations; provided, however, that nothing herein contained shall prevent Lender from judicially or non-judicially foreclosing the Deed of Trust or from exercising any other rights thereunder. If such foreclosure or other remedy is availed of, Guarantor agrees, subject only to conflicting applicable law which may not be waived by Guarantor, that only the net proceeds therefrom, after deduction of all charges and expenses of every kind and nature whatsoever, shall be applied in reduction of the amount due on the Note and Deed of Trust, and Lender shall not be required to institute or prosecute proceedings to recover any deficiency as a condition of payment hereunder or enforcement hereof. At any sale of the Property or other collateral given for the Indebtedness or any part thereof, whether by foreclosure or otherwise, Lender may at its discretion purchase all or any part of the Property or collateral so sold or offered for sale for its own account and may,

in payment of all or any portion of the amount bid therefor, credit bid all or any portion of the Indebtedness in accordance with applicable law and deduct any successful credit bid from the balance due it pursuant to the terms of the Note and Deed of Trust.

(c) Suit may be brought or demand may be made against Borrower or against all parties who have signed this Guaranty or any other guaranty covering all or any part of the Guaranteed Obligations, or against any one or more of them, separately or together, without impairing the rights of Lender against any party hereto. Any time that Lender is entitled to exercise its rights or remedies hereunder, it may in its discretion elect to demand payment and/or performance. If Lender elects to demand performance, it shall at all times thereafter have the right to demand payment until all of the Guaranteed Obligations have been paid and performed in full. If Lender elects to demand payment, it shall at all times thereafter have the right to demand performance until all of the Guaranteed Obligations have been paid and performed in full.

4. Certain Agreements and Waivers by Guarantor.

(a) Guarantor hereby agrees that neither Lender's rights or remedies nor Guarantor's obligations under the terms of this Guaranty shall be released, diminished, impaired, reduced or affected by any one or more of the following events, actions, facts, or circumstances, and the liability of Guarantor under this Guaranty shall be absolute and unconditional irrespective of:

(i) any limitation of liability or recourse in any other Loan Document or arising under any law;

(ii) any claim or defense that this Guaranty was made without consideration or is not supported by adequate consideration;

(iii) the taking or accepting of any other security or guaranty for, or right of recourse with respect to, any or all of the Guaranteed Obligations;

(iv) any homestead exemption or any other exemption under applicable law;

(v) any release, surrender, abandonment, exchange, alteration, sale or other disposition, subordination, deterioration, waste, failure to protect or preserve, impairment, or loss of, or any failure to create or perfect any lien or security interest with respect to, or any other dealings with, any collateral or security at any time existing or purported, believed or expected to exist in connection with any or all of the Guaranteed Obligations, including any impairment of Guarantor's recourse against any Person or collateral;

(vi) whether express or by operation of law, any partial release of the liability of Guarantor hereunder, or if one or more other guaranties are now or hereafter obtained by Lender covering all or any part of the Guaranteed Obligations, any complete or partial release of any one or more of such guarantors under any such other guaranty, or any complete or partial release of Borrower or

any other party liable, directly or indirectly, for the payment or performance of any or all of the Guaranteed Obligations;

(vii) the death, insolvency, bankruptcy, disability, dissolution, liquidation, termination, receivership, reorganization, merger, consolidation, change of form, structure or ownership, sale of all assets, or lack of corporate, partnership or other power of Borrower or any other party at any time liable for the payment or performance of any or all of the Guaranteed Obligations;

(viii) either with or without notice to or consent of Guarantor, and on one or more occasions: any renewal, extension, modification, supplement, subordination or rearrangement of the terms of any or all of the Guaranteed Obligations and/or any of the Loan Documents, including, without limitation, material alterations of the terms of payment (including changes in maturity date(s) and interest rate(s)) or performance (including changes in the Plans and other terms or aspects of construction of the Improvements) or any other terms thereof, or any waiver, termination, or release of, or consent to departure from, any of the Loan Documents or any other guaranty of any or all of the Guaranteed Obligations, or any adjustment, indulgence, forbearance, or compromise that may be granted from time to time by Lender to Borrower, Guarantor, and/or any other Person at any time liable for the payment or performance of any or all of the Guaranteed Obligations;

(ix) any neglect, lack of diligence, delay, omission, failure, or refusal of Lender to take or prosecute (or in taking or prosecuting) any action for the collection or enforcement of any of the Guaranteed Obligations, or to foreclose or take or prosecute any action to foreclose (or in foreclosing or taking or prosecuting any action to foreclose) upon any security therefor, or to exercise (or in exercising) any other right or power with respect to any security therefor, or to take or prosecute (or in taking or prosecuting) any action in connection with any Loan Document, or any failure to sell or otherwise dispose of in a commercially reasonable manner any collateral securing any or all of the Guaranteed Obligations;

(x) any failure of Lender to notify Guarantor of any creation, renewal, extension, rearrangement, modification, supplement, subordination, or assignment of the Guaranteed Obligations or any part thereof, or of any Loan Document, or of any release of or change in any security, or of any other action taken or refrained from being taken by Lender against Borrower or any security or other recourse, or of any new agreement between Lender and Borrower, it being understood that Lender shall not be required to give Guarantor any notice of any kind under any circumstances with respect to or in connection with the Guaranteed Obligations, any and all rights to notice Guarantor may have otherwise had being hereby waived by Guarantor, and the Guarantor shall be responsible for obtaining for itself information regarding the Borrower, including, but not limited to, any changes in the business or financial condition of the Borrower, and the Guarantor acknowledges and agrees that the Lender shall have

no duty to notify the Guarantor of any information which the Lender may have concerning the Borrower.

(xi) if for any reason Lender is required to refund any payment by Borrower to any other party liable for the payment or performance of any or all of the Guaranteed Obligations or pay the amount thereof to someone else;

(xii) the making of advances by Lender to protect its interest in the Property, preserve the value of the Property or for the purpose of performing any term or covenant contained in any of the Loan Documents;

(xiii) the existence of any claim, counterclaim, set-off or other right that Guarantor may at any time have against Borrower, Lender, or any other Person, whether or not arising in connection with this Guaranty, the Note, the Loan Agreement, or any other Loan Document;

(xiv) the unenforceability of all or any part of the Guaranteed Obligations against Borrower, whether because the Guaranteed Obligations exceed the amount permitted by law or violate any usury law, or because the act of creating the Guaranteed Obligations, or any part thereof, is ultra vires, or because the officers or Persons creating the Guaranteed Obligations acted in excess of their authority, or because of a lack of validity or enforceability of or defect or deficiency in any of the Loan Documents, or because Borrower has any valid defense, claim or offset with respect thereto, or because Borrower's obligation ceases to exist by operation of law, or because of any other reason or circumstance, it being agreed that Guarantor shall remain liable hereon regardless of whether Borrower or any other Person be found not liable on the Guaranteed Obligations, or any part thereof, for any reason (and regardless of any joinder of Borrower or any other party in any action to obtain payment or performance of any or all of the Guaranteed Obligations); or

(xv) any order, ruling or plan of reorganization emanating from proceedings under Title 11 of the United States Code with respect to Borrower or any other Person, including any extension, reduction, composition, or other alteration of the Guaranteed Obligations, whether or not consented to by Lender.

(b) In the event any payment by Borrower or any other Person to Lender is held to constitute a preference, fraudulent transfer or other voidable payment under any bankruptcy, insolvency or similar federal or state law or theory, including any equitable remedy, or if for any other reason Lender is required to refund such payment or pay the amount thereof to any other party, such payment by Borrower or any other party to Lender shall not constitute a release of Guarantor from any liability hereunder, and this Guaranty shall continue to be effective or shall be reinstated (notwithstanding any prior release, surrender or discharge by Lender of this Guaranty or of Guarantor), as the case may be, with respect to, and this Guaranty shall apply to, any and all amounts so refunded by Lender or paid by Lender to another Person (which amounts shall constitute part of the Guaranteed Obligations), and any interest paid by Lender and any attorneys' fees, costs and expenses paid or incurred by Lender in connection with



any such event. It is the intent of Guarantor and Lender that the obligations and liabilities of Guarantor hereunder are absolute and unconditional under any and all circumstances and that until the Guaranteed Obligations are fully and finally paid and performed, and not subject to refund or disgorgement, the obligations and liabilities of Guarantor hereunder shall not be discharged or released, in whole or in part, by any act or occurrence that might, but for the provisions of this Guaranty, be deemed a legal or equitable discharge or release of a guarantor. Lender shall be entitled to continue to hold this Guaranty in its possession for the longer of (i) the period after which any performance of obligations under the Environmental Agreement shall accrue, or (ii) a period of five years from the date the Guaranteed Obligations are paid and performed in full and for so long thereafter as may be necessary to enforce any obligation of Guarantor hereunder and/or to exercise any right or remedy of Lender hereunder.

(c) If acceleration of the time for payment of any amount payable by Borrower under the Note, the Loan Agreement, or any other Loan Document is stayed or delayed by any law or tribunal, all such amounts shall nonetheless be payable by Guarantor on demand by Lender.

(d) Guarantor hereby waives any and all rights to which Guarantor may otherwise have been entitled under any suretyship laws in effect from time to time, including any right or privilege, whether existing under statute, at law or in equity, to require Lender to take prior recourse or proceedings against any collateral, security or Person (as such term is defined in Section 24 below) whatsoever. By way of illustration and not limitation of the waiver in the preceding sentence, Guarantor waives and agrees not to assert or take advantage of the provisions of any of Arizona Revised Statutes Sections 12-1641 through 12-1646, 47-3419 and 47-3605, Rule 17(f) of the Arizona Rules of Civil Procedure, or any similar or analogous other present or future statutory or common law or procedural rule of any jurisdiction relating to guarantors, indemnitors, sureties, co-makers or accommodation parties.

(e) Without limiting the foregoing, or anything else contained in this Guaranty, Guarantor waives all rights and defenses that Guarantor may have because the Guaranteed Obligations are secured by real property. This means, among other things:

(i) That Lender may collect from Guarantor without first foreclosing on any real or personal property collateral pledged by Borrower; and

(ii) If Lender forecloses on any real property collateral pledged by Borrower: (A) the amount of the Guaranteed Obligations may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price; and (B) Lender may collect from Guarantor even if Lender, by foreclosing on the real property collateral, has destroyed any right Guarantor may have to collect from Borrower.

This is an unconditional and irrevocable waiver of any rights and defenses that Guarantor may have because the Guaranteed Obligations are secured by real property.

5. **Subordination.** If, for any reason whatsoever, Borrower is now or hereafter becomes indebted to Guarantor:

(a) such indebtedness and all interest thereon and all liens, security interests and rights now or hereafter existing with respect to property of Borrower securing such indebtedness shall, at all times, be subordinate in all respects to the Guaranteed Obligations and to all liens, security interests and rights now or hereafter existing to secure the Guaranteed Obligations;

(b) Guarantor shall not be entitled to enforce or receive payment, directly or indirectly, of any such indebtedness of Borrower to Guarantor until the Guaranteed Obligations have been fully and finally paid and performed;

(c) Guarantor hereby assigns and grants to Lender a security interest in all such indebtedness and security therefor, if any, of Borrower to Guarantor now existing or hereafter arising, including any dividends and payments pursuant to debtor relief or insolvency proceedings referred to below. In the event of receivership, bankruptcy, reorganization, arrangement or other debtor relief or insolvency proceedings involving Borrower as debtor, Lender shall have the right to prove its claim in any such proceeding so as to establish its rights hereunder and shall have the right to receive directly from the receiver, trustee or other custodian (whether or not a Default shall have occurred or be continuing under any of the Loan Documents), dividends and payments that are payable upon any obligation of Borrower to Guarantor now existing or hereafter arising, and to have all benefits of any security therefor, until the Guaranteed Obligations have been fully and finally paid and performed. If, notwithstanding the foregoing provisions, Guarantor should receive any payment, claim or distribution that is prohibited as provided above in this Section 5, Guarantor shall pay the same to Lender immediately, Guarantor hereby agreeing that it shall receive the payment, claim or distribution in trust for Lender and shall have absolutely no dominion over the same except to pay it immediately to Lender; and

(d) Guarantor shall promptly upon request of Lender from time to time execute such documents and perform such acts as Lender may require to evidence and perfect its interest and to permit or facilitate exercise of its rights under this Section 5, including, but not limited to, execution and delivery of financing statements, proofs of claim, further assignments and security agreements, and delivery to Lender of any promissory notes or other instruments evidencing indebtedness of Borrower to Guarantor. All promissory notes, accounts receivable ledgers or other evidences, now or hereafter held by Guarantor, of obligations of Borrower to Guarantor shall contain a specific written notice thereon that the indebtedness evidenced thereby is subordinated under and is subject to the terms of this Guaranty.

6. **Other Liability of Guarantor or Borrower.** If Guarantor is or becomes liable, by endorsement or otherwise, for any indebtedness owing by Borrower to Lender other than under this Guaranty, such liability shall not be in any manner impaired or affected hereby, and the rights of Lender hereunder shall be cumulative of any and all other rights that Lender may have against Guarantor. If Borrower is or becomes indebted to Lender for any indebtedness other than or in excess of the Indebtedness for which Guarantor is liable under this Guaranty, any payment received or recovery realized upon such other indebtedness of Borrower to Lender may, except to the extent paid by Guarantor on the Indebtedness or specifically required by law or agreement of Lender to be applied to the Indebtedness, in Lender's sole discretion, be applied upon indebtedness of Borrower to Lender other than the Indebtedness. This Guaranty is

independent of (and shall not be limited by) any other guaranty now existing or hereafter given. Further, Guarantor's liability under this Guaranty is in addition to any and all other liability Guarantor may have in any other capacity, including without limitation, its capacity as a general partner.

7. **Lender Assigns.** This Guaranty is for the benefit of Lender and Lender's successors and assigns, and in the event of an assignment of the Guaranteed Obligations, or any part thereof, the rights and benefits hereunder, to the extent applicable to the Guaranteed Obligations so assigned, may be transferred with such Guaranteed Obligations. Guarantor waives notice of any transfer or assignment of the Guaranteed Obligations, or any part thereof, and agrees that failure to give notice of any such transfer or assignment will not affect the liabilities of Guarantor hereunder.

8. **Binding Effect.** This Guaranty is binding not only on Guarantor, but also on Guarantor's heirs, personal representatives, successors and assigns. Upon the death of Guarantor, if Guarantor is a natural person, this Guaranty shall continue against Guarantor's estate as to all of the Guaranteed Obligations, including that portion incurred or arising after the death of Guarantor and shall be provable in full against Guarantor's estate, whether or not the Guaranteed Obligations are then due and payable. If this Guaranty is signed by more than one Person, then all of the obligations of Guarantor arising hereunder shall be jointly and severally binding on each of the undersigned, and their respective heirs, personal representatives, successors and assigns, and the term "Guarantor" shall mean all of such Persons and each of them individually.

9. **Governing Law; Forum; Consent to Jurisdiction.** The validity, enforcement, and interpretation of this Guaranty, shall for all purposes be governed by and construed in accordance with the laws of the State of Arizona and applicable United States federal law, and is intended to be performed in accordance with, and only to the extent permitted by, such laws. All obligations of Guarantor hereunder are payable and performable at the place or places where the Guaranteed Obligations are payable and performable. Guarantor hereby irrevocably submits generally and unconditionally for Guarantor and in respect of Guarantor's property to the nonexclusive jurisdiction of any state court, or any United States federal court, sitting in the state specified in the first sentence of this Section and to the jurisdiction of any state or United States federal court sitting in the state in which any of the Land is located, over any suit, action or proceeding arising out of or relating to this Guaranty or the Guaranteed Obligations. Guarantor hereby irrevocably waives, to the fullest extent permitted by law, any objection that Guarantor may now or hereafter have to the laying of venue in any such court and any claim that any such court is an inconvenient forum. Final judgment in any such suit, action or proceeding brought in any such court shall be conclusive and binding upon Guarantor and may be enforced in any court in which Guarantor is subject to jurisdiction. To the extent permitted by applicable law, Guarantor hereby agrees and consents that, in addition to any methods of service of process provided for under applicable law, all service of process in any such suit, action or proceeding in any state court, or any United States federal court, sitting in the state specified in the first sentence of this Section may be made by certified or registered mail, return receipt requested, directed to Guarantor at the address set forth at the end of this Guaranty, or at a subsequent address of which Lender receives actual notice from Guarantor in accordance with the notice provisions hereof, and service so made shall be complete five (5) days after the same shall have

been so mailed. Nothing herein shall affect the right of Lender to serve process in any manner permitted by law or limit the right of Lender to bring proceedings against Guarantor in any other court or jurisdiction. Guarantor hereby releases, to the extent permitted by applicable law, all errors and all rights of exemption, appeal, stay of execution, inquisition, and other rights to which the Guarantor may otherwise be entitled under the laws of the United States of America or any State or possession of the United States of America now in force or which may hereinafter be enacted.

10. **Invalidity of Certain Provisions.** If any provision of this Guaranty or the application thereof to any Person or circumstance shall, for any reason and to any extent, be declared to be invalid or unenforceable, neither the remaining provisions of this Guaranty nor the application of such provision to any other Person or circumstance shall be affected thereby, and the remaining provisions of this Guaranty, or the applicability of such provision to other Persons or circumstances, as applicable, shall remain in effect and be enforceable to the maximum extent permitted by applicable law.

11. **Attorneys' Fees and Costs of Collection.** Guarantor shall pay on demand all attorneys' fees and all other costs and expenses incurred by Lender in the enforcement of or preservation of Lender's rights under this Guaranty including, without limitation, all attorneys' fees and expenses, investigation costs, and all court costs, whether or not suit is filed hereon, or whether at maturity or by acceleration, or whether before or after maturity, or whether in connection with bankruptcy, insolvency or appeal, or whether in connection with the collection and enforcement of this Guaranty against any other Guarantor, if there be more than one. Guarantor agrees to pay interest on any expenses or other sums due to Lender under this Section 11 that are not paid when due, at a rate per annum equal to the interest rate provided for in the Note. Guarantor's obligations and liabilities under this Section 11 shall survive any payment or discharge in full of the Guaranteed Obligations.

12. **Payments.** All sums payable under this Guaranty shall be paid in lawful money of the United States of America that at the time of payment is legal tender for the payment of public and private debts.

13. **Controlling Agreement.** Guarantor hereby agrees and contracts in writing to pay all interest required by this Guaranty, and that all such interest will constitute interest paid at an agreed rate. It is not the intention of Lender or Guarantor to obligate Guarantor to pay interest in excess of that lawfully permitted to be paid by Guarantor under applicable law. Should it be determined that any portion of the Guaranteed Obligations or any other amount payable by Guarantor under this Guaranty constitutes interest in excess of the maximum amount of interest that Guarantor, in Guarantor's capacity as guarantor, may lawfully be required to pay under applicable law, the obligation of Guarantor to pay such interest shall automatically be limited to the payment thereof in the maximum amount so permitted under applicable law. The provisions of this Section 13 shall override and control all other provisions of this Guaranty and of any other agreement between Guarantor and Lender.

**14. Representations, Warranties, and Covenants of Guarantor.**

(a) Guarantor hereby represents, warrants, and covenants that (a) Guarantor has a financial interest in the Borrower and will derive a material and substantial benefit, directly or indirectly, from the making of the Loan to Borrower and from the making of this Guaranty by Guarantor; (b) this Guaranty is duly authorized and valid, and is binding upon and enforceable against Guarantor; (c) Guarantor is not, and the execution, delivery and performance by Guarantor of this Guaranty will not cause Guarantor to be, in violation of or in default with respect to any law or in default (or at risk of acceleration of indebtedness) under any material agreement or restriction by which Guarantor is bound or affected; (d) Guarantor has full power and authority to enter into and perform this Guaranty; (e) Guarantor will indemnify Lender from any loss, cost or expense as a result of any representation or warranty of the Guarantor being false, incorrect, incomplete or misleading in any material respect; (f) there is no litigation pending or, to the knowledge of Guarantor, threatened before or by any tribunal against or affecting Guarantor which could materially interfere with Guarantor's performance of the Guaranteed Obligations; (g) all financial statements and information heretofore furnished to Lender by Guarantor do, and all financial statements and information hereafter furnished to Lender by Guarantor will, fully and accurately present the condition (financial or otherwise) of Guarantor as of their dates and the results of Guarantor's operations for the periods therein specified, and, since the date of the most recent financial statements of Guarantor heretofore furnished to Lender, no material adverse change has occurred in the financial condition of Guarantor, nor, except as heretofore disclosed in writing to Lender, has Guarantor incurred any material liability, direct or indirect, fixed or contingent; (h) after giving effect to this Guaranty, Guarantor is solvent, is not engaged or about to engage in business or a transaction for which the property of Guarantor is an unreasonably small capital, and does not intend to incur or believe that it will incur debts that will be beyond its ability to pay as such debts mature; (i) Lender has no duty at any time to investigate or inform Guarantor of the financial or business condition or affairs of Borrower or any change therein, and Guarantor will keep fully apprised of Borrower's financial and business condition; (j) Guarantor acknowledges and agrees that Guarantor may be required to pay and perform the Guaranteed Obligations in full without assistance or support from Borrower or any other Person; and (k) Guarantor has read and fully understands the provisions contained in the Note, the Loan Agreement, the Deed of Trust, the Environmental Agreement, and the other Loan Documents. Guarantor's representations, warranties and covenants are a material inducement to Lender to enter into the other Loan Documents and shall survive the execution hereof and any bankruptcy, foreclosure, transfer of security or other event affecting Borrower, Guarantor, any other party, or any security for all or any part of the Guaranteed Obligations.

(b) Guarantor hereby agrees as follows:

(i) to maintain during the life of the Loan at the end of each fiscal quarter, unpledged cash equivalents as determined by generally accepted accounting principles, and marketable securities ("Liquidity") of not less than One Million And No/100 Dollars (\$1,000,000.00); and

(ii) to maintain at the end of each fiscal quarter a Tangible Net Worth equal to at least Fifty Million And No/100 Dollars (\$50,000,000.00).

"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 organization expense, treasury stock, unamortized debt discount and expense, deferred research and development costs, deferred marketing expenses, and other like intangibles) plus subordinated debt, less total liabilities, including but not limited to accrued and deferred income taxes, and any reserves against assets; and

(iii) to provide to Lender, within ninety (90) days after the close of each fiscal quarter, a covenant compliance certificate, in form and detail satisfactory to Lender, certifying Guarantor's compliance with the covenants described in subparagraph (i)-(ii) above.

15. Notices. All notices, requests, consents, demands and other communications required or which any party desires to give hereunder or under any other Loan Document shall be in writing and, unless otherwise specifically provided in such other Loan Document, shall be deemed sufficiently given or furnished if delivered by personal delivery, by courier, or by registered or certified United States mail, postage prepaid, addressed to the party to whom directed at the addresses specified in this Guaranty (unless changed by similar notice in writing given by the particular party whose address is to be changed) or by telegram, telex, or facsimile. Any such notice or communication shall be deemed to have been given either at the time of personal delivery or, in the case of courier or mail, as of the date of first attempted delivery at the address and in the manner provided herein, or, in the case of telegram, telex or facsimile, upon receipt; provided that, service of a notice required by any applicable statute shall be considered complete when the requirements of that statute are met. Notwithstanding the foregoing, no notice of change of address shall be effective except upon actual receipt. This Section shall not be construed in any way to affect or impair any waiver of notice or demand provided in this Guaranty or in any Loan Document or to require giving of notice or demand to or upon any Person in any situation or for any reason.

16. Cumulative Rights. The exercise by Lender of any right or remedy hereunder or under any other Loan Document, or at law or in equity, shall not preclude the concurrent or subsequent exercise of any other right or remedy. Lender shall have all rights, remedies and recourses afforded to Lender by reason of this Guaranty or any other Loan Document or by law or equity or otherwise, and the same (a) shall be cumulative and concurrent, (b) may be pursued separately, successively or concurrently against Guarantor or others obligated for the Guaranteed Obligations, or any part thereof, or against any one or more of them, or against any security or otherwise, at the sole and absolute discretion of Lender, (c) may be exercised as often as occasion therefor shall arise, it being agreed by Guarantor that the exercise of, discontinuance of the exercise of or failure to exercise any of such rights, remedies, or recourses shall in no event be construed as a waiver or release thereof or of any other right, remedy, or recourse, and (d) are intended to be, and shall be, nonexclusive. No waiver of any default on the part of Guarantor or of any breach of any of the provisions of this Guaranty or of any other document shall be considered a waiver of any other or subsequent default or breach, and no delay or omission in exercising or enforcing the rights and powers granted herein or in any other document shall be construed as a waiver of such rights and powers, and no exercise or enforcement of any rights or powers hereunder or under any other document shall be held to exhaust such rights and powers,

and every such right and power may be exercised from time to time. The granting of any consent, approval or waiver by Lender shall be limited to the specific instance and purpose therefor and shall not constitute consent or approval in any other instance or for any other purpose. No notice to or demand on Guarantor in any case shall of itself entitle Guarantor to any other or further notice or demand in similar or other circumstances. No provision of his Guaranty or any right, remedy or recourse of Lender with respect hereto, or any default or breach, can be waived, nor can this Guaranty or Guarantor be released or discharged in any way or to any extent, except specifically in each case by a writing intended for that purpose (and which refers specifically to this Guaranty) executed, and delivered to Guarantor, by Lender.

17. **Term of Guaranty.** This Guaranty shall continue in effect until all the Guaranteed Obligations are fully and finally paid, performed and discharged, except that, and notwithstanding any return of this Guaranty to Guarantor, this Guaranty shall continue in effect (i) with respect to any of the Guaranteed Obligations that survive the full and final payment of the indebtedness evidenced by the Note, (ii) with respect to all obligations and liabilities of Guarantor under Section 11 and (iii) as provided in Section 4(b).

18. **Financial Statements.** As used in this Section, "Financial Statements" means (i) for each reporting party other than an individual, a balance sheet, income statement and amount and sources of contingent liabilities, a reconciliation of changes in equity and liquidity verification, and, unless Lender otherwise consents, consolidated and consolidating statements if the reporting party is a holding company or a parent of a subsidiary entity; and (ii) for each reporting party who is an individual, a balance sheet, statements of amount and sources of contingent liabilities. Each party for whom Financial Statements are required is a "reporting party" and a specified period to which the required Financial Statements relate is a "reporting period". Guarantor shall provide or cause to be provided to Lender the following:

(a) If requested by Lender, for each fiscal year of such reporting party, as soon as reasonably practicable and in any event within one hundred twenty (120) days after the close of each fiscal year unqualified audited financial statements of Guarantor, and for each fiscal quarter, as soon as reasonably practicable and in any event within ninety (90) days after the close of each such reporting period company prepared financial statements of Guarantor.

(b) From time to time promptly after Lender's request, such additional information, reports and statements regarding the business operations and financial condition of each reporting party as Lender may reasonably request.

All Financial Statements shall be in form and detail satisfactory to Lender and shall contain or be attached to the signed and dated written certification of the reporting party in form satisfactory to Lender to certify that the Financial Statements are furnished to Lender in connection with the extension of credit by Lender and constitute a true and correct statement of the reporting party's financial position. All certifications and signatures on behalf of corporations, partnerships or other entities shall be by a representative of the entity satisfactory to Lender. All Financial Statements for a reporting party who is an individual shall be on Lender's then-current personal financial statement form or in another form satisfactory to Lender, and shall clearly designate any sole and separate or community property. All Financial Statements shall be audited or certified, as required by Lender, without any qualification or exception not acceptable to Lender,

by independent certified public accountants acceptable to Lender, and shall contain all reports and disclosures required by generally accepted accounting principles for a fair presentation.

All assets shown on the Financial Statements provided by Guarantor, unless clearly designated to the contrary shall, be conclusively deemed to be free and clear of any exemption or any claim of exemption of Guarantor at the date of the Financial Statements and at all times thereafter. Acceptance of any Financial Statement by Lender, whether or not in the form prescribed herein, shall be relied upon by Lender in the administration, enforcement, and extension of the Guaranteed Obligations.

**19. Disclosure of Information.** Lender may sell or offer to sell the Loan or interests in the Loan to one or more assignees or participants and may disclose to any such assignee or participant or prospective assignee or participant, to Lender's affiliates, to any regulatory body having jurisdiction over Lender and to any other parties as necessary or appropriate in Lender's reasonable judgment, any information Lender now has or hereafter obtains pertaining to the Guaranteed Obligations, this Guaranty, or Guarantor, including, without limitation, information regarding any security for the Guaranteed Obligations or for this Guaranty, credit or other information on Guarantor, Borrower, and/or any other party liable, directly or indirectly, for any part of the Guaranteed Obligations. Notwithstanding the foregoing, the disclosure of information regarding the Guarantor shall be subject to the confidentiality provisions of Section 6.7 of the Loan Agreement.

**20. Right of Set-Off.** Upon the occurrence and during the continuance of any Default, however defined, in the payment or performance when due of any of the Guaranteed Obligations, Lender is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law, without notice to any Person (any such notice being expressly waived by Guarantor to the fullest extent permitted by applicable law), to set off and apply any and all deposits, funds, or assets at any time held and other indebtedness at any time owing by Lender to or for the credit or the account of Guarantor against any and all of the obligations of Guarantor now or hereafter existing under this Guaranty, whether or not Lender shall have made any demand under this Guaranty or exercised any other right or remedy hereunder. Lender will promptly notify Guarantor after any such set-off and application made by Lender, provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of Lender under this Section 20 are in addition to the other rights and remedies (including other rights of set-off) that Lender may have and every right of setoff and lien shall continue in full force and effect until such right of setoff or lien is specifically waived or released by an instrument in writing executed by Lender.

**21. Subrogation.** Notwithstanding anything to the contrary contained herein, Guarantor shall not have any right of subrogation in or under any of the Loan Documents or to participate in any way therein, or in any right, title or interest in and to any security or right of recourse for the Indebtedness or any right to reimbursement, exoneration, contribution, indemnification or any similar rights, until the Indebtedness has been fully and finally paid. This waiver is given to induce Lender to make the Loan to Borrower.

**22. Further Assurances.** Guarantor at Guarantor's expense will promptly execute and deliver to Lender upon Lender's request all such other and further documents, agreements,



and instruments in compliance with or accomplishment of the agreements of Guarantor under this Guaranty.

23. **No Fiduciary Relationship.** The relationship between Lender and Guarantor is solely that of lender and guarantor. Lender has no fiduciary or other special relationship with or duty to Guarantor and none is created hereby or may be inferred from any course of dealing or act or omission of Lender.

24. **Interpretation.** If this Guaranty is signed by more than one Person as "Guarantor," then the term "Guarantor" as used in this Guaranty shall refer to all such Persons, jointly and severally, and all promises, agreements, covenants, waivers, consents, representations, warranties and other provisions in this Guaranty are made by and shall be binding upon each and every such Person, jointly and severally, and, with respect to any Guarantors constituting a marital community, their sole and separate and community property, and Lender may pursue any Guarantor hereunder without being required (i) to pursue any other Guarantor hereunder or (ii) pursue rights and remedies under the Deed of Trust and/or applicable law with respect to the Property or any other Loan Documents. The term "Lender" shall be deemed to include any subsequent holder(s) of the Note. Whenever the context of any provisions hereof shall require it, words in the singular shall include the plural, words in the plural shall include the singular, and pronouns of any gender shall include the other gender. Captions and headings in the Loan Documents are for convenience only and shall not affect the construction of the Loan Documents. All references in this Guaranty to Schedules, Articles, Sections, Subsections, paragraphs and subparagraphs refer to the respective subdivisions of this Guaranty, unless such reference specifically identifies another document. The terms "herein," "hereof," "hereto," "hereunder" and similar terms refer to this Guaranty and not to any particular Section or subsection of this Guaranty. The terms "include" and "including" shall be interpreted as if followed by the words "without limitation." All references in this Guaranty to sums denominated in dollars or with the symbol "\$" refer to the lawful currency of the United States of America, unless such reference specifically identifies another currency. For purposes of this Guaranty, "Person" or "Persons" shall include firms, associations, partnerships (including limited partnerships), joint ventures, trusts, corporations, limited liability companies, and other legal entities, including governmental bodies, agencies, or instrumentalities, as well as natural persons.

25. **Time of Essence.** Time shall be of the essence in this Guaranty with respect to all of Guarantor's obligations hereunder.

26. **Counterparts.** This Guaranty may be executed in multiple counterparts, each of which, for all purposes, shall be deemed an original, and all of which taken together shall constitute but one and the same agreement.

27. **Guarantor.** The obligations hereunder of Guarantor in such capacities shall be fully enforceable against all assets now or hereafter held by Guarantor.

28. **Entire Agreement.** This Guaranty embodies the entire agreement between Lender and Guarantor with respect to the guaranty by Guarantor of the Guaranteed Obligations. This Guaranty supersedes all prior agreements and understandings, if any, with respect to the guaranty by Guarantor of the Guaranteed Obligations. No condition or conditions precedent to

the effectiveness of this Guaranty exist. This Guaranty shall be effective upon execution by Guarantor and delivery to Lender. This Guaranty may not be modified, amended or superseded except in a writing signed by Lender and Guarantor referencing this Guaranty by its date and specifically identifying the portions hereof that are to be modified, amended or superseded.

**29. WAIVER OF JURY TRIAL.** GUARANTOR HEREBY WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH GUARANTOR AND LENDER MAY BE PARTIES ARISING OUT OF, IN CONNECTION WITH, OR IN ANY WAY PERTAINING TO, THIS GUARANTY, THE NOTE, THE DEED OF TRUST, THE LOAN AGREEMENT AND ANY OTHER LOAN DOCUMENT. IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS GUARANTY. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY GUARANTOR, AND GUARANTOR HEREBY REPRESENTS THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. GUARANTOR FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS GUARANTY AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

**30. Mandatory Arbitration.** Any controversy or claim between or among the parties hereto including but not limited to those arising out of or relating to this Guaranty or any related agreements or instruments, including any claim based on or arising from an alleged tort, shall be determined by binding arbitration in accordance with the Federal Arbitration Act (or if not applicable, the applicable state law), the Rules of Practice and Procedure for the Arbitration of Commercial Disputes of Endispute, Inc., doing business as "J.A.M.S./Endispute" ("J.A.M.S."), as amended from time to time, and the "Special Rules" set forth below. In the event of any inconsistency, the Special Rules shall control. Judgment upon any arbitration award may be entered in any court having jurisdiction. Any party to this Guaranty may bring an action, including a summary or expedited proceeding, to compel arbitration of any controversy or claim to which this agreement applies in any court having jurisdiction over such action.

(a) **Special Rules.** The arbitration shall be conducted in Phoenix, Arizona, administered by J.A.M.S. who will appoint an arbitrator; if J.A.M.S. is unable or legally precluded from administering the arbitration, then the American Arbitration Association will serve. All arbitration hearings will be commenced within ninety (90) days of the demand for arbitration; further, the arbitrator shall only, upon a showing of cause, be permitted to extend the commencement of such hearing for up to an additional sixty (60) days.

(b) **Reservations of Rights.** Nothing in this Guaranty shall be deemed to (i) limit the applicability of any otherwise applicable statutes of limitation or any waivers contained in this Guaranty; or (ii) be a waiver by Lender of the protection afforded to it by 12

U.S.C. Sec. 91 or any substantially equivalent state law; or (iii) limit the right of Lender (A) to exercise self help remedies such as (but not limited to) setoff, or (B) to foreclose against any real or personal property collateral, or (C) to obtain from a court provisional or ancillary remedies such as (but not limited to) injunctive relief or the appointment of a receiver. Lender may exercise such self help rights, foreclose upon such property, or obtain such provisional or ancillary remedies before, during or after the pendency of any arbitration proceeding brought pursuant to this Guaranty. At Lender's option, foreclosure under a deed of trust or mortgage may be accomplished by any of the following: the exercise of a power of sale under the deed of trust or mortgage, or by judicial sale under the deed of trust or mortgage, or by judicial foreclosure. Neither the exercise of self help remedies nor the institution or maintenance of an action for foreclosure or provisional or ancillary remedies shall constitute a waiver of the right of any party, including the claimant in any such action, to arbitrate the merits of the controversy or claim occasioning resort to such remedies.

No provision in the Loan Documents regarding waiver of jury trial or submission to jurisdiction and/or venue in any court is intended or shall be construed to be in derogation of the provisions in any Loan Document for arbitration of any controversy or claim.

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

IN WITNESS WHEREOF, Guarantor has duly executed this Guaranty under seal as of the date first written above.

Address of Guarantor:

2555 East Camelback Road, Suite 800  
Phoenix, Arizona 85016-9267  
Attention: Senior Vice President  
Real Estate Finance and Sales

GUARANTOR:

OPUS WEST CORPORATION, a  
Minnesota corporation

By: Charles Vogel

Name: Charles Vogel

Title: Senior Vice President

Address of Lender:

M&I Institutional Real Estate  
1110 North Old World Third Street  
Suite 320  
Milwaukee, Wisconsin 53203

## EXHIBIT "D"

### GUARANTY AGREEMENT

(Northern Village Senior Apartments, Phoenix, Arizona - Land Loan)

THIS GUARANTY AGREEMENT (this "Guaranty") is made as of the 27th day of March, 2006, by OPUS WEST CORPORATION, a Minnesota corporation ("Guarantor"), in favor of RICHTER-SCHROEDER COMPANY, INC., a Wisconsin corporation (together with its successors and assigns "Lender").

### PRELIMINARY STATEMENTS

Lender and NVSL PHOENIX, L.L.C., a Delaware limited liability company ("Borrower"), have entered into, are entering into concurrently herewith, or contemplate entering into, that certain Construction Loan Agreement of even date herewith (herein called, as it may hereafter be modified, supplemented, restated, extended, or renewed and in effect from time to time, the "Loan Agreement"), which Loan Agreement sets forth the terms and conditions of a loan (the "Loan") to Borrower for the cost of Improvements on the Land located in Phoenix, Arizona, as more particularly described in the Loan Agreement and identified therein as the Project.

A condition precedent to Lender's obligation to make the Loan to Borrower is Guarantor's execution and delivery to Lender of this Guaranty.

The Loan is, or will be, evidenced by that certain Deed of Trust Note of even date with the Loan Agreement, executed by Borrower and payable to the order of Lender in the principal face amount of SEVEN MILLION FIVE HUNDRED TWENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$7,525,000.00) (such note, as it may hereafter be renewed, extended, supplemented, increased or modified and in effect from time to time, and all other notes given in substitution therefor, or in modification, renewal, or extension thereof, in whole or in part, is herein called the "Note").

Any capitalized term used and not defined in this Guaranty shall have the meaning given to such term in the Loan Agreement. This Guaranty is one of the Loan Documents described in the Loan Agreement.

### STATEMENT OF AGREEMENTS

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and as a material inducement to Lender to extend credit to Borrower, Guarantor hereby guarantees to Lender the prompt and full payment and performance of the indebtedness and obligations described below in this Guaranty (collectively called the "Guaranteed Obligations"), this Guaranty being upon the following terms and conditions:

1. **Guaranty of Payment.** Guarantor hereby unconditionally and irrevocably guarantees to Lender the punctual payment when due, whether by lapse of time, by acceleration of maturity, or otherwise, of all principal, interest (including interest accruing after the commencement of any bankruptcy or insolvency proceeding by or against Borrower, whether or not allowed in such proceeding), fees, late charges, costs, expenses, indemnification

indebtedness, and other sums of money now or hereafter due and owing, or which Borrower is obligated to pay, pursuant to (a) the terms of the Note, the Loan Agreement, the Deed of Trust, the Environmental Agreement, any application, agreement, note or other document executed and delivered in connection with any Letter of Credit or any other Loan Documents, including the making of required Borrower's Deposits, and any indemnifications contained in the Loan Documents, now or hereafter existing, and (b) all renewals, extensions, refinancings, modifications, supplements or amendments of such indebtedness, or any of the Loan Documents, or any part thereof (the indebtedness described in clauses (a) and (b) above in this Section 1 is herein collectively called the "Indebtedness"). This Guaranty covers the Indebtedness, whether presently outstanding or arising subsequent to the date hereof, including all amounts advanced by Lender in stages or installments. The guaranty of Guarantor as set forth in this Section 1 is a continuing guaranty of payment and not a guaranty of collection.

2. Guaranty of Performance. Guarantor additionally hereby unconditionally and irrevocably guarantees to Lender the timely performance of all other obligations of Borrower under all of the Loan Documents, including, without limiting the generality of the foregoing, that Borrower will duly and punctually perform and observe all other terms, covenants, and conditions of the Note, the Deed of Trust, the Loan Agreement, the Environmental Agreement or any other Loan Document whether according to the present terms thereof, at any earlier or accelerated date or dates as provided therein, or pursuant to any extension of time or to any change or changes in the terms, covenants, or conditions thereof now or hereafter made or granted.

3. Primary Liability of Guarantor.

(a) This Guaranty is an absolute, irrevocable and unconditional guaranty of payment and performance. Guarantor shall be liable for the payment and performance of the Guaranteed Obligations as a primary obligor. This Guaranty shall be effective as a waiver of, and Guarantor hereby expressly waives, any and all rights to which Guarantor may otherwise have been entitled under any suretyship laws in effect from time to time, including any right or privilege, whether existing under statute, at law or in equity, to require Lender to take prior recourse or proceedings against any collateral, security or Person (hereinafter defined) whatsoever.

(b) Guarantor hereby agrees that in the event of (i) default by Borrower in payment or performance of the Guaranteed Obligations, or any part thereof, when such indebtedness or performance becomes due, either by its terms or as the result of the exercise of any power to accelerate; (ii) the failure of Guarantor to perform completely and satisfactorily the covenants, terms and conditions of any of the Guaranteed Obligations after the expiration of all applicable cure and grace periods; (iii) the death, incompetency, dissolution or insolvency of Guarantor; (iv) the inability of Guarantor to pay debts as they mature; (v) an assignment by Guarantor for the benefit of creditors; (vi) the institution of any proceeding by or against Guarantor in bankruptcy or for a reorganization or an arrangement with creditors, or for the appointment of a receiver, trustee or custodian for any of them or for any of their respective properties; (vii) the determination by Lender in good faith that a material adverse change has occurred in the financial condition of Guarantor that materially affects the Guarantor's ability to perform the Guaranteed Obligations; (viii) the entry of a judgment against Guarantor that

materially affects its ability to pay or perform the Guaranteed Obligations and that is not discharged or bonded against within a period of thirty (30) days; (ix) a writ or order of attachment, levy or garnishment is issued against Guarantor; (x) the falsity in any material respect of, or any material omission in, any representation made to Lender by Guarantor; or (xi) any transfer of assets of Guarantor that would materially and adversely affect Guarantor's obligations hereunder, without the Lender's prior consent (except for transfers of assets for estate planning purposes valued at less than \$50,000 per year, customary political and charitable contributions, and transfers for which the Guarantor receives consideration substantially equivalent to the fair market value of the transferred asset) (individually and collectively an "Event of Default"); then upon the occurrence of such Event of Default, the Guaranteed Obligations, for purposes of this Guaranty, shall be deemed immediately due and payable at the election of Lender, and Guarantor shall, on demand and without presentment, protest, notice of protest, further notice of nonpayment or of dishonor, default or nonperformance, or notice of acceleration or of intent to accelerate, or any other notice whatsoever, without any notice having been given to Guarantor previous to such demand of the acceptance by Lender of this Guaranty, and without any notice having been given to Guarantor previous to such demand of the creating or incurring of such indebtedness or of such obligation to perform, all such notices being hereby waived by Guarantor, pay the amount due to Lender or perform or observe the agreement, covenant, term or condition, as the case may be, and pay all damages and all costs and expenses that may arise in consequence of such Event of Default (including, without limitation, all attorneys' fees and expenses, investigation costs, court costs, and any and all other costs and expenses incurred by Lender in connection with the collection and enforcement of the Note or any other Loan Document), whether or not suit is filed thereon, or whether at maturity or by acceleration, or whether before or after maturity, or whether in connection with bankruptcy, insolvency or appeal. It shall not be necessary for Lender, in order to enforce such payment or performance by Guarantor, first to institute suit or pursue or exhaust any rights or remedies against Borrower or others liable on such indebtedness or for such performance, or to enforce any rights against any security that shall ever have been given to secure such indebtedness or performance, or to join Borrower or any others liable for the payment or performance of the Guaranteed Obligations or any part thereof in any action to enforce this Guaranty, or to resort to any other means of obtaining payment or performance of the Guaranteed Obligations; provided, however, that nothing herein contained shall prevent Lender from judicially or non-judicially foreclosing the Deed of Trust or from exercising any other rights thereunder. If such foreclosure or other remedy is availed of, Guarantor agrees, subject only to conflicting applicable law which may not be waived by Guarantor, that only the net proceeds therefrom, after deduction of all charges and expenses of every kind and nature whatsoever, shall be applied in reduction of the amount due on the Note and Deed of Trust, and Lender shall not be required to institute or prosecute proceedings to recover any deficiency as a condition of payment hereunder or enforcement hereof. At any sale of the Property or other collateral given for the Indebtedness or any part thereof, whether by foreclosure or otherwise, Lender may at its discretion purchase all or any part of the Property or collateral so sold or offered for sale for its own account and may, in payment of all or any portion of the amount bid therefor, credit bid all or any portion of the Indebtedness in accordance with applicable law and deduct any successful credit bid from the balance due it pursuant to the terms of the Note and Deed of Trust.

(c) Suit may be brought or demand may be made against Borrower or against all parties who have signed this Guaranty or any other guaranty covering all or any part of the

Guaranteed Obligations, or against any one or more of them, separately or together, without impairing the rights of Lender against any party hereto. Any time that Lender is entitled to exercise its rights or remedies hereunder, it may in its discretion elect to demand payment and/or performance. If Lender elects to demand performance, it shall at all times thereafter have the right to demand payment until all of the Guaranteed Obligations have been paid and performed in full. If Lender elects to demand payment, it shall at all times thereafter have the right to demand performance until all of the Guaranteed Obligations have been paid and performed in full.

4. Certain Agreements and Waivers by Guarantor.

(a) Guarantor hereby agrees that neither Lender's rights or remedies nor Guarantor's obligations under the terms of this Guaranty shall be released, diminished, impaired, reduced or affected by any one or more of the following events, actions, facts, or circumstances, and the liability of Guarantor under this Guaranty shall be absolute and unconditional irrespective of:

(i) any limitation of liability or recourse in any other Loan Document or arising under any law;

(ii) any claim or defense that this Guaranty was made without consideration or is not supported by adequate consideration;

(iii) the taking or accepting of any other security or guaranty for, or right of recourse with respect to, any or all of the Guaranteed Obligations;

(iv) any homestead exemption or any other exemption under applicable law;

(v) any release, surrender, abandonment, exchange, alteration, sale or other disposition, subordination, deterioration, waste, failure to protect or preserve, impairment, or loss of, or any failure to create or perfect any lien or security interest with respect to, or any other dealings with, any collateral or security at any time existing or purported, believed or expected to exist in connection with any or all of the Guaranteed Obligations, including any impairment of Guarantor's recourse against any Person or collateral;

(vi) whether express or by operation of law, any partial release of the liability of Guarantor hereunder, or if one or more other guaranties are now or hereafter obtained by Lender covering all or any part of the Guaranteed Obligations, any complete or partial release of any one or more of such guarantors under any such other guaranty, or any complete or partial release of Borrower or any other party liable, directly or indirectly, for the payment or performance of any or all of the Guaranteed Obligations;

(vii) the death, insolvency, bankruptcy, disability, dissolution, liquidation, termination, receivership, reorganization, merger, consolidation, change of form, structure or ownership, sale of all assets, or lack of corporate,



partnership or other power of Borrower or any other party at any time liable for the payment or performance of any or all of the Guaranteed Obligations;

(viii) either with or without notice to or consent of Guarantor, and on one or more occasions: any renewal, extension, modification, supplement, subordination or rearrangement of the terms of any or all of the Guaranteed Obligations and/or any of the Loan Documents, including, without limitation, material alterations of the terms of payment (including changes in maturity date(s) and interest rate(s)) or performance (including changes in the Plans and other terms or aspects of construction of the Improvements) or any other terms thereof, or any waiver, termination, or release of, or consent to departure from, any of the Loan Documents or any other guaranty of any or all of the Guaranteed Obligations, or any adjustment, indulgence, forbearance, or compromise that may be granted from time to time by Lender to Borrower, Guarantor, and/or any other Person at any time liable for the payment or performance of any or all of the Guaranteed Obligations;

(ix) any neglect, lack of diligence, delay, omission, failure, or refusal of Lender to take or prosecute (or in taking or prosecuting) any action for the collection or enforcement of any of the Guaranteed Obligations, or to foreclose or take or prosecute any action to foreclose (or in foreclosing or taking or prosecuting any action to foreclose) upon any security therefor, or to exercise (or in exercising) any other right or power with respect to any security therefor, or to take or prosecute (or in taking or prosecuting) any action in connection with any Loan Document, or any failure to sell or otherwise dispose of in a commercially reasonable manner any collateral securing any or all of the Guaranteed Obligations;

(x) any failure of Lender to notify Guarantor of any creation, renewal, extension, rearrangement, modification, supplement, subordination, or assignment of the Guaranteed Obligations or any part thereof, or of any Loan Document, or of any release of or change in any security, or of any other action taken or refrained from being taken by Lender against Borrower or any security or other recourse, or of any new agreement between Lender and Borrower, it being understood that Lender shall not be required to give Guarantor any notice of any kind under any circumstances with respect to or in connection with the Guaranteed Obligations, any and all rights to notice Guarantor may have otherwise had being hereby waived by Guarantor, and the Guarantor shall be responsible for obtaining for itself information regarding the Borrower, including, but not limited to, any changes in the business or financial condition of the Borrower, and the Guarantor acknowledges and agrees that the Lender shall have no duty to notify the Guarantor of any information which the Lender may have concerning the Borrower.

(xi) if for any reason Lender is required to refund any payment by Borrower to any other party liable for the payment or performance of any or all of the Guaranteed Obligations or pay the amount thereof to someone else;

(xii) the making of advances by Lender to protect its interest in the Property, preserve the value of the Property or for the purpose of performing any term or covenant contained in any of the Loan Documents;

(xiii) the existence of any claim, counterclaim, set-off or other right that Guarantor may at any time have against Borrower, Lender, or any other Person, whether or not arising in connection with this Guaranty, the Note, the Loan Agreement, or any other Loan Document;

(xiv) the unenforceability of all or any part of the Guaranteed Obligations against Borrower, whether because the Guaranteed Obligations exceed the amount permitted by law or violate any usury law, or because the act of creating the Guaranteed Obligations, or any part thereof, is ultra vires, or because the officers or Persons creating the Guaranteed Obligations acted in excess of their authority, or because of a lack of validity or enforceability of or defect or deficiency in any of the Loan Documents, or because Borrower has any valid defense, claim or offset with respect thereto, or because Borrower's obligation ceases to exist by operation of law, or because of any other reason or circumstance, it being agreed that Guarantor shall remain liable hereon regardless of whether Borrower or any other Person be found not liable on the Guaranteed Obligations, or any part thereof, for any reason (and regardless of any joinder of Borrower or any other party in any action to obtain payment or performance of any or all of the Guaranteed Obligations); or

(xv) any order, ruling or plan of reorganization emanating from proceedings under Title 11 of the United States Code with respect to Borrower or any other Person, including any extension, reduction, composition, or other alteration of the Guaranteed Obligations, whether or not consented to by Lender.

(b) In the event any payment by Borrower or any other Person to Lender is held to constitute a preference, fraudulent transfer or other voidable payment under any bankruptcy, insolvency or similar federal or state law or theory, including any equitable remedy, or if for any other reason Lender is required to refund such payment or pay the amount thereof to any other party, such payment by Borrower or any other party to Lender shall not constitute a release of Guarantor from any liability hereunder, and this Guaranty shall continue to be effective or shall be reinstated (notwithstanding any prior release, surrender or discharge by Lender of this Guaranty or of Guarantor), as the case may be, with respect to, and this Guaranty shall apply to, any and all amounts so refunded by Lender or paid by Lender to another Person (which amounts shall constitute part of the Guaranteed Obligations), and any interest paid by Lender and any attorneys' fees, costs and expenses paid or incurred by Lender in connection with any such event. It is the intent of Guarantor and Lender that the obligations and liabilities of Guarantor hereunder are absolute and unconditional under any and all circumstances and that until the Guaranteed Obligations are fully and finally paid and performed, and not subject to refund or disgorgement, the obligations and liabilities of Guarantor hereunder shall not be discharged or released, in whole or in part, by any act or occurrence that might, but for the provisions of this Guaranty, be deemed a legal or equitable discharge or release of a guarantor. Lender shall be entitled to continue to hold this Guaranty in its possession for the longer of

(i) the period after which any performance of obligations under the Environmental Agreement shall accrue, or (ii) a period of five years from the date the Guaranteed Obligations are paid and performed in full and for so long thereafter as may be necessary to enforce any obligation of Guarantor hereunder and/or to exercise any right or remedy of Lender hereunder.

(c) If acceleration of the time for payment of any amount payable by Borrower under the Note, the Loan Agreement, or any other Loan Document is stayed or delayed by any law or tribunal, all such amounts shall nonetheless be payable by Guarantor on demand by Lender.

(d) Guarantor hereby waives any and all rights to which Guarantor may otherwise have been entitled under any suretyship laws in effect from time to time, including any right or privilege, whether existing under statute, at law or in equity, to require Lender to take prior recourse or proceedings against any collateral, security or Person (as such term is defined in Section 24 below) whatsoever. By way of illustration and not limitation of the waiver in the preceding sentence, Guarantor waives and agrees not to assert or take advantage of the provisions of any of Arizona Revised Statutes Sections 12-1641 through 12-1646, 47-3419 and 47-3605, Rule 17(f) of the Arizona Rules of Civil Procedure, or any similar or analogous other present or future statutory or common law or procedural rule of any jurisdiction relating to guarantors, indemnitors, sureties, co-makers or accommodation parties.

(e) Without limiting the foregoing, or anything else contained in this Guaranty, Guarantor waives all rights and defenses that Guarantor may have because the Guaranteed Obligations are secured by real property. This means, among other things:

(i) That Lender may collect from Guarantor without first foreclosing on any real or personal property collateral pledged by Borrower; and

(ii) If Lender forecloses on any real property collateral pledged by Borrower: (A) the amount of the Guaranteed Obligations may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price; and (B) Lender may collect from Guarantor even if Lender, by foreclosing on the real property collateral, has destroyed any right Guarantor may have to collect from Borrower.

This is an unconditional and irrevocable waiver of any rights and defenses that Guarantor may have because the Guaranteed Obligations are secured by real property.

5. **Subordination**. If, for any reason whatsoever, Borrower is now or hereafter becomes indebted to Guarantor:

(a) such indebtedness and all interest thereon and all liens, security interests and rights now or hereafter existing with respect to property of Borrower securing such indebtedness shall, at all times, be subordinate in all respects to the Guaranteed Obligations and to all liens, security interests and rights now or hereafter existing to secure the Guaranteed Obligations;

(b) Guarantor shall not be entitled to enforce or receive payment, directly or indirectly, of any such indebtedness of Borrower to Guarantor until the Guaranteed Obligations have been fully and finally paid and performed;

(c) Guarantor hereby assigns and grants to Lender a security interest in all such indebtedness and security therefor, if any, of Borrower to Guarantor now existing or hereafter arising, including any dividends and payments pursuant to debtor relief or insolvency proceedings referred to below. In the event of receivership, bankruptcy, reorganization, arrangement or other debtor relief or insolvency proceedings involving Borrower as debtor, Lender shall have the right to prove its claim in any such proceeding so as to establish its rights hereunder and shall have the right to receive directly from the receiver, trustee or other custodian (whether or not a Default shall have occurred or be continuing under any of the Loan Documents), dividends and payments that are payable upon any obligation of Borrower to Guarantor now existing or hereafter arising, and to have all benefits of any security therefor, until the Guaranteed Obligations have been fully and finally paid and performed. If, notwithstanding the foregoing provisions, Guarantor should receive any payment, claim or distribution that is prohibited as provided above in this Section 5, Guarantor shall pay the same to Lender immediately, Guarantor hereby agreeing that it shall receive the payment, claim or distribution in trust for Lender and shall have absolutely no dominion over the same except to pay it immediately to Lender; and

(d) Guarantor shall promptly upon request of Lender from time to time execute such documents and perform such acts as Lender may require to evidence and perfect its interest and to permit or facilitate exercise of its rights under this Section 5, including, but not limited to, execution and delivery of financing statements, proofs of claim, further assignments and security agreements, and delivery to Lender of any promissory notes or other instruments evidencing indebtedness of Borrower to Guarantor. All promissory notes, accounts receivable ledgers or other evidences, now or hereafter held by Guarantor, of obligations of Borrower to Guarantor shall contain a specific written notice thereon that the indebtedness evidenced thereby is subordinated under and is subject to the terms of this Guaranty.

6. Other Liability of Guarantor or Borrower. If Guarantor is or becomes liable, by endorsement or otherwise, for any indebtedness owing by Borrower to Lender other than under this Guaranty, such liability shall not be in any manner impaired or affected hereby, and the rights of Lender hereunder shall be cumulative of any and all other rights that Lender may have against Guarantor. If Borrower is or becomes indebted to Lender for any indebtedness other than or in excess of the Indebtedness for which Guarantor is liable under this Guaranty, any payment received or recovery realized upon such other indebtedness of Borrower to Lender may, except to the extent paid by Guarantor on the Indebtedness or specifically required by law or agreement of Lender to be applied to the Indebtedness, in Lender's sole discretion, be applied upon indebtedness of Borrower to Lender other than the Indebtedness. This Guaranty is independent of (and shall not be limited by) any other guaranty now existing or hereafter given. Further, Guarantor's liability under this Guaranty is in addition to any and all other liability Guarantor may have in any other capacity, including without limitation, its capacity as a general partner.

7. **Lender Assigns.** This Guaranty is for the benefit of Lender and Lender's successors and assigns, and in the event of an assignment of the Guaranteed Obligations, or any part thereof, the rights and benefits hereunder, to the extent applicable to the Guaranteed Obligations so assigned, may be transferred with such Guaranteed Obligations. Guarantor waives notice of any transfer or assignment of the Guaranteed Obligations, or any part thereof, and agrees that failure to give notice of any such transfer or assignment will not affect the liabilities of Guarantor hereunder.

8. **Binding Effect.** This Guaranty is binding not only on Guarantor, but also on Guarantor's heirs, personal representatives, successors and assigns. Upon the death of Guarantor, if Guarantor is a natural person, this Guaranty shall continue against Guarantor's estate as to all of the Guaranteed Obligations, including that portion incurred or arising after the death of Guarantor and shall be provable in full against Guarantor's estate, whether or not the Guaranteed Obligations are then due and payable. If this Guaranty is signed by more than one Person, then all of the obligations of Guarantor arising hereunder shall be jointly and severally binding on each of the undersigned, and their respective heirs, personal representatives, successors and assigns, and the term "Guarantor" shall mean all of such Persons and each of them individually.

9. **Governing Law; Forum; Consent to Jurisdiction.** The validity, enforcement, and interpretation of this Guaranty, shall for all purposes be governed by and construed in accordance with the laws of the State of Arizona and applicable United States federal law, and is intended to be performed in accordance with, and only to the extent permitted by, such laws. All obligations of Guarantor hereunder are payable and performable at the place or places where the Guaranteed Obligations are payable and performable. Guarantor hereby irrevocably submits generally and unconditionally for Guarantor and in respect of Guarantor's property to the nonexclusive jurisdiction of any state court, or any United States federal court, sitting in the state specified in the first sentence of this Section and to the jurisdiction of any state or United States federal court sitting in the state in which any of the Land is located, over any suit, action or proceeding arising out of or relating to this Guaranty or the Guaranteed Obligations. Guarantor hereby irrevocably waives, to the fullest extent permitted by law, any objection that Guarantor may now or hereafter have to the laying of venue in any such court and any claim that any such court is an inconvenient forum. Final judgment in any such suit, action or proceeding brought in any such court shall be conclusive and binding upon Guarantor and may be enforced in any court in which Guarantor is subject to jurisdiction. To the extent permitted by applicable law, Guarantor hereby agrees and consents that, in addition to any methods of service of process provided for under applicable law, all service of process in any such suit, action or proceeding in any state court, or any United States federal court, sitting in the state specified in the first sentence of this Section may be made by certified or registered mail, return receipt requested, directed to Guarantor at the address set forth at the end of this Guaranty, or at a subsequent address of which Lender receives actual notice from Guarantor in accordance with the notice provisions hereof, and service so made shall be complete five (5) days after the same shall have been so mailed. Nothing herein shall affect the right of Lender to serve process in any manner permitted by law or limit the right of Lender to bring proceedings against Guarantor in any other court or jurisdiction. Guarantor hereby releases, to the extent permitted by applicable law, all errors and all rights of exemption, appeal, stay of execution, inquisition, and other rights to which the Guarantor may otherwise be entitled under the laws of the United States of America or

any State or possession of the United States of America now in force or which may hereinafter be enacted.

10. **Invalidity of Certain Provisions.** If any provision of this Guaranty or the application thereof to any Person or circumstance shall, for any reason and to any extent, be declared to be invalid or unenforceable, neither the remaining provisions of this Guaranty nor the application of such provision to any other Person or circumstance shall be affected thereby, and the remaining provisions of this Guaranty, or the applicability of such provision to other Persons or circumstances, as applicable, shall remain in effect and be enforceable to the maximum extent permitted by applicable law.

11. **Attorneys' Fees and Costs of Collection.** Guarantor shall pay on demand all attorneys' fees and all other costs and expenses incurred by Lender in the enforcement of or preservation of Lender's rights under this Guaranty including, without limitation, all attorneys' fees and expenses, investigation costs, and all court costs, whether or not suit is filed hereon, or whether at maturity or by acceleration, or whether before or after maturity, or whether in connection with bankruptcy, insolvency or appeal, or whether in connection with the collection and enforcement of this Guaranty against any other Guarantor, if there be more than one. Guarantor agrees to pay interest on any expenses or other sums due to Lender under this Section 11 that are not paid when due, at a rate per annum equal to the interest rate provided for in the Note. Guarantor's obligations and liabilities under this Section 11 shall survive any payment or discharge in full of the Guaranteed Obligations.

12. **Payments.** All sums payable under this Guaranty shall be paid in lawful money of the United States of America that at the time of payment is legal tender for the payment of public and private debts.

13. **Controlling Agreement.** Guarantor hereby agrees and contracts in writing to pay all interest required by this Guaranty, and that all such interest will constitute interest paid at an agreed rate. It is not the intention of Lender or Guarantor to obligate Guarantor to pay interest in excess of that lawfully permitted to be paid by Guarantor under applicable law. Should it be determined that any portion of the Guaranteed Obligations or any other amount payable by Guarantor under this Guaranty constitutes interest in excess of the maximum amount of interest that Guarantor, in Guarantor's capacity as guarantor, may lawfully be required to pay under applicable law, the obligation of Guarantor to pay such interest shall automatically be limited to the payment thereof in the maximum amount so permitted under applicable law. The provisions of this Section 13 shall override and control all other provisions of this Guaranty and of any other agreement between Guarantor and Lender.

14. **Representations, Warranties, and Covenants of Guarantor.**

(a) Guarantor hereby represents, warrants, and covenants that (a) Guarantor has a financial interest in the Borrower and will derive a material and substantial benefit, directly or indirectly, from the making of the Loan to Borrower and from the making of this Guaranty by Guarantor; (b) this Guaranty is duly authorized and valid, and is binding upon and enforceable against Guarantor; (c) Guarantor is not, and the execution, delivery and performance by Guarantor of this Guaranty will not cause Guarantor to be, in violation of or in default with

respect to any law or in default (or at risk of acceleration of indebtedness) under any material agreement or restriction by which Guarantor is bound or affected; (d) Guarantor has full power and authority to enter into and perform this Guaranty; (e) Guarantor will indemnify Lender from any loss, cost or expense as a result of any representation or warranty of the Guarantor being false, incorrect, incomplete or misleading in any material respect; (f) there is no litigation pending or, to the knowledge of Guarantor, threatened before or by any tribunal against or affecting Guarantor which could materially interfere with Guarantor's performance of the Guaranteed Obligations; (g) all financial statements and information heretofore furnished to Lender by Guarantor do, and all financial statements and information hereafter furnished to Lender by Guarantor will, fully and accurately present the condition (financial or otherwise) of Guarantor as of their dates and the results of Guarantor's operations for the periods therein specified, and, since the date of the most recent financial statements of Guarantor heretofore furnished to Lender, no material adverse change has occurred in the financial condition of Guarantor, nor, except as heretofore disclosed in writing to Lender, has Guarantor incurred any material liability, direct or indirect, fixed or contingent; (h) after giving effect to this Guaranty, Guarantor is solvent, is not engaged or about to engage in business or a transaction for which the property of Guarantor is an unreasonably small capital, and does not intend to incur or believe that it will incur debts that will be beyond its ability to pay as such debts mature; (i) Lender has no duty at any time to investigate or inform Guarantor of the financial or business condition or affairs of Borrower or any change therein, and Guarantor will keep fully apprised of Borrower's financial and business condition; (j) Guarantor acknowledges and agrees that Guarantor may be required to pay and perform the Guaranteed Obligations in full without assistance or support from Borrower or any other Person; and (k) Guarantor has read and fully understands the provisions contained in the Note, the Loan Agreement, the Deed of Trust, the Environmental Agreement, and the other Loan Documents. Guarantor's representations, warranties and covenants are a material inducement to Lender to enter into the other Loan Documents and shall survive the execution hereof and any bankruptcy, foreclosure, transfer of security or other event affecting Borrower, Guarantor, any other party, or any security for all or any part of the Guaranteed Obligations.

(b) Guarantor hereby agrees as follows:

(i) to maintain during the life of the Loan at the end of each fiscal quarter, unpledged cash equivalents as determined by generally accepted accounting principles, and marketable securities ("Liquidity") of not less than One Million And No/100 Dollars (\$1,000,000.00); and

(ii) to maintain at the end of each fiscal quarter a Tangible Net Worth equal to at least Fifty Million And No/100 Dollars (\$50,000,000.00). "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 organization expense, treasury stock, unamortized debt discount and expense, deferred research and development costs, deferred marketing expenses, and other like intangibles) plus subordinated debt, less total liabilities, including but not limited to accrued and deferred income taxes, and any reserves against assets; and

(iii) to provide to Lender, within forty-five (45) days after the close of each fiscal quarter, a covenant compliance certificate, in form and detail satisfactory to Lender, certifying Guarantor's compliance with the covenants described in subparagraph (i)-(ii) above.

15. **Notices.** All notices, requests, consents, demands and other communications required or which any party desires to give hereunder or under any other Loan Document shall be in writing and, unless otherwise specifically provided in such other Loan Document, shall be deemed sufficiently given or furnished if delivered by personal delivery, by courier, or by registered or certified United States mail, postage prepaid, addressed to the party to whom directed at the addresses specified in this Guaranty (unless changed by similar notice in writing given by the particular party whose address is to be changed) or by telegram, telex, or facsimile. Any such notice or communication shall be deemed to have been given either at the time of personal delivery or, in the case of courier or mail, as of the date of first attempted delivery at the address and in the manner provided herein, or, in the case of telegram, telex or facsimile, upon receipt; provided that, service of a notice required by any applicable statute shall be considered complete when the requirements of that statute are met. Notwithstanding the foregoing, no notice of change of address shall be effective except upon actual receipt. This Section shall not be construed in any way to affect or impair any waiver of notice or demand provided in this Guaranty or in any Loan Document or to require giving of notice or demand to or upon any Person in any situation or for any reason.

16. **Cumulative Rights.** The exercise by Lender of any right or remedy hereunder or under any other Loan Document, or at law or in equity, shall not preclude the concurrent or subsequent exercise of any other right or remedy. Lender shall have all rights, remedies and recourses afforded to Lender by reason of this Guaranty or any other Loan Document or by law or equity or otherwise, and the same (a) shall be cumulative and concurrent, (b) may be pursued separately, successively or concurrently against Guarantor or others obligated for the Guaranteed Obligations, or any part thereof, or against any one or more of them, or against any security or otherwise, at the sole and absolute discretion of Lender, (c) may be exercised as often as occasion therefor shall arise, it being agreed by Guarantor that the exercise of, discontinuance of the exercise of or failure to exercise any of such rights, remedies, or recourses shall in no event be construed as a waiver or release thereof or of any other right, remedy, or recourse, and (d) are intended to be, and shall be, nonexclusive. No waiver of any default on the part of Guarantor or of any breach of any of the provisions of this Guaranty or of any other document shall be considered a waiver of any other or subsequent default or breach, and no delay or omission in exercising or enforcing the rights and powers granted herein or in any other document shall be construed as a waiver of such rights and powers, and no exercise or enforcement of any rights or powers hereunder or under any other document shall be held to exhaust such rights and powers, and every such right and power may be exercised from time to time. The granting of any consent, approval or waiver by Lender shall be limited to the specific instance and purpose therefor and shall not constitute consent or approval in any other instance or for any other purpose. No notice to or demand on Guarantor in any case shall of itself entitle Guarantor to any other or further notice or demand in similar or other circumstances. No provision of his Guaranty or any right, remedy or recourse of Lender with respect hereto, or any default or breach, can be waived, nor can this Guaranty or Guarantor be released or discharged in any way



or to any extent, except specifically in each case by a writing intended for that purpose (and which refers specifically to this Guaranty) executed, and delivered to Guarantor, by Lender.

17. **Term of Guaranty.** This Guaranty shall continue in effect until all the Guaranteed Obligations are fully and finally paid, performed and discharged, except that, and notwithstanding any return of this Guaranty to Guarantor, this Guaranty shall continue in effect (i) with respect to any of the Guaranteed Obligations that survive the full and final payment of the indebtedness evidenced by the Note, (ii) with respect to all obligations and liabilities of Guarantor under Section 11 and (iii) as provided in Section 4(b).

18. **Financial Statements.** As used in this Section, "Financial Statements" means (i) for each reporting party other than an individual, a balance sheet, income statement and amount and sources of contingent liabilities, a reconciliation of changes in equity and liquidity verification, and, unless Lender otherwise consents, consolidated and consolidating statements if the reporting party is a holding company or a parent of a subsidiary entity; and (ii) for each reporting party who is an individual, a balance sheet, statements of amount and sources of contingent liabilities. Each party for whom Financial Statements are required is a "reporting party" and a specified period to which the required Financial Statements relate is a "reporting period". Guarantor shall provide or cause to be provided to Lender the following:

(a) If requested by Lender, for each fiscal year of such reporting party, as soon as reasonably practicable and in any event within one hundred twenty (120) days after the close of each fiscal year unqualified audited financial statements of Guarantor, and for each fiscal quarter, as soon as reasonably practicable and in any event within sixty (60) days after the close of each such reporting period company prepared financial statements of Guarantor.

(b) From time to time promptly after Lender's request, such additional information, reports and statements regarding the business operations and financial condition of each reporting party as Lender may reasonably request.

All Financial Statements shall be in form and detail satisfactory to Lender and shall contain or be attached to the signed and dated written certification of the reporting party in form satisfactory to Lender to certify that the Financial Statements are furnished to Lender in connection with the extension of credit by Lender and constitute a true and correct statement of the reporting party's financial position. All certifications and signatures on behalf of corporations, partnerships or other entities shall be by a representative of the entity satisfactory to Lender. All Financial Statements for a reporting party who is an individual shall be on Lender's then-current personal financial statement form or in another form satisfactory to Lender, and shall clearly designate any sole and separate or community property. All Financial Statements shall be audited or certified, as required by Lender, without any qualification or exception not acceptable to Lender, by independent certified public accountants acceptable to Lender, and shall contain all reports and disclosures required by generally accepted accounting principles for a fair presentation.

All assets shown on the Financial Statements provided by Guarantor, unless clearly designated to the contrary shall, be conclusively deemed to be free and clear of any exemption or any claim of exemption of Guarantor at the date of the Financial Statements and at all times thereafter. Acceptance of any Financial Statement by Lender, whether or not in the form prescribed herein,

shall be relied upon by Lender in the administration, enforcement, and extension of the Guaranteed Obligations.

19. **Disclosure of Information.** Lender may sell or offer to sell the Loan or interests in the Loan to one or more assignees or participants and may disclose to any such assignee or participant or prospective assignee or participant, to Lender's affiliates, to any regulatory body having jurisdiction over Lender and to any other parties as necessary or appropriate in Lender's reasonable judgment, any information Lender now has or hereafter obtains pertaining to the Guaranteed Obligations, this Guaranty, or Guarantor, including, without limitation, information regarding any security for the Guaranteed Obligations or for this Guaranty, credit or other information on Guarantor, Borrower, and/or any other party liable, directly or indirectly, for any part of the Guaranteed Obligations. Notwithstanding the foregoing, the disclosure of information regarding the Guarantor shall be subject to the confidentiality provisions of Section 6.7 of the Loan Agreement.

20. **Right of Set-Off.** Upon the occurrence and during the continuance of any Default, however defined, in the payment or performance when due of any of the Guaranteed Obligations, Lender is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law, without notice to any Person (any such notice being expressly waived by Guarantor to the fullest extent permitted by applicable law), to set off and apply any and all deposits, funds, or assets at any time held and other indebtedness at any time owing by Lender to or for the credit or the account of Guarantor against any and all of the obligations of Guarantor now or hereafter existing under this Guaranty, whether or not Lender shall have made any demand under this Guaranty or exercised any other right or remedy hereunder. Lender will promptly notify Guarantor after any such set-off and application made by Lender, provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of Lender under this Section 20 are in addition to the other rights and remedies (including other rights of set-off) that Lender may have and every right of setoff and lien shall continue in full force and effect until such right of setoff or lien is specifically waived or released by an instrument in writing executed by Lender.

21. **Subrogation.** Notwithstanding anything to the contrary contained herein, Guarantor shall not have any right of subrogation in or under any of the Loan Documents or to participate in any way therein, or in any right, title or interest in and to any security or right of recourse for the Indebtedness or any right to reimbursement, exoneration, contribution, indemnification or any similar rights, until the Indebtedness has been fully and finally paid. This waiver is given to induce Lender to make the Loan to Borrower.

22. **Further Assurances.** Guarantor at Guarantor's expense will promptly execute and deliver to Lender upon Lender's request all such other and further documents, agreements, and instruments in compliance with or accomplishment of the agreements of Guarantor under this Guaranty.

23. **No Fiduciary Relationship.** The relationship between Lender and Guarantor is solely that of lender and guarantor. Lender has no fiduciary or other special relationship with or duty to Guarantor and none is created hereby or may be inferred from any course of dealing or act or omission of Lender.

24. **Interpretation.** If this Guaranty is signed by more than one Person as "Guarantor", then the term "Guarantor" as used in this Guaranty shall refer to all such Persons, jointly and severally, and all promises, agreements, covenants, waivers, consents, representations, warranties and other provisions in this Guaranty are made by and shall be binding upon each and every such Person, jointly and severally, and, with respect to any Guarantors constituting a marital community, their sole and separate and community property, and Lender may pursue any Guarantor hereunder without being required (i) to pursue any other Guarantor hereunder or (ii) pursue rights and remedies under the Deed of Trust and/or applicable law with respect to the Property or any other Loan Documents. The term "Lender" shall be deemed to include any subsequent holder(s) of the Note. Whenever the context of any provisions hereof shall require it, words in the singular shall include the plural, words in the plural shall include the singular, and pronouns of any gender shall include the other gender. Captions and headings in the Loan Documents are for convenience only and shall not affect the construction of the Loan Documents. All references in this Guaranty to Schedules, Articles, Sections, Subsections, paragraphs and subparagraphs refer to the respective subdivisions of this Guaranty, unless such reference specifically identifies another document. The terms "herein," "hereof," "hereto," "hereunder" and similar terms refer to this Guaranty and not to any particular Section or subsection of this Guaranty. The terms "include" and "including" shall be interpreted as if followed by the words "without limitation." All references in this Guaranty to sums denominated in dollars or with the symbol "\$" refer to the lawful currency of the United States of America, unless such reference specifically identifies another currency. For purposes of this Guaranty, "Person" or "Persons" shall include firms, associations, partnerships (including limited partnerships), joint ventures, trusts, corporations, limited liability companies, and other legal entities, including governmental bodies, agencies, or instrumentalities, as well as natural persons.

25. **Time of Essence.** Time shall be of the essence in this Guaranty with respect to all of Guarantor's obligations hereunder.

26. **Counterparts.** This Guaranty may be executed in multiple counterparts, each of which, for all purposes, shall be deemed an original, and all of which taken together shall constitute but one and the same agreement.

27. **Guarantor.** The obligations hereunder of Guarantor in such capacities shall be fully enforceable against all assets now or hereafter held by Guarantor.

28. **Entire Agreement.** This Guaranty embodies the entire agreement between Lender and Guarantor with respect to the guaranty by Guarantor of the Guaranteed Obligations. This Guaranty supersedes all prior agreements and understandings, if any, with respect to the guaranty by Guarantor of the Guaranteed Obligations. No condition or conditions precedent to the effectiveness of this Guaranty exist. This Guaranty shall be effective upon execution by Guarantor and delivery to Lender. This Guaranty may not be modified, amended or superseded except in a writing signed by Lender and Guarantor referencing this Guaranty by its date and specifically identifying the portions hereof that are to be modified, amended or superseded.

29. **WAIVER OF JURY TRIAL.** GUARANTOR HEREBY WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH GUARANTOR AND LENDER MAY BE PARTIES ARISING OUT OF, IN CONNECTION WITH, OR IN

ANY WAY PERTAINING TO, THIS GUARANTY, THE NOTE, THE DEED OF TRUST, THE LOAN AGREEMENT AND ANY OTHER LOAN DOCUMENT. IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS GUARANTY. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY GUARANTOR, AND GUARANTOR HEREBY REPRESENTS THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. GUARANTOR FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS GUARANTY AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

30. Mandatory Arbitration. Any controversy or claim between or among the parties hereto including but not limited to those arising out of or relating to this Guaranty or any related agreements or instruments, including any claim based on or arising from an alleged tort, shall be determined by binding arbitration in accordance with the Federal Arbitration Act (or if not applicable, the applicable state law), the Rules of Practice and Procedure for the Arbitration of Commercial Disputes of Endispute, Inc., doing business as "J.A.M.S./Endispute" ("J.A.M.S."), as amended from time to time, and the "Special Rules" set forth below. In the event of any inconsistency, the Special Rules shall control. Judgment upon any arbitration award may be entered in any court having jurisdiction. Any party to this Guaranty may bring an action, including a summary or expedited proceeding, to compel arbitration of any controversy or claim to which this agreement applies in any court having jurisdiction over such action.

(a) Special Rules. The arbitration shall be conducted in Phoenix, Arizona, administered by J.A.M.S. who will appoint an arbitrator; if J.A.M.S. is unable or legally precluded from administering the arbitration, then the American Arbitration Association will serve. All arbitration hearings will be commenced within ninety (90) days of the demand for arbitration; further, the arbitrator shall only, upon a showing of cause, be permitted to extend the commencement of such hearing for up to an additional sixty (60) days.

(b) Reservations of Rights. Nothing in this Guaranty shall be deemed to (i) limit the applicability of any otherwise applicable statutes of limitation or any waivers contained in this Guaranty; or (ii) be a waiver by Lender of the protection afforded to it by 12 U.S.C. Sec. 91 or any substantially equivalent state law; or (iii) limit the right of Lender (A) to exercise self help remedies such as (but not limited to) setoff, or (B) to foreclose against any real or personal property collateral, or (C) to obtain from a court provisional or ancillary remedies such as (but not limited to) injunctive relief or the appointment of a receiver. Lender may exercise such self help rights, foreclose upon such property, or obtain such provisional or ancillary remedies before, during or after the pendency of any arbitration proceeding brought pursuant to this Guaranty. At Lender's option, foreclosure under a deed of trust or mortgage may be accomplished by any of the following: the exercise of a power of sale under the deed of trust

or mortgage, or by judicial sale under the deed of trust or mortgage, or by judicial foreclosure. Neither the exercise of self help remedies nor the institution or maintenance of an action for foreclosure or provisional or ancillary remedies shall constitute a waiver of the right of any party, including the claimant in any such action, to arbitrate the merits of the controversy or claim occasioning resort to such remedies.

No provision in the Loan Documents regarding waiver of jury trial or submission to jurisdiction and/or venue in any court is intended or shall be construed to be in derogation of the provisions in any Loan Document for arbitration of any controversy or claim.

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

IN WITNESS WHEREOF, Guarantor has duly executed this Guaranty under seal as of the date first written above.

Address of Guarantor:

2555 East Camelback Road, Suite 800  
Phoenix, Arizona 85016-9267  
Attention: Senior Vice President  
Real Estate Finance and Sales

GUARANTOR:

OPUS WEST CORPORATION,  
a Minnesota corporation

By: 

Name:

Charles Vogel

Title:

Senior Vice President

Address of Lender:

Richter-Schroeder Company, Inc.  
1110 North Old World Third Street  
Suite 320  
Milwaukee, Wisconsin 53203

# EXHIBIT "E"

**AMENDED AND RESTATED GUARANTY AGREEMENT**  
(Northern Village Senior Apartments, Phoenix, AZ - Construction Loan)

THIS AMENDED AND RESTATED GUARANTY AGREEMENT (this "Guaranty") is made as of the 28<sup>th</sup> day of December, 2006, by OPUS WEST CORPORATION, a Minnesota corporation ("Guarantor"), in favor of M&I MARSHALL & ILSLEY BANK, a Wisconsin banking corporation ("Lender").

**PRELIMINARY STATEMENTS**

NVSL PHOENIX, L.L.C., a Delaware limited liability company ("Borrower"), has executed and delivered to Lender a Deed of Trust Note dated March 27, 2006 in the principal amount of \$7,525,000.00 payable by Borrower to the order of Lender (the "Existing Note") in order to evidence a loan in said principal amount made by Lender to Borrower ("Land Loan") in order to permit the Borrower to finance its acquisition of certain land in Phoenix, Arizona (the "Land").

Pursuant to a Construction Loan Agreement dated as of December 28, 2006 (as the same may be amended from time to time, the "Construction Loan Agreement"), the Borrower has requested, and the Lender has agreed to increase and extend the Land Loan in order to permit the Borrower to construct improvements on the Land, and in connection therewith Borrower has executed and delivered to Lender an amended and restated Deed of Trust Note in the principal amount of \$41,200,000.00 payable by Borrower to the order of the Lender (such note, as it may hereafter be renewed, extended, supplemented, increased or modified and in effect from time to time, and all other notes given in substitution therefore, or in modification, renewal, or extension thereof, in whole or in part, is herein called the "Note").

A condition precedent to Lender's obligation to make the increased loan to Borrower pursuant to the Construction Loan Agreement (the "Loan") is Guarantor's execution and delivery to Lender of this Guaranty.

Any capitalized term used and not defined in this Guaranty shall have the meaning given to such term in the Construction Loan Agreement.

NOW THEREFORE the Existing Guaranty is hereby amended, restated and superseded in its entirety as of the date first written above to read as follows and the obligations set forth in the Existing Guaranty are hereby terminated in favor of the obligations set forth herein.

**STATEMENT OF AGREEMENTS**

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and as a material inducement to Lender to extend credit to Borrower, Guarantor hereby guarantees to Lender the prompt and full payment and performance of the indebtedness and obligations described below in this Guaranty (collectively called the "Guaranteed Obligations"), this Guaranty being upon the following terms and conditions:

1. **Guaranty of Payment.** Guarantor hereby unconditionally and irrevocably guarantees to Lender the punctual payment when due, whether by lapse of time, by acceleration of maturity, or otherwise, of all principal, interest (including interest accruing after the commencement of any bankruptcy or insolvency proceeding by or against Borrower, whether or not allowed in such proceeding), fees, late charges, costs, expenses, indemnification indebtedness, and other sums of money now or hereafter due and owing, or which Borrower is obligated to pay, pursuant to (a) the terms of the Note, the Loan Agreement, the Deed of Trust, the Environmental Agreement, any application, agreement, note or other document executed and delivered in connection with any Loan Documents, including the making of required Borrower's Deposits, and any indemnifications contained in the Loan Documents, now or hereafter existing, and (b) all renewals, extensions, refinancings, modifications, supplements or amendments of such indebtedness, or any of the Loan Documents, or any part thereof (the indebtedness described in clauses (a) and (b) above in this Section 1 is herein collectively called the "Indebtedness"). This Guaranty covers the Indebtedness, whether presently outstanding or arising subsequent to the date hereof, including all amounts advanced by Lender in stages or installments. The guaranty of Guarantor as set forth in this Section 1 is a continuing guaranty of payment and not a guaranty of collection.

2. **Guaranty of Performance.** Guarantor additionally hereby unconditionally and irrevocably guarantees to Lender the timely performance of all other obligations of Borrower under all of the Loan Documents, including, without limiting the generality of the foregoing, that Borrower will duly and punctually perform and observe all other terms, covenants, and conditions of the Note, the Deed of Trust, the Loan Agreement, the Environmental Agreement or any other Loan Document whether according to the present terms thereof, at any earlier or accelerated date or dates as provided therein, or pursuant to any extension of time or to any change or changes in the terms, covenants, or conditions thereof now or hereafter made or granted.

3. **Primary Liability of Guarantor.**

(a) This Guaranty is an absolute, irrevocable and unconditional guaranty of payment and performance. Guarantor shall be liable for the payment and performance of the Guaranteed Obligations as a primary obligor. This Guaranty shall be effective as a waiver of, and Guarantor hereby expressly waives, any and all rights to which Guarantor may otherwise have been entitled under any suretyship laws in effect from time to time, including any right or privilege, whether existing under statute, at law or in equity, to require Lender to take prior recourse or proceedings against any collateral, security or Person (hereinafter defined) whatsoever.

(b) Guarantor hereby agrees that in the event of (i) default by Borrower in payment or performance of the Guaranteed Obligations, or any part thereof, when such indebtedness or performance becomes due, either by its terms or as the result of the exercise of any power to accelerate; (ii) the failure of Guarantor to perform completely and satisfactorily the covenants, terms and conditions of any of the Guaranteed Obligations after the expiration of all applicable cure and grace periods; (iii) the death, incompetency, dissolution or insolvency of Guarantor; (iv) the inability of Guarantor to pay debts as they mature; (v) an assignment by Guarantor for the benefit of creditors; (vi) the institution of any proceeding by or against



Guarantor in bankruptcy or for a reorganization or an arrangement with creditors, or for the appointment of a receiver, trustee or custodian for any of them or for any of their respective properties; (vii) the determination by Lender in good faith that a material adverse change has occurred in the financial condition of Guarantor that materially affects the Guarantor's ability to perform the Guaranteed Obligations; (viii) the entry of a judgment against Guarantor that materially affects its ability to pay or perform the Guaranteed Obligations and that is not discharged or bonded against within a period of thirty (30) days; (ix) a writ or order of attachment, levy or garnishment is issued against Guarantor; (x) the falsity in any material respect of, or any material omission in, any representation made to Lender by Guarantor; or (xi) any transfer of assets of Guarantor that would materially and adversely affect Guarantor's obligations hereunder, without the Lender's prior consent (except for transfers of assets for estate planning purposes valued at less than \$50,000 per year, customary political and charitable contributions, and transfers for which the Guarantor receives consideration substantially equivalent to the fair market value of the transferred asset) (individually and collectively an "Event of Default"); then upon the occurrence of such Event of Default, the Guaranteed Obligations, for purposes of this Guaranty, shall be deemed immediately due and payable at the election of Lender, and Guarantor shall, on demand and without presentment, protest, notice of protest, further notice of nonpayment or of dishonor, default or nonperformance, or notice of acceleration or of intent to accelerate, or any other notice whatsoever, without any notice having been given to Guarantor previous to such demand of the acceptance by Lender of this Guaranty, and without any notice having been given to Guarantor previous to such demand of the creating or incurring of such indebtedness or of such obligation to perform, all such notices being hereby waived by Guarantor, pay the amount due to Lender or perform or observe the agreement, covenant, term or condition, as the case may be, and pay all damages and all costs and expenses that may arise in consequence of such Event of Default (including, without limitation, all attorneys' fees and expenses, investigation costs, court costs, and any and all other costs and expenses incurred by Lender in connection with the collection and enforcement of the Note or any other Loan Document), whether or not suit is filed thereon, or whether at maturity or by acceleration, or whether before or after maturity, or whether in connection with bankruptcy, insolvency or appeal. It shall not be necessary for Lender, in order to enforce such payment or performance by Guarantor, first to institute suit or pursue or exhaust any rights or remedies against Borrower or others liable on such indebtedness or for such performance, or to enforce any rights against any security that shall ever have been given to secure such indebtedness or performance, or to join Borrower or any others liable for the payment or performance of the Guaranteed Obligations or any part thereof in any action to enforce this Guaranty, or to resort to any other means of obtaining payment or performance of the Guaranteed Obligations; provided, however, that nothing herein contained shall prevent Lender from judicially or non-judicially foreclosing the Deed of Trust or from exercising any other rights thereunder. If such foreclosure or other remedy is availed of, Guarantor agrees, subject only to conflicting applicable law which may not be waived by Guarantor, that only the net proceeds therefrom, after deduction of all charges and expenses of every kind and nature whatsoever, shall be applied in reduction of the amount due on the Note and Deed of Trust, and Lender shall not be required to institute or prosecute proceedings to recover any deficiency as a condition of payment hereunder or enforcement hereof. At any sale of the Property or other collateral given for the Indebtedness or any part thereof, whether by foreclosure or otherwise, Lender may at its discretion purchase all or any part of the Property or collateral so sold or offered for sale for its own account and may,

in payment of all or any portion of the amount bid therefor, credit bid all or any portion of the Indebtedness in accordance with applicable law and deduct any successful credit bid from the balance due it pursuant to the terms of the Note and Deed of Trust.

(c) Suit may be brought or demand may be made against Borrower or against all parties who have signed this Guaranty or any other guaranty covering all or any part of the Guaranteed Obligations, or against any one or more of them, separately or together, without impairing the rights of Lender against any party hereto. Any time that Lender is entitled to exercise its rights or remedies hereunder, it may in its discretion elect to demand payment and/or performance. If Lender elects to demand performance, it shall at all times thereafter have the right to demand payment until all of the Guaranteed Obligations have been paid and performed in full. If Lender elects to demand payment, it shall at all times thereafter have the right to demand performance until all of the Guaranteed Obligations have been paid and performed in full.

#### **4. Certain Agreements and Waivers by Guarantor.**

(a) Guarantor hereby agrees that neither Lender's rights or remedies nor Guarantor's obligations under the terms of this Guaranty shall be released, diminished, impaired, reduced or affected by any one or more of the following events, actions, facts, or circumstances, and the liability of Guarantor under this Guaranty shall be absolute and unconditional irrespective of:

(i) any limitation of liability or recourse in any other Loan Document or arising under any law;

(ii) any claim or defense that this Guaranty was made without consideration or is not supported by adequate consideration;

(iii) the taking or accepting of any other security or guaranty for, or right of recourse with respect to, any or all of the Guaranteed Obligations;

(iv) any homestead exemption or any other exemption under applicable law;

(v) any release, surrender, abandonment, exchange, alteration, sale or other disposition, subordination, deterioration, waste, failure to protect or preserve, impairment, or loss of, or any failure to create or perfect any lien or security interest with respect to, or any other dealings with, any collateral or security at any time existing or purported, believed or expected to exist in connection with any or all of the Guaranteed Obligations, including any impairment of Guarantor's recourse against any Person or collateral;

(vi) whether express or by operation of law, any partial release of the liability of Guarantor hereunder, or if one or more other guaranties are now or hereafter obtained by Lender covering all or any part of the Guaranteed Obligations, any complete or partial release of any one or more of such guarantors under any such other guaranty, or any complete or partial release of Borrower or

any other party liable, directly or indirectly, for the payment or performance of any or all of the Guaranteed Obligations;

(vii) the death, insolvency, bankruptcy, disability, dissolution, liquidation, termination, receivership, reorganization, merger, consolidation, change of form, structure or ownership, sale of all assets, or lack of corporate, partnership or other power of Borrower or any other party at any time liable for the payment or performance of any or all of the Guaranteed Obligations;

(viii) either with or without notice to or consent of Guarantor, and on one or more occasions: any renewal, extension, modification, supplement, subordination or rearrangement of the terms of any or all of the Guaranteed Obligations and/or any of the Loan Documents, including, without limitation, material alterations of the terms of payment (including changes in maturity date(s) and interest rate(s)) or performance (including changes in the Plans and other terms or aspects of construction of the Improvements) or any other terms thereof, or any waiver, termination, or release of, or consent to departure from, any of the Loan Documents or any other guaranty of any or all of the Guaranteed Obligations, or any adjustment, indulgence, forbearance, or compromise that may be granted from time to time by Lender to Borrower, Guarantor, and/or any other Person at any time liable for the payment or performance of any or all of the Guaranteed Obligations;

(ix) any neglect, lack of diligence, delay, omission, failure, or refusal of Lender to take or prosecute (or in taking or prosecuting) any action for the collection or enforcement of any of the Guaranteed Obligations, or to foreclose or take or prosecute any action to foreclose (or in foreclosing or taking or prosecuting any action to foreclose) upon any security therefor, or to exercise (or in exercising) any other right or power with respect to any security therefor, or to take or prosecute (or in taking or prosecuting) any action in connection with any Loan Document, or any failure to sell or otherwise dispose of in a commercially reasonable manner any collateral securing any or all of the Guaranteed Obligations;

(x) any failure of Lender to notify Guarantor of any creation, renewal, extension, rearrangement, modification, supplement, subordination, or assignment of the Guaranteed Obligations or any part thereof, or of any Loan Document, or of any release of or change in any security, or of any other action taken or refrained from being taken by Lender against Borrower or any security or other recourse, or of any new agreement between Lender and Borrower, it being understood that Lender shall not be required to give Guarantor any notice of any kind under any circumstances with respect to or in connection with the Guaranteed Obligations, any and all rights to notice Guarantor may have otherwise had being hereby waived by Guarantor, and the Guarantor shall be responsible for obtaining for itself information regarding the Borrower, including, but not limited to, any changes in the business or financial condition of the Borrower, and the Guarantor acknowledges and agrees that the Lender shall have

no duty to notify the Guarantor of any information which the Lender may have concerning the Borrower.

(xi) if for any reason Lender is required to refund any payment by Borrower to any other party liable for the payment or performance of any or all of the Guaranteed Obligations or pay the amount thereof to someone else;

(xii) the making of advances by Lender to protect its interest in the Property, preserve the value of the Property or for the purpose of performing any term or covenant contained in any of the Loan Documents;

(xiii) the existence of any claim, counterclaim, set-off or other right that Guarantor may at any time have against Borrower, Lender, or any other Person, whether or not arising in connection with this Guaranty, the Note, the Loan Agreement, or any other Loan Document;

(xiv) the unenforceability of all or any part of the Guaranteed Obligations against Borrower, whether because the Guaranteed Obligations exceed the amount permitted by law or violate any usury law, or because the act of creating the Guaranteed Obligations, or any part thereof, is ultra vires, or because the officers or Persons creating the Guaranteed Obligations acted in excess of their authority, or because of a lack of validity or enforceability of or defect or deficiency in any of the Loan Documents, or because Borrower has any valid defense, claim or offset with respect thereto, or because Borrower's obligation ceases to exist by operation of law, or because of any other reason or circumstance, it being agreed that Guarantor shall remain liable hereon regardless of whether Borrower or any other Person be found not liable on the Guaranteed Obligations, or any part thereof, for any reason (and regardless of any joinder of Borrower or any other party in any action to obtain payment or performance of any or all of the Guaranteed Obligations); or

(xv) any order, ruling or plan of reorganization emanating from proceedings under Title 11 of the United States Code with respect to Borrower or any other Person, including any extension, reduction, composition, or other alteration of the Guaranteed Obligations, whether or not consented to by Lender.

(b) In the event any payment by Borrower or any other Person to Lender is held to constitute a preference, fraudulent transfer or other voidable payment under any bankruptcy, insolvency or similar federal or state law or theory, including any equitable remedy, or if for any other reason Lender is required to refund such payment or pay the amount thereof to any other party, such payment by Borrower or any other party to Lender shall not constitute a release of Guarantor from any liability hereunder, and this Guaranty shall continue to be effective or shall be reinstated (notwithstanding any prior release, surrender or discharge by Lender of this Guaranty or of Guarantor), as the case may be, with respect to, and this Guaranty shall apply to, any and all amounts so refunded by Lender or paid by Lender to another Person (which amounts shall constitute part of the Guaranteed Obligations), and any interest paid by Lender and any attorneys' fees, costs and expenses paid or incurred by Lender in connection with

any such event. It is the intent of Guarantor and Lender that the obligations and liabilities of Guarantor hereunder are absolute and unconditional under any and all circumstances and that until the Guaranteed Obligations are fully and finally paid and performed, and not subject to refund or disgorgement, the obligations and liabilities of Guarantor hereunder shall not be discharged or released, in whole or in part, by any act or occurrence that might, but for the provisions of this Guaranty, be deemed a legal or equitable discharge or release of a guarantor. Lender shall be entitled to continue to hold this Guaranty in its possession for the longer of (i) the period after which any performance of obligations under the Environmental Agreement shall accrue, or (ii) a period of five years from the date the Guaranteed Obligations are paid and performed in full and for so long thereafter as may be necessary to enforce any obligation of Guarantor hereunder and/or to exercise any right or remedy of Lender hereunder.

(c) If acceleration of the time for payment of any amount payable by Borrower under the Note, the Loan Agreement, or any other Loan Document is stayed or delayed by any law or tribunal, all such amounts shall nonetheless be payable by Guarantor on demand by Lender.

(d) Guarantor hereby waives any and all rights to which Guarantor may otherwise have been entitled under any suretyship laws in effect from time to time, including any right or privilege, whether existing under statute, at law or in equity, to require Lender to take prior recourse or proceedings against any collateral, security or Person (as such term is defined in Section 24 below) whatsoever. By way of illustration and not limitation of the waiver in the preceding sentence, Guarantor waives and agrees not to assert or take advantage of the provisions of any of Arizona Revised Statutes Sections 12-1641 through 12-1646, 47-3419 and 47-3605, Rule 17(f) of the Arizona Rules of Civil Procedure, or any similar or analogous other present or future statutory or common law or procedural rule of any jurisdiction relating to guarantors, indemnitors, sureties, co-makers or accommodation parties.

(e) Without limiting the foregoing, or anything else contained in this Guaranty, Guarantor waives all rights and defenses that Guarantor may have because the Guaranteed Obligations are secured by real property. This means, among other things:

(i) That Lender may collect from Guarantor without first foreclosing on any real or personal property collateral pledged by Borrower; and

(ii) If Lender forecloses on any real property collateral pledged by Borrower: (A) the amount of the Guaranteed Obligations may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price; and (B) Lender may collect from Guarantor even if Lender, by foreclosing on the real property collateral, has destroyed any right Guarantor may have to collect from Borrower.

This is an unconditional and irrevocable waiver of any rights and defenses that Guarantor may have because the Guaranteed Obligations are secured by real property.

5. **Subordination.** If, for any reason whatsoever, Borrower is now or hereafter becomes indebted to Guarantor:

(a) such indebtedness and all interest thereon and all liens, security interests and rights now or hereafter existing with respect to property of Borrower securing such indebtedness shall, at all times, be subordinate in all respects to the Guaranteed Obligations and to all liens, security interests and rights now or hereafter existing to secure the Guaranteed Obligations;

(b) Guarantor shall not be entitled to enforce or receive payment, directly or indirectly, of any such indebtedness of Borrower to Guarantor until the Guaranteed Obligations have been fully and finally paid and performed;

(c) Guarantor hereby assigns and grants to Lender a security interest in all such indebtedness and security therefor, if any, of Borrower to Guarantor now existing or hereafter arising, including any dividends and payments pursuant to debtor relief or insolvency proceedings referred to below. In the event of receivership, bankruptcy, reorganization, arrangement or other debtor relief or insolvency proceedings involving Borrower as debtor, Lender shall have the right to prove its claim in any such proceeding so as to establish its rights hereunder and shall have the right to receive directly from the receiver, trustee or other custodian (whether or not a Default shall have occurred or be continuing under any of the Loan Documents), dividends and payments that are payable upon any obligation of Borrower to Guarantor now existing or hereafter arising, and to have all benefits of any security therefor, until the Guaranteed Obligations have been fully and finally paid and performed. If, notwithstanding the foregoing provisions, Guarantor should receive any payment, claim or distribution that is prohibited as provided above in this Section 5, Guarantor shall pay the same to Lender immediately, Guarantor hereby agreeing that it shall receive the payment, claim or distribution in trust for Lender and shall have absolutely no dominion over the same except to pay it immediately to Lender; and

(d) Guarantor shall promptly upon request of Lender from time to time execute such documents and perform such acts as Lender may require to evidence and perfect its interest and to permit or facilitate exercise of its rights under this Section 5, including, but not limited to, execution and delivery of financing statements, proofs of claim, further assignments and security agreements, and delivery to Lender of any promissory notes or other instruments evidencing indebtedness of Borrower to Guarantor. All promissory notes, accounts receivable ledgers or other evidences, now or hereafter held by Guarantor, of obligations of Borrower to Guarantor shall contain a specific written notice thereon that the indebtedness evidenced thereby is subordinated under and is subject to the terms of this Guaranty.

6. Other Liability of Guarantor or Borrower. If Guarantor is or becomes liable, by endorsement or otherwise, for any indebtedness owing by Borrower to Lender other than under this Guaranty, such liability shall not be in any manner impaired or affected hereby, and the rights of Lender hereunder shall be cumulative of any and all other rights that Lender may have against Guarantor. If Borrower is or becomes indebted to Lender for any indebtedness other than or in excess of the Indebtedness for which Guarantor is liable under this Guaranty, any payment received or recovery realized upon such other indebtedness of Borrower to Lender may, except to the extent paid by Guarantor on the Indebtedness or specifically required by law or agreement of Lender to be applied to the Indebtedness, in Lender's sole discretion, be applied upon indebtedness of Borrower to Lender other than the Indebtedness. This Guaranty is

independent of (and shall not be limited by) any other guaranty now existing or hereafter given. Further, Guarantor's liability under this Guaranty is in addition to any and all other liability Guarantor may have in any other capacity, including without limitation, its capacity as a general partner.

7. **Lender Assigns.** This Guaranty is for the benefit of Lender and Lender's successors and assigns, and in the event of an assignment of the Guaranteed Obligations, or any part thereof, the rights and benefits hereunder, to the extent applicable to the Guaranteed Obligations so assigned, may be transferred with such Guaranteed Obligations. Guarantor waives notice of any transfer or assignment of the Guaranteed Obligations, or any part thereof, and agrees that failure to give notice of any such transfer or assignment will not affect the liabilities of Guarantor hereunder.

8. **Binding Effect.** This Guaranty is binding not only on Guarantor, but also on Guarantor's heirs, personal representatives, successors and assigns. Upon the death of Guarantor, if Guarantor is a natural person, this Guaranty shall continue against Guarantor's estate as to all of the Guaranteed Obligations, including that portion incurred or arising after the death of Guarantor and shall be provable in full against Guarantor's estate, whether or not the Guaranteed Obligations are then due and payable. If this Guaranty is signed by more than one Person, then all of the obligations of Guarantor arising hereunder shall be jointly and severally binding on each of the undersigned, and their respective heirs, personal representatives, successors and assigns, and the term "Guarantor" shall mean all of such Persons and each of them individually.

9. **Governing Law; Forum; Consent to Jurisdiction.** The validity, enforcement, and interpretation of this Guaranty, shall for all purposes be governed by and construed in accordance with the laws of the State of Arizona and applicable United States federal law, and is intended to be performed in accordance with, and only to the extent permitted by, such laws. All obligations of Guarantor hereunder are payable and performable at the place or places where the Guaranteed Obligations are payable and performable. Guarantor hereby irrevocably submits generally and unconditionally for Guarantor and in respect of Guarantor's property to the nonexclusive jurisdiction of any state court, or any United States federal court, sitting in the state specified in the first sentence of this Section and to the jurisdiction of any state or United States federal court sitting in the state in which any of the Land is located, over any suit, action or proceeding arising out of or relating to this Guaranty or the Guaranteed Obligations. Guarantor hereby irrevocably waives, to the fullest extent permitted by law, any objection that Guarantor may now or hereafter have to the laying of venue in any such court and any claim that any such court is an inconvenient forum. Final judgment in any such suit, action or proceeding brought in any such court shall be conclusive and binding upon Guarantor and may be enforced in any court in which Guarantor is subject to jurisdiction. To the extent permitted by applicable law, Guarantor hereby agrees and consents that, in addition to any methods of service of process provided for under applicable law, all service of process in any such suit, action or proceeding in any state court, or any United States federal court, sitting in the state specified in the first sentence of this Section may be made by certified or registered mail, return receipt requested, directed to Guarantor at the address set forth at the end of this Guaranty, or at a subsequent address of which Lender receives actual notice from Guarantor in accordance with the notice provisions hereof, and service so made shall be complete five (5) days after the same shall have

been so mailed. Nothing herein shall affect the right of Lender to serve process in any manner permitted by law or limit the right of Lender to bring proceedings against Guarantor in any other court or jurisdiction. Guarantor hereby releases, to the extent permitted by applicable law, all errors and all rights of exemption, appeal, stay of execution, inquisition, and other rights to which the Guarantor may otherwise be entitled under the laws of the United States of America or any State or possession of the United States of America now in force or which may hereinafter be enacted.

10. **Invalidity of Certain Provisions.** If any provision of this Guaranty or the application thereof to any Person or circumstance shall, for any reason and to any extent, be declared to be invalid or unenforceable, neither the remaining provisions of this Guaranty nor the application of such provision to any other Person or circumstance shall be affected thereby, and the remaining provisions of this Guaranty, or the applicability of such provision to other Persons or circumstances, as applicable, shall remain in effect and be enforceable to the maximum extent permitted by applicable law.

11. **Attorneys' Fees and Costs of Collection.** Guarantor shall pay on demand all attorneys' fees and all other costs and expenses incurred by Lender in the enforcement of or preservation of Lender's rights under this Guaranty including, without limitation, all attorneys' fees and expenses, investigation costs, and all court costs, whether or not suit is filed hereon, or whether at maturity or by acceleration, or whether before or after maturity, or whether in connection with bankruptcy, insolvency or appeal, or whether in connection with the collection and enforcement of this Guaranty against any other Guarantor, if there be more than one. Guarantor agrees to pay interest on any expenses or other sums due to Lender under this Section 11 that are not paid when due, at a rate per annum equal to the interest rate provided for in the Note. Guarantor's obligations and liabilities under this Section 11 shall survive any payment or discharge in full of the Guaranteed Obligations.

12. **Payments.** All sums payable under this Guaranty shall be paid in lawful money of the United States of America that at the time of payment is legal tender for the payment of public and private debts.

13. **Controlling Agreement.** Guarantor hereby agrees and contracts in writing to pay all interest required by this Guaranty, and that all such interest will constitute interest paid at an agreed rate. It is not the intention of Lender or Guarantor to obligate Guarantor to pay interest in excess of that lawfully permitted to be paid by Guarantor under applicable law. Should it be determined that any portion of the Guaranteed Obligations or any other amount payable by Guarantor under this Guaranty constitutes interest in excess of the maximum amount of interest that Guarantor, in Guarantor's capacity as guarantor, may lawfully be required to pay under applicable law, the obligation of Guarantor to pay such interest shall automatically be limited to the payment thereof in the maximum amount so permitted under applicable law. The provisions of this Section 13 shall override and control all other provisions of this Guaranty and of any other agreement between Guarantor and Lender.



**14. Representations, Warranties, and Covenants of Guarantor.**

(a) Guarantor hereby represents, warrants, and covenants that (a) Guarantor has a financial interest in the Borrower and will derive a material and substantial benefit, directly or indirectly, from the making of the Loan to Borrower and from the making of this Guaranty by Guarantor; (b) this Guaranty is duly authorized and valid, and is binding upon and enforceable against Guarantor; (c) Guarantor is not, and the execution, delivery and performance by Guarantor of this Guaranty will not cause Guarantor to be, in violation of or in default with respect to any law or in default (or at risk of acceleration of indebtedness) under any material agreement or restriction by which Guarantor is bound or affected; (d) Guarantor has full power and authority to enter into and perform this Guaranty; (e) Guarantor will indemnify Lender from any loss, cost or expense as a result of any representation or warranty of the Guarantor being false, incorrect, incomplete or misleading in any material respect; (f) there is no litigation pending or, to the knowledge of Guarantor, threatened before or by any tribunal against or affecting Guarantor which could materially interfere with Guarantor's performance of the Guaranteed Obligations; (g) all financial statements and information heretofore furnished to Lender by Guarantor do, and all financial statements and information hereafter furnished to Lender by Guarantor will, fully and accurately present the condition (financial or otherwise) of Guarantor as of their dates and the results of Guarantor's operations for the periods therein specified, and, since the date of the most recent financial statements of Guarantor heretofore furnished to Lender, no material adverse change has occurred in the financial condition of Guarantor, nor, except as heretofore disclosed in writing to Lender, has Guarantor incurred any material liability, direct or indirect, fixed or contingent; (h) after giving effect to this Guaranty, Guarantor is solvent, is not engaged or about to engage in business or a transaction for which the property of Guarantor is an unreasonably small capital, and does not intend to incur or believe that it will incur debts that will be beyond its ability to pay as such debts mature; (i) Lender has no duty at any time to investigate or inform Guarantor of the financial or business condition or affairs of Borrower or any change therein, and Guarantor will keep fully apprised of Borrower's financial and business condition; (j) Guarantor acknowledges and agrees that Guarantor may be required to pay and perform the Guaranteed Obligations in full without assistance or support from Borrower or any other Person; and (k) Guarantor has read and fully understands the provisions contained in the Note, the Loan Agreement, the Deed of Trust, the Environmental Agreement, and the other Loan Documents. Guarantor's representations, warranties and covenants are a material inducement to Lender to enter into the other Loan Documents and shall survive the execution hereof and any bankruptcy, foreclosure, transfer of security or other event affecting Borrower, Guarantor, any other party, or any security for all or any part of the Guaranteed Obligations.

(b) Guarantor hereby agrees as follows:

(i) to maintain during the life of the Loan at the end of each fiscal quarter, unpledged cash equivalents as determined by generally accepted accounting principles, and marketable securities ("Liquidity") of not less than One Million And No/100 Dollars (\$1,000,000.00); and

(ii) to maintain at the end of each fiscal quarter a Tangible Net Worth equal to at least Fifty Million And No/100 Dollars (\$50,000,000.00).

"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 organization expense, treasury stock, unamortized debt discount and expense, deferred research and development costs, deferred marketing expenses, and other like intangibles) plus subordinated debt, less total liabilities, including but not limited to accrued and deferred income taxes, and any reserves against assets; and

(iii) to provide to Lender, within ninety (90) days after the close of each fiscal quarter, a covenant compliance certificate, in form and detail satisfactory to Lender, certifying Guarantor's compliance with the covenants described in subparagraph (i)-(ii) above.

15. Notices. All notices, requests, consents, demands and other communications required or which any party desires to give hereunder or under any other Loan Document shall be in writing and, unless otherwise specifically provided in such other Loan Document, shall be deemed sufficiently given or furnished if delivered by personal delivery, by courier, or by registered or certified United States mail, postage prepaid, addressed to the party to whom directed at the addresses specified in this Guaranty (unless changed by similar notice in writing given by the particular party whose address is to be changed) or by telegram, telex, or facsimile. Any such notice or communication shall be deemed to have been given either at the time of personal delivery or, in the case of courier or mail, as of the date of first attempted delivery at the address and in the manner provided herein, or, in the case of telegram, telex or facsimile, upon receipt; provided that, service of a notice required by any applicable statute shall be considered complete when the requirements of that statute are met. Notwithstanding the foregoing, no notice of change of address shall be effective except upon actual receipt. This Section shall not be construed in any way to affect or impair any waiver of notice or demand provided in this Guaranty or in any Loan Document or to require giving of notice or demand to or upon any Person in any situation or for any reason.

16. Cumulative Rights. The exercise by Lender of any right or remedy hereunder or under any other Loan Document, or at law or in equity, shall not preclude the concurrent or subsequent exercise of any other right or remedy. Lender shall have all rights, remedies and recourses afforded to Lender by reason of this Guaranty or any other Loan Document or by law or equity or otherwise, and the same (a) shall be cumulative and concurrent, (b) may be pursued separately, successively or concurrently against Guarantor or others obligated for the Guaranteed Obligations, or any part thereof, or against any one or more of them, or against any security or otherwise, at the sole and absolute discretion of Lender, (c) may be exercised as often as occasion therefor shall arise, it being agreed by Guarantor that the exercise of, discontinuance of the exercise of or failure to exercise any of such rights, remedies, or recourses shall in no event be construed as a waiver or release thereof or of any other right, remedy, or recourse, and (d) are intended to be, and shall be, nonexclusive. No waiver of any default on the part of Guarantor or of any breach of any of the provisions of this Guaranty or of any other document shall be considered a waiver of any other or subsequent default or breach, and no delay or omission in exercising or enforcing the rights and powers granted herein or in any other document shall be construed as a waiver of such rights and powers, and no exercise or enforcement of any rights or powers hereunder or under any other document shall be held to exhaust such rights and powers,

and every such right and power may be exercised from time to time. The granting of any consent, approval or waiver by Lender shall be limited to the specific instance and purpose therefor and shall not constitute consent or approval in any other instance or for any other purpose. No notice to or demand on Guarantor in any case shall of itself entitle Guarantor to any other or further notice or demand in similar or other circumstances. No provision of his Guaranty or any right, remedy or recourse of Lender with respect hereto, or any default or breach, can be waived, nor can this Guaranty or Guarantor be released or discharged in any way or to any extent, except specifically in each case by a writing intended for that purpose (and which refers specifically to this Guaranty) executed, and delivered to Guarantor, by Lender.

17. **Term of Guaranty.** This Guaranty shall continue in effect until all the Guaranteed Obligations are fully and finally paid, performed and discharged, except that, and notwithstanding any return of this Guaranty to Guarantor, this Guaranty shall continue in effect (i) with respect to any of the Guaranteed Obligations that survive the full and final payment of the indebtedness evidenced by the Note; (ii) with respect to all obligations and liabilities of Guarantor under Section 11 and (iii) as provided in Section 4(b).

18. **Financial Statements.** As used in this Section, "Financial Statements" means (i) for each reporting party other than an individual, a balance sheet, income statement and amount and sources of contingent liabilities, a reconciliation of changes in equity and liquidity verification, and, unless Lender otherwise consents, consolidated and consolidating statements if the reporting party is a holding company or a parent of a subsidiary entity; and (ii) for each reporting party who is an individual, a balance sheet, statements of amount and sources of contingent liabilities. Each party for whom Financial Statements are required is a "reporting party" and a specified period to which the required Financial Statements relate is a "reporting period". Guarantor shall provide or cause to be provided to Lender the following:

(a) If requested by Lender, for each fiscal year of such reporting party, as soon as reasonably practicable and in any event within one hundred twenty (120) days after the close of each fiscal year unqualified audited financial statements of Guarantor, and for each fiscal quarter, as soon as reasonably practicable and in any event within ninety (90) days after the close of each such reporting period company prepared financial statements of Guarantor.

(b) From time to time promptly after Lender's request, such additional information, reports and statements regarding the business operations and financial condition of each reporting party as Lender may reasonably request.

All Financial Statements shall be in form and detail satisfactory to Lender and shall contain or be attached to the signed and dated written certification of the reporting party in form satisfactory to Lender to certify that the Financial Statements are furnished to Lender in connection with the extension of credit by Lender and constitute a true and correct statement of the reporting party's financial position. All certifications and signatures on behalf of corporations, partnerships or other entities shall be by a representative of the entity satisfactory to Lender. All Financial Statements for a reporting party who is an individual shall be on Lender's then-current personal financial statement form or in another form satisfactory to Lender, and shall clearly designate any sole and separate or community property. All Financial Statements shall be audited or certified, as required by Lender, without any qualification or exception not acceptable to Lender,

by independent certified public accountants acceptable to Lender, and shall contain all reports and disclosures required by generally accepted accounting principles for a fair presentation.

All assets shown on the Financial Statements provided by Guarantor, unless clearly designated to the contrary shall, be conclusively deemed to be free and clear of any exemption or any claim of exemption of Guarantor at the date of the Financial Statements and at all times thereafter. Acceptance of any Financial Statement by Lender, whether or not in the form prescribed herein, shall be relied upon by Lender in the administration, enforcement, and extension of the Guaranteed Obligations.

19. **Disclosure of Information.** Lender may sell or offer to sell the Loan or interests in the Loan to one or more assignees or participants and may disclose to any such assignee or participant or prospective assignee or participant, to Lender's affiliates, to any regulatory body having jurisdiction over Lender and to any other parties as necessary or appropriate in Lender's reasonable judgment, any information Lender now has or hereafter obtains pertaining to the Guaranteed Obligations, this Guaranty, or Guarantor, including, without limitation, information regarding any security for the Guaranteed Obligations or for this Guaranty, credit or other information on Guarantor, Borrower, and/or any other party liable, directly or indirectly, for any part of the Guaranteed Obligations. Notwithstanding the foregoing, the disclosure of information regarding the Guarantor shall be subject to the confidentiality provisions of Section 6.7 of the Loan Agreement.

20. **Right of Set-Off.** Upon the occurrence and during the continuance of any Default, however defined, in the payment or performance when due of any of the Guaranteed Obligations, Lender is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law, without notice to any Person (any such notice being expressly waived by Guarantor to the fullest extent permitted by applicable law), to set off and apply any and all deposits, funds, or assets at any time held and other indebtedness at any time owing by Lender to or for the credit or the account of Guarantor against any and all of the obligations of Guarantor now or hereafter existing under this Guaranty, whether or not Lender shall have made any demand under this Guaranty or exercised any other right or remedy hereunder. Lender will promptly notify Guarantor after any such set-off and application made by Lender, provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of Lender under this Section 20 are in addition to the other rights and remedies (including other rights of set-off) that Lender may have and every right of setoff and lien shall continue in full force and effect until such right of setoff or lien is specifically waived or released by an instrument in writing executed by Lender.

21. **Subrogation.** Notwithstanding anything to the contrary contained herein, Guarantor shall not have any right of subrogation in or under any of the Loan Documents or to participate in any way therein, or in any right, title or interest in and to any security or right of recourse for the Indebtedness or any right to reimbursement, exoneration, contribution, indemnification or any similar rights, until the Indebtedness has been fully and finally paid. This waiver is given to induce Lender to make the Loan to Borrower.

22. **Further Assurances.** Guarantor at Guarantor's expense will promptly execute and deliver to Lender upon Lender's request all such other and further documents, agreements,

and instruments in compliance with or accomplishment of the agreements of Guarantor under this Guaranty.

23. **No Fiduciary Relationship.** The relationship between Lender and Guarantor is solely that of lender and guarantor. Lender has no fiduciary or other special relationship with or duty to Guarantor and none is created hereby or may be inferred from any course of dealing or act or omission of Lender.

24. **Interpretation.** If this Guaranty is signed by more than one Person as "Guarantor," then the term "Guarantor" as used in this Guaranty shall refer to all such Persons, jointly and severally, and all promises, agreements, covenants, waivers, consents, representations, warranties and other provisions in this Guaranty are made by and shall be binding upon each and every such Person, jointly and severally, and, with respect to any Guarantors constituting a marital community, their sole and separate and community property, and Lender may pursue any Guarantor hereunder without being required (i) to pursue any other Guarantor hereunder or (ii) pursue rights and remedies under the Deed of Trust and/or applicable law with respect to the Property or any other Loan Documents. The term "Lender" shall be deemed to include any subsequent holder(s) of the Note. Whenever the context of any provisions hereof shall require it, words in the singular shall include the plural, words in the plural shall include the singular, and pronouns of any gender shall include the other gender. Captions and headings in the Loan Documents are for convenience only and shall not affect the construction of the Loan Documents. All references in this Guaranty to Schedules, Articles, Sections, Subsections, paragraphs and subparagraphs refer to the respective subdivisions of this Guaranty, unless such reference specifically identifies another document. The terms "herein," "hereof," "hereto," "hereunder" and similar terms refer to this Guaranty and not to any particular Section or subsection of this Guaranty. The terms "include" and "including" shall be interpreted as if followed by the words "without limitation." All references in this Guaranty to sums denominated in dollars or with the symbol "\$" refer to the lawful currency of the United States of America, unless such reference specifically identifies another currency. For purposes of this Guaranty, "Person" or "Persons" shall include firms, associations, partnerships (including limited partnerships), joint ventures, trusts, corporations, limited liability companies, and other legal entities, including governmental bodies, agencies, or instrumentalities, as well as natural persons.

25. **Time of Essence.** Time shall be of the essence in this Guaranty with respect to all of Guarantor's obligations hereunder.

26. **Counterparts.** This Guaranty may be executed in multiple counterparts, each of which, for all purposes, shall be deemed an original, and all of which taken together shall constitute but one and the same agreement.

27. **Guarantor.** The obligations hereunder of Guarantor in such capacities shall be fully enforceable against all assets now or hereafter held by Guarantor.

28. **Entire Agreement.** This Guaranty embodies the entire agreement between Lender and Guarantor with respect to the guaranty by Guarantor of the Guaranteed Obligations. This Guaranty supersedes all prior agreements and understandings, if any, with respect to the guaranty by Guarantor of the Guaranteed Obligations. No condition or conditions precedent to

the effectiveness of this Guaranty exist. This Guaranty shall be effective upon execution by Guarantor and delivery to Lender. This Guaranty may not be modified, amended or superseded except in a writing signed by Lender and Guarantor referencing this Guaranty by its date and specifically identifying the portions hereof that are to be modified, amended or superseded.

**29. WAIVER OF JURY TRIAL.** GUARANTOR HEREBY WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH GUARANTOR AND LENDER MAY BE PARTIES ARISING OUT OF, IN CONNECTION WITH, OR IN ANY WAY PERTAINING TO, THIS GUARANTY, THE NOTE, THE DEED OF TRUST, THE LOAN AGREEMENT AND ANY OTHER LOAN DOCUMENT. IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS GUARANTY. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY GUARANTOR, AND GUARANTOR HEREBY REPRESENTS THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. GUARANTOR FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS GUARANTY AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

**30. Mandatory Arbitration.** Any controversy or claim between or among the parties hereto including but not limited to those arising out of or relating to this Guaranty or any related agreements or instruments, including any claim based on or arising from an alleged tort, shall be determined by binding arbitration in accordance with the Federal Arbitration Act (or if not applicable, the applicable state law), the Rules of Practice and Procedure for the Arbitration of Commercial Disputes of Endispute, Inc., doing business as "J.A.M.S./Endispute" ("J.A.M.S."), as amended from time to time, and the "Special Rules" set forth below. In the event of any inconsistency, the Special Rules shall control. Judgment upon any arbitration award may be entered in any court having jurisdiction. Any party to this Guaranty may bring an action, including a summary or expedited proceeding, to compel arbitration of any controversy or claim to which this agreement applies in any court having jurisdiction over such action.

(a) **Special Rules.** The arbitration shall be conducted in Phoenix, Arizona, administered by J.A.M.S. who will appoint an arbitrator; if J.A.M.S. is unable or legally precluded from administering the arbitration, then the American Arbitration Association will serve. All arbitration hearings will be commenced within ninety (90) days of the demand for arbitration; further, the arbitrator shall only, upon a showing of cause, be permitted to extend the commencement of such hearing for up to an additional sixty (60) days.

(b) **Reservations of Rights.** Nothing in this Guaranty shall be deemed to (i) limit the applicability of any otherwise applicable statutes of limitation or any waivers contained in this Guaranty; or (ii) be a waiver by Lender of the protection afforded to it by 12

U.S.C. Sec. 91 or any substantially equivalent state law; or (iii) limit the right of Lender (A) to exercise self help remedies such as (but not limited to) setoff, or (B) to foreclose against any real or personal property collateral, or (C) to obtain from a court provisional or ancillary remedies such as (but not limited to) injunctive relief or the appointment of a receiver. Lender may exercise such self help rights, foreclose upon such property, or obtain such provisional or ancillary remedies before, during or after the pendency of any arbitration proceeding brought pursuant to this Guaranty. At Lender's option, foreclosure under a deed of trust or mortgage may be accomplished by any of the following: the exercise of a power of sale under the deed of trust or mortgage, or by judicial sale under the deed of trust or mortgage, or by judicial foreclosure. Neither the exercise of self help remedies nor the institution or maintenance of an action for foreclosure or provisional or ancillary remedies shall constitute a waiver of the right of any party, including the claimant in any such action, to arbitrate the merits of the controversy or claim occasioning resort to such remedies.

No provision in the Loan Documents regarding waiver of jury trial or submission to jurisdiction and/or venue in any court is intended or shall be construed to be in derogation of the provisions in any Loan Document for arbitration of any controversy or claim.

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

IN WITNESS WHEREOF, Guarantor has duly executed this Guaranty under seal as of the date first written above.

Address of Guarantor:

2555 East Camelback Road, Suite 800  
Phoenix, Arizona 85016-9267  
Attention: Senior Vice President  
Real Estate Finance and Sales

GUARANTOR:

OPUS WEST CORPORATION, a  
Minnesota corporation

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

Address of Lender:

M&I Institutional Real Estate  
1110 North Old World Third Street  
Suite 320  
Milwaukee, Wisconsin 53203

# EXHIBIT "F"



### **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, 11<sup>th</sup> 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

# EXHIBIT “G”

**ENVIRONMENTAL INDEMNIFICATION AND RELEASE AGREEMENT**  
(Hermosa Village Senior Living Apartments, Tucson, Arizona - Land Loan)

This Environmental Indemnification and Release Agreement (this "Agreement") is made as of the 30<sup>th</sup> day of October, 2006, by and between HVSL TUCSON, L.L.C., a Delaware limited liability company ("Borrower"), and OPUS WEST CORPORATION, a Minnesota corporation ("Guarantor"), and RICHTER-SCHROEDER COMPANY, INC., a Wisconsin corporation (together with its successors and assigns, "Lender").

**RECITALS**

Borrower has requested that Lender make a loan (the "Loan") to Borrower evidenced by a Promissory Note of even date herewith made by Borrower payable to the order of Lender in the principal face amount of EIGHT MILLION AND NO/100 DOLLARS (\$8,000,000.00), which Loan is secured by, among other things, a Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing (the "Deed of Trust") of even date herewith encumbering certain real and personal property as therein described (collectively, the "Property"), including the land described in Exhibit "A" which is attached hereto and made a part hereof. As a condition precedent to making the Loan, Lender has required that Borrower and Guarantor execute and deliver this Agreement to Lender. The term "Loan Documents" is used herein as defined in the Deed of Trust. This Agreement is one of the Loan Documents, but this Agreement is not secured by the Deed of Trust. Therefore, no enforcement action under this Agreement will be subject to the bar date set forth in A.R.S. Section 33-814.A.

**AGREEMENTS**

1. Definitions. As used in this Agreement, the terms defined in the Preamble and in the Recitals hereto shall have the respective meanings specified therein, and the following additional terms shall have the meanings specified:

"Claim" means any controversy or claim between one or more Obligor and Lender, whether arising in contract or tort or by statute, that arises out of or relates to this Agreement, including any renewals, extensions or modifications hereof.

"Cut-Off Date" means the earlier of the following two dates: (a) the date on which the indebtedness and obligations secured by the Deed of Trust have been paid and performed in full and the Deed of Trust has been released; or (b) the date on which the lien of the Deed of Trust is fully and finally foreclosed or a conveyance by deed in lieu of such foreclosure is fully and finally effective and possession of the Property has been given to and accepted by the purchaser or grantee free of occupancy and claims to occupancy by Obligor and their heirs, devisees, representatives, successors and assigns; provided, however, that if such payment, performance, release, foreclosure or conveyance is challenged in proceedings under any Debtor Relief Law or otherwise, the Cut-Off Date shall be deemed not to have occurred until such challenge is validly released, dismissed with prejudice or otherwise barred by law from further assertion.

"Debtor Relief Law" means any federal, state or local law, domestic or foreign, as now or hereafter in effect relating to bankruptcy, insolvency, liquidation, receivership, reorganization, arrangement, composition, extension or adjustment of debts, or any similar law affecting the rights of creditors.

"Default" has the meaning ascribed to such term in the Deed of Trust and includes any breach of any covenant, representation or warranty and any other default under this Agreement, subject to any applicable notice and cure period.

"Default Rate" has the meaning ascribed to such term in the Note.

"Environmental Assessment" means a report (including all drafts thereof) of an environmental assessment of the Property of such scope as may be requested by Lender or another Indemnified Party, including the taking of soil borings and air and groundwater samples and other above- and below-ground testing, by a consulting firm acceptable to such Indemnified Party and made in accordance with the established guidelines of such Indemnified Party.

"Environmental Claim" means any written investigative, enforcement, cleanup, removal, containment, remedial or other private or governmental or regulatory action at any time threatened, instituted or completed pursuant to any applicable Environmental Requirement, against Borrower or Obligor against or with respect to the Property or any condition, use or activity on the Property (including any such action against Lender), and any claim at any time threatened or made by any person against Obligor or against or with respect to the Property or any condition, use or activity on the Property (including any such claim against Lender), relating to damage, contribution, cost recovery, compensation, loss or injury resulting from or in any way arising in connection with any Hazardous Material or any Environmental Requirement.

"Environmental Damages" means all written claims, demands, liabilities (including strict liability), losses, damages (including consequential damages), causes of action, judgments, penalties, fines, costs and expenses (including fees, costs and expenses of attorneys, consultants, contractors, experts and laboratories), of any and every kind and character, contingent or otherwise, matured or unmatured, known or unknown, foreseeable or unforeseeable, made, incurred, suffered, brought, or imposed at any time and from time to time, and arising in whole or in part from any of the following matters, regardless of whether caused by an Obligor or a tenant or subtenant, or a prior owner of the Property or its tenant or subtenant, or any third party:

(a) The presence of any Hazardous Material on the Property, or any escape, seepage, leakage, spillage, emission, release, discharge or disposal of any Hazardous Material on or from the Property, or the migration or release or threatened migration or release of any Hazardous Material to, from or through the Property, on or before the Cut-Off Date; or

(b) Any act, omission, event or circumstance existing or occurring in connection with the handling, treatment, containment, removal, storage, decontamination, clean-up, transport or disposal of any Hazardous Material which is or was present on the Property on or before the Cut-Off Date; or

(c) The breach of any representation, warranty, covenant or agreement contained in this Agreement because of any event or condition occurring or existing on or before the Cut-Off Date; or

(d) Any violation on or before the Cut-Off Date, of any Environmental Requirement in effect on or before the Cut-Off Date, regardless of whether any act, omission, event or circumstance giving rise to the violation constituted a violation at the time of the occurrence or inception of such act, omission, event or circumstance; or

(e) Any Environmental Claim, or the filing or imposition of any environmental lien against the Property, because of, resulting from, in connection with, or arising out of any of the matters referred to in clauses (a) through (d) preceding.

Without limiting the generality of the foregoing, "Environmental Damages" includes: (i) the investigation or remediation of any such Hazardous Material or violation of any such Environmental Requirement, including the preparation of any feasibility studies or reports and the performance of any cleanup, remediation, removal, response, abatement, containment, closure, restoration, monitoring or similar work required by any Environmental Requirement or necessary to have full use and benefit of the Property as contemplated by the Loan Documents (including any of the same in connection with any foreclosure action or transfer in lieu thereof); (ii) injury or damage to any person, property or natural resource occurring on or off the Property, including the cost of demolition and rebuilding of any improvements on real property; (iii) all liability to pay or indemnify any person or governmental authority for costs expended in connection with any of the matters included within this definition of Environmental Damages; (iv) the investigation and defense of any claim, whether or not such claim is ultimately defeated; and (v) the settlement of any claim or judgment.

"Environmental Documents" means those documents listed on Exhibit "B" which is attached hereto and made a part hereof.

"Environmental Law" means any federal, state or local law, statute, ordinance, code, rule, regulation, license, authorization, decision, order, injunction, decree, or rule of common law, and any judicial interpretation of any of the foregoing, which pertains to health, safety, any Hazardous Material, or the environment (including ground or air or water or noise pollution or contamination, and underground or aboveground tanks) and shall include the Solid Waste Disposal Act, 42 U.S.C. § 6901, et seq.; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601, et seq. ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"); the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1251, et seq.; the Clean Air Act, 42 U.S.C. § 7401, et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq.; the Safe Drinking Water Act, 42 U.S.C. § 300f, et seq.; and any other state or federal environmental statutes, and all rules, regulations, orders and decrees now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.

"Environmental Requirement" means any Environmental Law, agreement or restriction (including any condition or requirement imposed by any insurance or surety

company), as the same now exists or may be changed or amended or come into effect in the future, which pertains to health, safety, any Hazardous Material, or the environment, including ground, air, water or noise pollution or contamination, and underground or aboveground tanks.

"Hazardous Material" means any substance, whether solid, liquid or gaseous: (a) which is listed, defined or regulated as a "hazardous substance," "hazardous waste" or "solid waste," or otherwise classified as hazardous or toxic, in or pursuant to any Environmental Requirement; or (b) which is or which contains asbestos, radon, any polychlorinated biphenyl, urea formaldehyde foam insulation, explosive or radioactive material, or motor fuel or other petroleum hydrocarbons; or (c) which causes or poses a threat to cause a contamination or nuisance on the Property or any adjacent property or a hazard to the environment or to the health or safety of persons on the Property. Notwithstanding the foregoing, the term "Hazardous Material" shall not include any substance stored or used by Borrower or its designees in the ordinary course of construction or business and in compliance with Environmental Law.

"Indemnified Party" means each of the following persons and entities: (a) Lender or any subsequent holder of the Note; (b) Trustee; (c) any persons or entities owned or controlled by, owning or controlling, or under common control or affiliated with, Lender, any subsequent holder of the Note, and/or Trustee; (d) any participants of the Loan; (e) the directors, officers, partners, employees, attorneys and agents of each of the foregoing persons and entities; and (f) the heirs, personal representatives, successors and assigns of each of the foregoing persons and entities.

"Loan Documents" has the meaning ascribed to such term in the Deed of Trust.

"Obligor" means any individual Borrower or Guarantor and "Obligors" means some or all of the persons and entities comprising Borrower and/or Guarantor, collectively.

"On" or "on", when used with respect to the Property or any property adjacent to the Property, means "on, in, under, above or about."

"Trustee" means the Trustee under the Deed of Trust.

2. Representations and Warranties. Each Obligor, to the best of each Obligor's knowledge, hereby represents and warrants to, and covenants with, Lender, except as disclosed in the Environmental Documents, as follows:

(a) During the period of Borrower's ownership of the Property, the Property has not been used for industrial or manufacturing purposes, for landfill, dumping or other waste disposal activities or operations, for generation, storage, use, sale, treatment, processing, recycling or disposal of any Hazardous Material, for underground or aboveground storage tanks, or for any other use that could give rise to the release of any Hazardous Material on the Property; to the best of Obligors' knowledge, no such use of the Property occurred at any time prior to the period of Borrower's ownership of the Property; and to the best of Obligors' knowledge, no such use on any adjacent property occurred at any time prior to the date hereof;



(b) To the best of Obligors' knowledge, there is no Hazardous Material, storage tank (or similar vessel) whether underground or otherwise, sump or well currently on the Property;

(c) Obligors have received no written notice and have no knowledge of any Environmental Claim or any completed, pending or proposed or threatened investigation or inquiry concerning the presence or release of any Hazardous Material on the Property or concerning whether any condition, use or activity on the Property is in violation of any Environmental Requirement;

(d) To the best of Obligors' knowledge, the present conditions, uses and activities of and on the Property do not violate any Environmental Requirement and the use of the Property which Borrower (and each tenant and subtenant, if any) makes and intends to make of the Property complies and will comply with all applicable Environmental Requirements;

(e) The Property does not appear on and to the best of Obligors' knowledge has never been on the National Priorities List, any federal or state "superfund" or "superlien" list, or any other list or database of properties maintained by any local, state or federal agency or department showing properties which are known to contain or which are suspected of containing a Hazardous Material;

(f) No action has been taken to designate the Property as a hazardous waste property or border zone property or otherwise to restrict the land use of the Property (including through a moratorium on new land uses), nor does any Obligor know of any basis for such designation or other restriction;

(g) Obligors have never applied for and been denied environmental impairment liability insurance coverage relating to the Property; and

(h) No Obligor, and to Obligors' knowledge, no tenant or subtenant, has obtained or is required to obtain any permit or authorization to construct, occupy, operate, use or conduct any activity on any of the Property by reason of any Environmental Requirement.

3. Violations. Obligors will not cause, commit, permit or allow to continue (i) any violation of any Environmental Requirement (a) by any person or entity, including any Obligor, or (b) by or with respect to the Property or any use of or activity on the Property, or (ii) the attachment of any lien to the Property under any Environmental Law. Obligors will not place, install, dispose of or release, or cause, permit, or allow the placing, installation, disposal, spilling, leaking, dumping or release of, any Hazardous Material (other than the Hazardous Materials located on the Property and not required to be removed pursuant to the Environmental Documents) or storage tank (or similar vessel) on the Property and will keep the Property free of Hazardous Material. Notwithstanding the foregoing provisions of this Section 3, Obligors shall not be in Default under this Section 3 should Obligors store minimal quantities of substances on the Property which technically could be considered Hazardous Material; provided that such substances are of a type and are held only in a quantity normally used in connection with the construction, occupancy or operation of comparable buildings (such as cleaning fluids and supplies normally used in the day-to-day operation of business offices), and such substances are

being held, stored and used in complete and strict compliance with all applicable Environmental Requirements. The indemnity in Section 6 of this Agreement shall always apply to such substances, and it shall be and continue to be the responsibility of Obligors to take all remedial actions required under and in accordance with Section 5 of this Agreement in the event of any unlawful release of any such substance.

4. Notice to Lender. Obligors shall promptly deliver to Lender a copy of each written report pertaining to the Property or to any Obligor with regard to the Property prepared by or on behalf of any Obligor pursuant to any Environmental Requirement. Obligors shall promptly advise Lender in writing of any Environmental Claim or of the discovery of any Hazardous Material on the Property as soon as any Obligor first obtains knowledge thereof, including a full description of the nature and extent of the Environmental Claim and/or Hazardous Material and all relevant circumstances.

5. Remedial Actions.

(a) Except as permitted under Section 3 above, if any Hazardous Material is discovered on the Property at any time and regardless of the cause, Obligors shall promptly at Obligors' sole risk and expense remove, treat, and dispose of the Hazardous Material in compliance with all applicable Environmental Requirements and solely under Obligor's (or any of their) name (or if such removal is prohibited by any Environmental Requirement take whatever action as is required by any Environmental Requirement) in addition to taking such other action as is necessary to have the full use and benefit of the Property as contemplated by the Loan Documents. Within fifteen (15) days after completion of such remedial actions, Obligors shall obtain and deliver to Lender an Environmental Assessment of the Property made after such completion and confirming to Lender's satisfaction that all required remedial action as stated above has been taken and successfully completed and that there is no evidence or suspicion of any contamination or risk of contamination on the Property or any adjacent property, or of violation of any Environmental Requirement, with respect to any such Hazardous Material.

(b) After the occurrence and during the continuance of a Default, Lender may but shall never be obligated to, remove or cause the removal of any Hazardous Material from the Property (other than the Hazardous Materials located on the Property and not required to be removed pursuant to the Environmental Documents or if removal is prohibited by any Environmental Requirement, take or cause the taking of such other action as is required by any Environmental Requirement) if Obligors fail to promptly commence such remedial actions following discovery and thereafter diligently prosecute the same to the satisfaction of Lender (without limitation of Lender's rights to declare a Default under any of the Loan Documents and to exercise all rights and remedies available by reason thereof). Lender and its designees are hereby granted access to the Property at any time or times, upon reasonable written notice, and a license which is coupled with an interest and irrevocable, to remove or cause such removal or to take or cause the taking of any such other action.

6. Indemnity. Obligors hereby agree to protect, indemnify, defend and hold Indemnified Parties and each of them harmless for, from and against, and, if and to the extent paid, reimburse them on demand for, any and all Environmental Damages. Without limitation,

the foregoing indemnity shall apply to each Indemnified Party with respect to Environmental Damages which in whole or in part are caused by or arise out of the negligence of such (and/or any other) Indemnified Party. However, such indemnity shall not apply to the extent that the subject of the indemnification is caused by or arises out of the gross negligence or willful misconduct of an Indemnified Party. Upon demand by Lender, Obligors shall diligently defend any Environmental Claim, except any Environmental Claim which arises from the gross negligence or willful misconduct of an Indemnified Party, which affects the Property or is made or commenced against Lender, whether alone or together with Obligors or any other person, all at Obligors' own cost and expense and by counsel to be approved by Lender in the exercise of its reasonable judgment. In the alternative, at any time Lender may elect to conduct its own defense through counsel selected by Lender and at the cost and expense of Obligors.

7. Consideration; Survival; Cumulative Rights. Obligors acknowledge that Lender has relied and will rely on the representations, warranties, covenants and agreements herein in closing and funding the Loan and that the execution and delivery of this Agreement is an essential condition but for which Lender would not close or fund the Loan. The representations, warranties, covenants and agreements in this Agreement shall be binding upon Obligors and their successors, assigns and legal representatives and shall inure to the benefit of Lender and its successors, assigns and legal representatives and participants in the Loan; and shall terminate as set forth in the last sentence of this Section 7. The obligations of Obligors under this Agreement are not secured by the Deed of Trust. Any amount to be paid under this Agreement by Obligors (or any of them) shall be a demand obligation owing by Obligors (which Obligors hereby promise to pay). Lender's rights under this Agreement shall be in addition to all rights of Lender under the Loan Documents or at law or in equity, and payments by Obligors under this Agreement shall not reduce Obligors' obligations and liabilities under any of the Loan Documents. The liability of Obligors or any other person under this Agreement shall not be limited or impaired in any way by any provision in the Loan Documents or applicable law limiting Obligors' or such other person's liability or Lender's recourse or rights to a deficiency judgment, or by any change, extension, release, inaccuracy, breach or failure to perform by any party under the Loan Documents, Obligors' (and, if applicable, such other person's) liability hereunder being direct and primary and not as a guarantor or surety. Notwithstanding the foregoing, any Guarantor's obligations under this Agreement are separate from and in addition to such Guarantor's obligations under any separate Guaranty Agreement executed in connection with the Loan. Obligors hereby assign and irrevocably transfers to Lender any and all rights of subrogation, contribution, indemnification, reimbursement or similar rights it may have against any other Obligor or any other person for Environmental Damages. Nothing in this Agreement or in any other Loan Document shall limit or impair any rights or remedies of Lender, Trustee and/or any other Indemnified Party against Obligors or any other person under any Environmental Requirement or otherwise at law or in equity, including without limitation any rights of contribution or indemnification. Notwithstanding anything contained herein to the contrary, the indemnity obligations of Obligors and all other obligations of Obligors hereunder shall terminate on that date that is twenty-four (24) months after the Cut-Off Date.

8. Environmental Assessments. If any Indemnified Party shall ever have reason to believe that any Hazardous Material affects the Property, or if any Environmental Claim is made or threatened, or if a Default shall have occurred and be continuing, or upon the occurrence of the Cut-Off Date if requested by any Indemnified Party, Obligors shall at their expense provide

to such Indemnified Party from time to time, in each case within forty-five (45) days after request by such Indemnified Party, an Environmental Assessment made after the date of such request. Obligors will cooperate with each consulting firm making any such Environmental Assessment and will supply to the consulting firm, from time to time and promptly on request, all information available to Obligors to facilitate the completion of the Environmental Assessment. If Obligors fail to furnish any Indemnified Party within twenty (20) days after such Indemnified Party's request with a copy of an agreement with an acceptable environmental consulting firm to provide such Environmental Assessment, Lender may cause any such Environmental Assessment to be made at Obligors' expense and risk, other than costs for repair or property damaged by the Environmental Assessment, which shall be the sole responsibility of the Indemnified Party. Lender and its designees are hereby granted access to the Property at any time or times, upon reasonable written notice, and a license which is coupled with an interest and irrevocable, to make or cause to be made such Environmental Assessments. All costs and expenses incurred by any Indemnified Party in connection with any Environmental Assessment conducted in accordance with this Section 8 shall be paid by Obligors. Lender may disclose to interested parties any information Lender ever has about the environmental condition or the compliance of the Property, but shall be under no duty to disclose such information except as may be required by law. Lender shall be under no duty to make any Environmental Assessment of the Property, and in no event shall any such Environmental Assessment by Lender be or give rise to a representation that any Hazardous Material is or is not present on the Property, or that there has been or shall be compliance with any Environmental Requirement, nor shall Obligors or any other person be entitled to rely on any Environmental Assessment made by or at the request of Lender.

9. Information. The results of all investigations conducted and/or Environmental Assessments prepared by or for any Indemnified Party shall be and at all times remain the property of the Indemnified Party and under no circumstances shall any Indemnified Party have any obligation whatsoever to disclose or otherwise make available to Obligors or any other party such results or any other information obtained by any Indemnified Party in connection with such investigations and reports. Notwithstanding the foregoing, Indemnified Parties hereby reserve the right, and Obligors hereby expressly authorize any Indemnified Party, to make available to any party (including any governmental agency or authority and any prospective bidder at any foreclosure sale of the Property) any and all Environmental Assessments that any Indemnified Party may have with respect to the Property. Obligors consent to Indemnified Parties notifying any party (either as part of a notice of sale or otherwise) of the availability of any or all of the Environmental Assessments and the information contained therein. Obligors acknowledge that Indemnified Parties cannot control or otherwise assure the truthfulness or accuracy of the Environmental Assessments, and further acknowledge that the release of the Environmental Assessments, or any information contained therein, to prospective bidders at any foreclosure sale of the Property may have a material and adverse effect upon the amount that a party may bid at such sale. Obligors agree that Indemnified Parties shall have no liability whatsoever as a result of delivering any or all of the Environmental Assessments or any information contained therein to any third party, and Obligors hereby release and forever discharge Indemnified Parties from any and all claims, damages, or causes of action, arising out of, connected with or incidental to the Environmental Assessments or the delivery thereof.

10. Cross-Default with Loan Documents. Any Default under this Agreement shall constitute a Default under the Loan Documents. In addition, any Default under any of the Loan Documents shall constitute a Default hereunder.

11. Payable on Demand; Remedies. Any amounts to be paid under this Agreement by Obligors (or any of them) from time to time shall be payable by Obligors within twenty (20) days after written demand by Lender or any other Indemnified Party.

12. No Waiver. No delay or omission by Lender to exercise any right under this Agreement shall impair any such right nor shall it be construed to be a waiver thereof. No waiver of any single breach or default under this Agreement shall be deemed a waiver of any other breach or default. Any waiver, consent or approval under this Agreement must be in writing to be effective.

13. Notices. All notices, requests, consents, demands and other communications required or which any party desires to give hereunder shall be in writing and shall be deemed sufficiently given or furnished if delivered by personal delivery, by courier, or by registered or certified United States mail, postage prepaid, addressed to the party to whom directed at the addresses specified at the end of this Agreement (unless changed by similar notice in writing given by the particular party whose address is to be changed) or by telegram, telex, or facsimile. Any such notice or communication shall be deemed to have been given either at the time of personal delivery or, in the case of courier or mail, as of the date of first attempted delivery at the address and in the manner provided herein, or, in the case of telegram, telex or facsimile, upon receipt; provided, that service of a notice required by any applicable statute shall be considered complete when the requirements of that statute are met. Notwithstanding the foregoing, no notice of change of address shall be effective except upon actual receipt. This Section 13 shall not be construed in any way to affect or impair any waiver of notice or demand provided in any Loan Document or to require giving of notice or demand to or upon any person in any situation or for any reason.

14. Invalid Provisions. A determination that any provision of this Agreement is unenforceable or invalid shall not affect the enforceability or validity of any other provision and a determination that the application of any provision of this Agreement to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to other persons or circumstances.

15. Construction. Whenever in this Agreement the singular number is used, the same shall include plural where appropriate, and vice versa; and words of any gender in this Agreement shall include each other gender where appropriate. The headings in this Agreement are for convenience only and shall be disregarded in the interpretation hereof. Reference to "person" or "entity" means firms, associations, partnerships, joint ventures, trusts, limited liability companies, corporations and other legal entities, including public or governmental bodies, agencies or instrumentalities, as well as natural persons. The words "include" and "including" shall be interpreted as if followed by the words "without limitation."

16. Joint and Several Liability and Waivers by Obligor.

(a) Each Obligor agrees that it is jointly and severally liable to Indemnified Parties for the payment of all obligations arising under this Agreement, and that such liability is independent of the obligations of the other Obligor. Any Indemnified Party may bring an action against any Obligor, whether or not any action is brought against the other Obligor.

(b) Each Obligor agrees that any release which may be given by any Indemnified Party to the other Obligor will not release such Obligor from its obligations under this Agreement.

(c) Each Obligor waives any right to assert against any Indemnified Party any defense, setoff, counterclaim, or claims which such Obligor may have against the other Obligor or any other party liable to Indemnified Parties or any of them for the obligations of Obligor under this Agreement.

(d) Each Obligor agrees that it is solely responsible for keeping itself informed as to the financial condition of the other Obligor and of all circumstances which bear upon the risk of nonpayment. Each Obligor waives any right it may have to require Indemnified Parties to disclose to such Obligor any information which Indemnified Parties or any of them may now or hereafter acquire concerning the financial condition of the other Obligor.

(e) Each Obligor waives all rights to notices of acceptance of this Agreement and further waives all rights to notices of default or nonperformance by any other Obligor under this Agreement.

(f) Each Obligor waives any right of subrogation, reimbursement, indemnification and contribution (contractual, statutory or otherwise), including any claim or right of subrogation under any Debtor Relief Law, which such Obligor may now or hereafter have against any other Obligor or any other person with respect to the obligations incurred under this Agreement. Each Obligor waives any right to enforce any remedy that any Indemnified Party now has or may hereafter have against any other Obligor.

17. Applicable Law; Forum. This Agreement is performable in Maricopa County, Arizona, and the laws of the State of Arizona, and applicable United States federal law shall govern the rights and duties of the parties hereto and the validity, enforcement and interpretation hereof. Obligor hereby irrevocably submit generally and unconditionally for itself and in respect of its property to the jurisdiction of any state court, or any United States federal court, sitting in the State of Arizona and to the jurisdiction of any state court or any United States federal court, sitting in the state in which any of the Property is located, over any suit, action or proceeding arising out of or relating to this Agreement or the Loan. Obligor hereby irrevocably wave to the fullest extent permitted by law, any objection that Obligor may now or hereafter have to the laying of venue in any such court and any claim that any such court is an inconvenient forum. Obligor hereby agree and consent that, in addition to any methods of service or process provided for under applicable law, all service of process in any such suit, action or proceeding in any state court, or any United States federal court, sitting in the state specified above, may be made by certified or registered mail, return receipt requested, directed to

Obligors at their address for notice stated below, or at a subsequent address of which Lender received actual notice from Obligors in accordance with the Loan Documents, and service so made shall be complete five (5) days after the same shall have been so mailed. Nothing herein shall affect the right of Lender to serve process in any manner permitted by law or limit the right of Lender to bring proceedings against Obligors in any other court or jurisdiction.

18. Lender Assigns; Disclosure of Information. Lender may, at any time, sell, transfer, or assign the Loan and any and all servicing rights with respect thereto, or grant participations therein or issue mortgage pass-through certificates or other securities evidencing a beneficial interest in a rated or unrated public offering or private placement. In the event of any such sale, transfer or assignment of the Loan or any part thereof, the rights and benefits under this Agreement may be transferred therewith to the extent applicable to the Loan or part thereof being sold, transferred or assigned. Obligors waive notice of any sale, transfer or assignment of the Loan or any part thereof, and agree that failure to give notice of any such sale, transfer or assignment will not affect the liabilities of Obligors hereunder. Lender is hereby authorized to disseminate any information it now has or hereafter obtains pertaining to the Property or this Agreement, including credit and/or other information on Obligors and/or any party liable, directly or indirectly, for any part of the obligations under this Agreement, to any actual or prospective assignee or participant with respect to the Loan, to any of Lender's affiliates, to any regulatory body having jurisdiction over Lender, and to any other parties as necessary or appropriate in Lender's reasonable judgment.

19. Execution; Modification. This Agreement may be executed in any number of identical counterparts, each of which shall be deemed an original for all purposes and all of which constitute, collectively, one agreement. This Agreement may be amended only by an instrument in writing intended for that purpose executed jointly by an authorized representative of each party hereto.

20. WAIVER OF JURY TRIAL. OBLIGORS AND LENDER HEREBY WAIVE TRIAL BY JURY IN RESPECT OF ANY "CLAIM" AS DEFINED IN SECTION 1. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY OBLIGORS AND LENDER, AND OBLIGORS AND LENDER HEREBY REPRESENT THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY PERSON OR ENTITY TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS AGREEMENT. OBLIGORS AND LENDER ARE EACH HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION 20 IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER OF JURY TRIAL. EACH OBLIGOR FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS AGREEMENT AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

21. FINAL AGREEMENT. THIS AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY

EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

IN WITNESS WHEREOF, Borrower and Lender have caused this Agreement to be executed as of the date first written above.

The address of Borrower is:

c/o Opus West Corporation  
2555 East Camelback Road, Suite 800  
Phoenix, Arizona 85016-9267  
Attention: Vice President

BORROWER:

HVSL TUCSON, L.L.C., a Delaware limited liability company

BY: OWR Hermosa, Inc., a Delaware corporation,  
Its Manager

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

The address of Guarantor is:

2555 East Camelback Road, Suite 800  
Phoenix, Arizona 85016-9267

GUARANTOR:

OPUS WEST CORPORATION, a Minnesota corporation

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

The address of Lender is:

1110 North Old World Third Street  
Suite 320  
Milwaukee, Wisconsin 53202

LENDER:

RICHTER-SCHROEDER COMPANY, INC.,  
a Wisconsin corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

IN WITNESS WHEREOF, Borrower and Lender have caused this Agreement to be executed as of the date first written above.

The address of Borrower is:

c/o Opus West Corporation  
2555 East Camelback Road, Suite 800  
Phoenix, Arizona 85016-9267  
Attention: Vice President

BORROWER:

HVSL TUCSON, L.L.C., a Delaware limited liability company

BY: OWR Hermosa, Inc., a Delaware corporation,  
Its Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

The address of Guarantor is:

2555 East Camelback Road, Suite 800  
Phoenix, Arizona 85016-9267

GUARANTOR:

OPUS WEST CORPORATION, a Minnesota corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

The address of Lender is:

1110 North Old World Third Street  
Suite 320  
Milwaukee, Wisconsin 53202

LENDER:

RICHTER-SCHROEDER COMPANY, INC.,  
a Wisconsin corporation

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

**EXHIBIT "A"**

**Parcel 1**

Lot 123, HAROLD BELL WRIGHT ESTATES, Pima County, Arizona, according to the plat of record in the Office of the Pima County Recorder in Book 9 of Maps, page 52, AND all that portion of the Northwest Quarter of the Northwest Quarter of the Northwest Quarter of Section 7, Township 14 South, Range 15 East, Gila and Salt River Base and Meridian, Pima County, Arizona, in the original right-of-way of East Speedway, vacated by Ordinance of the City of Tucson, as recorded in said Recorder's Office in Docket 3014 at page 112 and conveyed by Quit Claim Deed recorded in said Docket 3014 at page 120;

EXCEPT the following described parcel:

BEGINNING at the Northwest corner of said Section 7;

THENCE South 00 degrees 04 minutes 00 seconds West, along the West line of Section 7, a distance of 99.98 feet;

THENCE South 89 degrees 56 minutes 00 seconds East, a distance of 75.00 feet to the Point of Curvature on the North end of the West line of said Lot 123 of HAROLD BELL WRIGHT ESTATES, being the TRUE POINT OF BEGINNING;

THENCE South 00 degrees 04 minutes 00 seconds West, along said West line of Lot 123, being the East line of Wilmot Road, a distance of 150.02 feet;

THENCE South 89 degrees 58 minutes 42 seconds East, parallel with the North line of said Lot 123, a distance of 175.00 feet;

THENCE North 00 degrees 04 minutes 00 seconds East, parallel with said East line of Wilmot Road, a distance of 191.60 feet to a point in the North line of said vacated portion of East Speedway;

THENCE North 74 degrees 20 minutes 21 seconds West, along said North line, a distance of 135.59 feet to a point of curvature to the left;

THENCE West and Southwest along the boundary of said vacated portion and along the arc of a 35 foot radius curve through a central angle of 105 degrees 35 minutes 39 seconds, 64.50 feet to a point of tangency with the Northerly prolongation of the West line of said Lot 123;

**EXHIBIT "A"**  
**(Continued)**

THENCE South 00 degrees 04 minutes 00 seconds West, along said prolongation, a distance of 44.46 feet to the TRUE POINT OF BEGINNING;

EXCEPT any portion thereof within Speedway Boulevard as it now exists.

(JV Arbs 323 and 3)

**Parcel 2**

All those parts of Lot 123 of Harold Bell Wright Estates, subdivision of Pima County, Arizona, according to the Map or Plat thereof of record in the Office of the County Recorder of Pima County, Arizona in Book 9 of Maps and Plats at Page 52, and of that portion of the Northwest quarter of the Northwest quarter of the Northwest quarter of Section 7, Township 14 South, Range 15 East, Gila and Salt River Base and Meridian, Pima County, Arizona, in the original right of way of East Speedway, vacated by ordinance of the City of Tucson, as recorded in said Recorder's Office in Docket Book 3014 at Page 112 and conveyed by Quit Claim Deed recorded in said Docket 3014 at page 120, described as follows:

Beginning at the Northwest corner of said Section 7;

Thence South 00 degrees 04 minutes 00 seconds West, along the West line of Section 7, a distance of 99.98 feet;

Thence South 89 degrees 56 minutes 00 seconds East, 75.00 feet to the point of curvature on the North end of the West line of said Lot 123 of Harold Bell Wright Estates, being the True Point of Beginning;

Thence South 00 degrees 04 minutes 00 seconds West along said West line of Lot 123, being the East line of Wilmot Road 150.02 feet;

Thence South 89 degrees 58 minutes 42 seconds East, parallel with the North line of said Lot 123, a distance of 175.00 feet;

Thence North 00 degrees 04 minutes 00 seconds East, parallel with said East line of Wilmot Road, 191.60 feet to a point in the North line of said vacated portion of East Speedway;

Thence North 74 degrees 20 minutes 21 seconds West along said North line 135.59 feet to a point of curvature to the left;

**EXHIBIT "A"**  
**(Continued)**

Thence West and Southwest along the boundary of said vacated portion and along the arc of a 35 foot radius curve through a central angle of 105 degrees 35 minutes 39 seconds, 64.50 feet to a point of tangency with the Northerly prolongation of the West line of said Lot 123;

Thence South 00 degrees 04 minutes 00 seconds West along said prolongation 44.46 feet to the True Point of Beginning.

(JV Arb 223)

**EXHIBIT "B"**

**(Environmental Documents)**

1. Revised Phase I Environmental Site Assessment Report  
Smuggler's Inn  
6350 East Speedway Boulevard  
Tucson, Arizona, dated May 17, 2006  
(GEC -- SA&B Project No. 05-0701.R02)
2. Comprehensive Asbestos Survey  
Smuggler's Inn  
6350 East Speedway Boulevard  
Tucson, Arizona, dated September 15, 2006  
(GEC -- SA&B Project No. 06-0036B.R02)
3. Hazardous Materials Survey  
Smuggler's Inn  
6350 East Speedway Boulevard  
Tucson, Arizona, dated September 25, 2006  
(GEC -- SA&B Project No. 06-0036C.R02)
4. Revised Phase I Environmental Site Assessment  
Coxco Gas Station  
6302 East Speedway Boulevard  
Tucson, Arizona, dated May 17, 2006  
(GEC -- SA&B Project No. 06-0036.R01)
5. Environmental Consulting Services  
Coxco Gas Station  
6302 East Speedway Boulevard  
Tucson, Arizona, dated July 21, 2006  
(GEC -- SA&B Project No. 06-0036A.R01)
6. Comprehensive Asbestos Survey  
Coxco Service Station  
6350 East Speedway Boulevard  
Tucson, Arizona, dated August 29, 2006  
(GEC -- SA&B Project No. 06-0036B.R01)
7. Hazardous Materials Survey  
Coxco Service Station  
6350 East Speedway Boulevard  
Tucson, Arizona, dated September 25, 2006  
(GEC -- SA&B Project No. 06-0036C.R02)

# EXHIBIT “H”

**AMENDED AND RESTATED ENVIRONMENTAL INDEMNIFICATION  
AND RELEASE AGREEMENT**

(Hermosa Village Senior Apartments, Tucson, AZ - Construction Loan)

This Amended and Restated Environmental Indemnification and Release Agreement (this "Agreement") is made as of the 13th day of June, 2007, by and between HVSL TUCSON, L.L.C., a Delaware limited liability company ("Borrower"), OPUS WEST CORPORATION, a Minnesota corporation ("Guarantor"), and M&I MARSHALL & ILSLEY BANK, a Wisconsin banking corporation ("Lender").

**RECITALS**

Borrower has previously entered into an Environmental Indemnification and Release Agreement dated October 30, 2006 (the "Existing Environmental Indemnification Agreement") in connection with a loan made by Richter-Schroeder Company, Inc., a Wisconsin corporation, to the Borrower in the principal amount of \$8,000,000.00, and subsequently assigned to Lender (the "Existing Loan"), the proceeds of which were used by the Borrower to acquire the land described in Exhibit "A" which is attached hereto and made a part hereof (the "Land").

In connection with the Borrower's development of the Land, the Borrower has executed an Amended and Restated Deed of Trust Note in the principal amount of \$44,200,000.00 in order to evidence a loan made by Lender to the Borrower (the "Loan"). The Loan is secured by, among other things, an Amended and Restated Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing of even date herewith (the "Deed of Trust") encumbering certain real and personal property as therein described (collective, the "Property"). The term "Loan Documents" is used herein as defined in the Deed of Trust. This Agreement is one of the Loan Documents, but this Agreement is not secured by the Deed of Trust. Therefore, no enforcement action under this Agreement will be subject to the bar date set forth in A.R.S. Section 33-814.A.

In order to induce the Lender to make the Loan, the Borrower hereby agrees that the Existing Environmental Indemnification Agreement is hereby amended, restated and superseded in its entirety to read as follows:

**AGREEMENTS**

1. Definitions. As used in this Agreement, the terms defined in the Preamble and in the Recitals hereto shall have the respective meanings specified therein, and the following additional terms shall have the meanings specified:

"Claim" means any controversy or claim between one or more Obligors and Lender, whether arising in contract or tort or by statute, that arises out of or relates to this Agreement, including any renewals, extensions or modifications hereof.

"Cut-Off Date" means the earlier of the following two dates: (a) the date on which the indebtedness and obligations secured by the Deed of Trust have been paid and performed in full and the Deed of Trust has been released; or (b) the date on which the lien of the Deed of

Trust is fully and finally foreclosed or a conveyance by deed in lieu of such foreclosure is fully and finally effective and possession of the Property has been given to and accepted by the purchaser or grantee free of occupancy and claims to occupancy by Obligors and their heirs, devisees, representatives, successors and assigns; provided, however, that if such payment, performance, release, foreclosure or conveyance is challenged in proceedings under any Debtor Relief Law or otherwise, the Cut-Off Date shall be deemed not to have occurred until such challenge is validly released, dismissed with prejudice or otherwise barred by law from further assertion.

"Debtor Relief Law" means any federal, state or local law, domestic or foreign, as now or hereafter in effect relating to bankruptcy, insolvency, liquidation, receivership, reorganization, arrangement, composition, extension or adjustment of debts, or any similar law affecting the rights of creditors.

"Default" has the meaning ascribed to such term in the Deed of Trust and includes any breach of any covenant, representation or warranty and any other default under this Agreement, subject to any applicable notice and cure period.

"Default Rate" has the meaning ascribed to such term in the Note.

"Environmental Assessment" means a report (including all drafts thereof) of an environmental assessment of the Property of such scope as may be requested by Lender or another Indemnified Party, including the taking of soil borings and air and groundwater samples and other above- and below-ground testing, by a consulting firm acceptable to such Indemnified Party and made in accordance with the established guidelines of such Indemnified Party.

"Environmental Claim" means any written investigative, enforcement, cleanup, removal, containment, remedial or other private or governmental or regulatory action at any time threatened, instituted or completed pursuant to any applicable Environmental Requirement, against Borrower or Obligor against or with respect to the Property or any condition, use or activity on the Property (including any such action against Lender), and any claim at any time threatened or made by any person against Obligor or against or with respect to the Property or any condition, use or activity on the Property (including any such claim against Lender), relating to damage, contribution, cost recovery, compensation, loss or injury resulting from or in any way arising in connection with any Hazardous Material or any Environmental Requirement.

"Environmental Damages" means all written claims, demands, liabilities (including strict liability), losses, damages (including consequential damages), causes of action, judgments, penalties, fines, costs and expenses (including fees, costs and expenses of attorneys, consultants, contractors, experts and laboratories), of any and every kind and character, contingent or otherwise, matured or unmatured, known or unknown, foreseeable or unforeseeable, made, incurred, suffered, brought, or imposed at any time and from time to time, and arising in whole or in part from any of the following matters, regardless of whether caused by an Obligor or a tenant or subtenant, or a prior owner of the Property or its tenant or subtenant, or any third party:



(a) The presence of any Hazardous Material on the Property, or any escape, seepage, leakage, spillage, emission, release, discharge or disposal of any Hazardous Material on or from the Property, or the migration or release or threatened migration or release of any Hazardous Material to, from or through the Property, on or before the Cut-Off Date; or

(b) Any act, omission, event or circumstance existing or occurring in connection with the handling, treatment, containment, removal, storage, decontamination, clean-up, transport or disposal of any Hazardous Material which is or was present on the Property on or before the Cut-Off Date; or

(c) The breach of any representation, warranty, covenant or agreement contained in this Agreement because of any event or condition occurring or existing on or before the Cut-Off Date; or

(d) Any violation on or before the Cut-Off Date, of any Environmental Requirement in effect on or before the Cut-Off Date, regardless of whether any act, omission, event or circumstance giving rise to the violation constituted a violation at the time of the occurrence or inception of such act, omission, event or circumstance; or

(e) Any Environmental Claim, or the filing or imposition of any environmental lien against the Property, because of, resulting from, in connection with, or arising out of any of the matters referred to in clauses (a) through (d) preceding.

Without limiting the generality of the foregoing, "Environmental Damages" includes: (i) the investigation or remediation of any such Hazardous Material or violation of any such Environmental Requirement, including the preparation of any feasibility studies or reports and the performance of any cleanup, remediation, removal, response, abatement, containment, closure, restoration, monitoring or similar work required by any Environmental Requirement or necessary to have full use and benefit of the Property as contemplated by the Loan Documents (including any of the same in connection with any foreclosure action or transfer in lieu thereof); (ii) injury or damage to any person, property or natural resource occurring on or off the Property, including the cost of demolition and rebuilding of any improvements on real property; (iii) all liability to pay or indemnify any person or governmental authority for costs expended in connection with any of the matters included within this definition of Environmental Damages; (iv) the investigation and defense of any claim, whether or not such claim is ultimately defeated; and (v) the settlement of any claim or judgment.

"Environmental Documents" means those documents listed on Exhibit "B" which is attached hereto and made a part hereof.

"Environmental Law" means any federal, state or local law, statute, ordinance, code, rule, regulation, license, authorization, decision, order, injunction, decree, or rule of common law, and any judicial interpretation of any of the foregoing, which pertains to health, safety, any Hazardous Material, or the environment (including ground or air or water or noise pollution or contamination, and underground or aboveground tanks) and shall include the Solid Waste Disposal Act, 42 U.S.C. § 6901, et seq.; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601, et seq. ("CERCLA"), as amended by

the Superfund Amendments and Reauthorization Act of 1986 ("SARA"); the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1251, et seq.; the Clean Air Act, 42 U.S.C. § 7401, et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq.; the Safe Drinking Water Act, 42 U.S.C. § 300f, et seq.; and any other state or federal environmental statutes, and all rules, regulations, orders and decrees now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.

"Environmental Requirement" means any Environmental Law, agreement or restriction (including any condition or requirement imposed by any insurance or surety company), as the same now exists or may be changed or amended or come into effect in the future, which pertains to health, safety, any Hazardous Material, or the environment, including ground, air, water or noise pollution or contamination, and underground or aboveground tanks.

"Hazardous Material" means any substance, whether solid, liquid or gaseous: (a) which is listed, defined or regulated as a "hazardous substance," "hazardous waste" or "solid waste," or otherwise classified as hazardous or toxic, in or pursuant to any Environmental Requirement; or (b) which is or which contains asbestos, radon, any polychlorinated biphenyl, urea formaldehyde foam insulation, explosive or radioactive material, or motor fuel or other petroleum hydrocarbons; or (c) which causes or poses a threat to cause a contamination or nuisance on the Property or any adjacent property or a hazard to the environment or to the health or safety of persons on the Property. Notwithstanding the foregoing, the term "Hazardous Material" shall not include any substance stored or used by Borrower or its designees in the ordinary course of construction or business and in compliance with Environmental Law.

"Indemnified Party" means each of the following persons and entities: (a) Lender or any subsequent holder of the Note; (b) Trustee; (c) any persons or entities owned or controlled by, owning or controlling, or under common control or affiliated with, Lender, any subsequent holder of the Note, and/or Trustee; (d) any participants of the Loan; (e) the directors, officers, partners, employees, attorneys and agents of each of the foregoing persons and entities; and (f) the heirs, personal representatives, successors and assigns of each of the foregoing persons and entities.

"Loan Documents" has the meaning ascribed to such term in the Deed of Trust.

"Obligor" means any individual Borrower or Guarantor and "Obligors" means some or all of the persons and entities comprising Borrower and/or Guarantor, collectively.

"On" or "on", when used with respect to the Property or any property adjacent to the Property, means "on, in, under, above or about."

"Trustee" means the Trustee under the Deed of Trust.

2. Representations and Warranties. Each Obligor, to the best of each Obligor's knowledge, hereby represents and warrants to, and covenants with, Lender, except as disclosed in the Environmental Documents, as follows:

(a) During the period of Borrower's ownership of the Property, the Property has not been used for industrial or manufacturing purposes, for landfill, dumping or other waste disposal activities or operations, for generation, storage, use, sale, treatment, processing, recycling or disposal of any Hazardous Material, for underground or aboveground storage tanks, or for any other use that could give rise to the release of any Hazardous Material on the Property; to the best of Obligors' knowledge, no such use of the Property occurred at any time prior to the period of Borrower's ownership of the Property; and to the best of Obligors' knowledge, no such use on any adjacent property occurred at any time prior to the date hereof;

(b) To the best of Obligors' knowledge, there is no Hazardous Material, storage tank (or similar vessel) whether underground or otherwise, sump or well currently on the Property;

(c) Obligors have received no written notice and have no knowledge of any Environmental Claim or any completed, pending or proposed or threatened investigation or inquiry concerning the presence or release of any Hazardous Material on the Property or concerning whether any condition, use or activity on the Property is in violation of any Environmental Requirement;

(d) To the best of Obligors' knowledge, the present conditions, uses and activities of and on the Property do not violate any Environmental Requirement and the use of the Property which Borrower (and each tenant and subtenant, if any) makes and intends to make of the Property complies and will comply with all applicable Environmental Requirements;

(e) The Property does not appear on and to the best of Obligors' knowledge has never been on the National Priorities List, any federal or state "superfund" or "superlien" list, or any other list or database of properties maintained by any local, state or federal agency or department showing properties which are known to contain or which are suspected of containing a Hazardous Material;

(f) No action has been taken to designate the Property as a hazardous waste property or border zone property or otherwise to restrict the land use of the Property (including through a moratorium on new land uses), nor does any Obligor know of any basis for such designation or other restriction;

(g) Obligors have never applied for and been denied environmental impairment liability insurance coverage relating to the Property; and

(h) No Obligor, and to Obligors' knowledge, no tenant or subtenant, has obtained or is required to obtain any permit or authorization to construct, occupy, operate, use or conduct any activity on any of the Property by reason of any Environmental Requirement.

3. Violations. Obligors will not cause, commit, permit or allow to continue (i) any violation of any Environmental Requirement (a) by any person or entity, including any Obligor, or (b) by or with respect to the Property or any use of or activity on the Property, or (ii) the attachment of any lien to the Property under any Environmental Law. Obligors will not place, install, dispose of or release, or cause, permit, or allow the placing, installation, disposal, spilling, leaking, dumping or release of, any Hazardous Material (other than the Hazardous Materials

located on the Property and not required to be removed pursuant to the Environmental Documents) or storage tank (or similar vessel) on the Property and will keep the Property free of Hazardous Material. Notwithstanding the foregoing provisions of this Section 3, Obligors shall not be in Default under this Section 3 should Obligors store minimal quantities of substances on the Property which technically could be considered Hazardous Material; provided that such substances are of a type and are held only in a quantity normally used in connection with the construction, occupancy or operation of comparable buildings (such as cleaning fluids and supplies normally used in the day-to-day operation of business offices), and such substances are being held, stored and used in complete and strict compliance with all applicable Environmental Requirements. The indemnity in Section 6 of this Agreement shall always apply to such substances, and it shall be and continue to be the responsibility of Obligors to take all remedial actions required under and in accordance with Section 5 of this Agreement in the event of any unlawful release of any such substance.

4. Notice to Lender. Obligors shall promptly deliver to Lender a copy of each written report pertaining to the Property or to any Obligor with regard to the Property prepared by or on behalf of any Obligor pursuant to any Environmental Requirement. Obligors shall promptly advise Lender in writing of any Environmental Claim or of the discovery of any Hazardous Material on the Property as soon as any Obligor first obtains knowledge thereof, including a full description of the nature and extent of the Environmental Claim and/or Hazardous Material and all relevant circumstances.

5. Remedial Actions.

(a) Except as permitted under Section 3 above, if any Hazardous Material is discovered on the Property at any time and regardless of the cause, Obligors shall promptly at Obligors' sole risk and expense remove, treat, and dispose of the Hazardous Material in compliance with all applicable Environmental Requirements and solely under Obligor's (or any of their) name (or if such removal is prohibited by any Environmental Requirement take whatever action as is required by any Environmental Requirement) in addition to taking such other action as is necessary to have the full use and benefit of the Property as contemplated by the Loan Documents. Within fifteen (15) days after completion of such remedial actions, Obligors shall obtain and deliver to Lender an Environmental Assessment of the Property made after such completion and confirming to Lender's satisfaction that all required remedial action as stated above has been taken and successfully completed and that there is no evidence or suspicion of any contamination or risk of contamination on the Property or any adjacent property, or of violation of any Environmental Requirement, with respect to any such Hazardous Material.

(b) After the occurrence and during the continuance of a Default, Lender may but shall never be obligated to, remove or cause the removal of any Hazardous Material from the Property (other than the Hazardous Materials located on the Property and not required to be removed pursuant to the Environmental Documents or if removal is prohibited by any Environmental Requirement, take or cause the taking of such other action as is required by any Environmental Requirement) if Obligors fail to promptly commence such remedial actions following discovery and thereafter diligently prosecute the same to the satisfaction of Lender (without limitation of Lender's rights to declare a Default under any of the Loan Documents and

to exercise all rights and remedies available by reason thereof). Lender and its designees are hereby granted access to the Property at any time or times, upon reasonable written notice, and a license which is coupled with an interest and irrevocable, to remove or cause such removal or to take or cause the taking of any such other action.

6. Indemnity. Obligors hereby agree to protect, indemnify, defend and hold Indemnified Parties and each of them harmless for, from and against, and, if and to the extent paid, reimburse them on demand for, any and all Environmental Damages. Without limitation, the foregoing indemnity shall apply to each Indemnified Party with respect to Environmental Damages which in whole or in part are caused by or arise out of the negligence of such (and/or any other) Indemnified Party. However, such indemnity shall not apply to the extent that the subject of the indemnification is caused by or arises out of the gross negligence or willful misconduct of an Indemnified Party. Upon demand by Lender, Obligors shall diligently defend any Environmental Claim, except any Environmental Claim which arises from the gross negligence or willful misconduct of an Indemnified Party, which affects the Property or is made or commenced against Lender, whether alone or together with Obligors or any other person, all at Obligors' own cost and expense and by counsel to be approved by Lender in the exercise of its reasonable judgment. In the alternative, at any time Lender may elect to conduct its own defense through counsel selected by Lender and at the cost and expense of Obligors.

7. Consideration; Survival; Cumulative Rights. Obligors acknowledge that Lender has relied and will rely on the representations, warranties, covenants and agreements herein in closing and funding the Loan and that the execution and delivery of this Agreement is an essential condition but for which Lender would not close or fund the Loan. The representations, warranties, covenants and agreements in this Agreement shall be binding upon Obligors and their successors, assigns and legal representatives and shall inure to the benefit of Lender and its successors, assigns and legal representatives and participants in the Loan; and shall terminate as set forth in the last sentence of this Section 7. The obligations of Obligors under this Agreement are not secured by the Deed of Trust. Any amount to be paid under this Agreement by Obligors (or any of them) shall be a demand obligation owing by Obligors (which Obligors hereby promise to pay). Lender's rights under this Agreement shall be in addition to all rights of Lender under the Loan Documents or at law or in equity, and payments by Obligors under this Agreement shall not reduce Obligors' obligations and liabilities under any of the Loan Documents. The liability of Obligors or any other person under this Agreement shall not be limited or impaired in any way by any provision in the Loan Documents or applicable law limiting Obligors' or such other person's liability or Lender's recourse or rights to a deficiency judgment, or by any change, extension, release, inaccuracy, breach or failure to perform by any party under the Loan Documents, Obligors' (and, if applicable, such other person's) liability hereunder being direct and primary and not as a guarantor or surety. Notwithstanding the foregoing, any Guarantor's obligations under this Agreement are separate from and in addition to such Guarantor's obligations under any separate Guaranty Agreement executed in connection with the Loan. Obligors hereby assign and irrevocably transfers to Lender any and all rights of subrogation, contribution, indemnification, reimbursement or similar rights it may have against any other Obligor or any other person for Environmental Damages. Nothing in this Agreement or in any other Loan Document shall limit or impair any rights or remedies of Lender, Trustee and/or any other Indemnified Party against Obligors or any other person under any Environmental Requirement or otherwise at law or in equity, including without limitation any

rights of contribution or indemnification. Notwithstanding anything contained herein to the contrary, the indemnity obligations of Obligors and all other obligations of Obligors hereunder shall terminate on that date that is twenty-four (24) months after the Cut-Off Date.

8. Environmental Assessments. If any Indemnified Party shall ever have reason to believe that any Hazardous Material affects the Property, or if any Environmental Claim is made, or threatened, or if a Default shall have occurred and be continuing, or upon the occurrence of the Cut-Off Date if requested by any Indemnified Party, Obligors shall at their expense provide to such Indemnified Party from time to time, in each case within forty-five (45) days after request by such Indemnified Party, an Environmental Assessment made after the date of such request. Obligors will cooperate with each consulting firm making any such Environmental Assessment and will supply to the consulting firm, from time to time and promptly on request, all information available to Obligors to facilitate the completion of the Environmental Assessment. If Obligors fail to furnish any Indemnified Party within twenty (20) days after such Indemnified Party's request with a copy of an agreement with an acceptable environmental consulting firm to provide such Environmental Assessment, Lender may cause any such Environmental Assessment to be made at Obligors' expense and risk, other than costs for repair or property damaged by the Environmental Assessment, which shall be the sole responsibility of the Indemnified Party. Lender and its designees are hereby granted access to the Property at any time or times, upon reasonable written notice, and a license which is coupled with an interest and irrevocable, to make or cause to be made such Environmental Assessments. All costs and expenses incurred by any Indemnified Party in connection with any Environmental Assessment conducted in accordance with this Section 8 shall be paid by Obligors. Lender may disclose to interested parties any information Lender ever has about the environmental condition or the compliance of the Property, but shall be under no duty to disclose such information except as may be required by law. Lender shall be under no duty to make any Environmental Assessment of the Property, and in no event shall any such Environmental Assessment by Lender be or give rise to a representation that any Hazardous Material is or is not present on the Property, or that there has been or shall be compliance with any Environmental Requirement, nor shall Obligors or any other person be entitled to rely on any Environmental Assessment made by or at the request of Lender.

9. Information. The results of all investigations conducted and/or Environmental Assessments prepared by or for any Indemnified Party shall be and at all times remain the property of the Indemnified Party and under no circumstances shall any Indemnified Party have any obligation whatsoever to disclose or otherwise make available to Obligors or any other party such results or any other information obtained by any Indemnified Party in connection with such investigations and reports. Notwithstanding the foregoing, Indemnified Parties hereby reserve the right, and Obligors hereby expressly authorize any Indemnified Party, to make available to any party (including any governmental agency or authority and any prospective bidder at any foreclosure sale of the Property) any and all Environmental Assessments that any Indemnified Party may have with respect to the Property. Obligors consent to Indemnified Parties notifying any party (either as part of a notice of sale or otherwise) of the availability of any or all of the Environmental Assessments and the information contained therein. Obligors acknowledge that Indemnified Parties cannot control or otherwise assure the truthfulness or accuracy of the Environmental Assessments, and further acknowledge that the release of the Environmental Assessments, or any information contained therein, to prospective bidders at any foreclosure sale

of the Property may have a material and adverse effect upon the amount that a party may bid at such sale. Obligors agree that Indemnified Parties shall have no liability whatsoever as a result of delivering any or all of the Environmental Assessments or any information contained therein to any third party, and Obligors hereby release and forever discharge Indemnified Parties from any and all claims, damages, or causes of action, arising out of, connected with or incidental to the Environmental Assessments or the delivery thereof.

10. Cross-Default with Loan Documents. Any Default under this Agreement shall constitute a Default under the Loan Documents. In addition, any Default under any of the Loan Documents shall constitute a Default hereunder.

11. Payable on Demand; Remedies. Any amounts to be paid under this Agreement by Obligors (or any of them) from time to time shall be payable by Obligors within twenty (20) days after written demand by Lender or any other Indemnified Party.

12. No Waiver. No delay or omission by Lender to exercise any right under this Agreement shall impair any such right nor shall it be construed to be a waiver thereof. No waiver of any single breach or default under this Agreement shall be deemed a waiver of any other breach or default. Any waiver, consent or approval under this Agreement must be in writing to be effective.

13. Notices. All notices, requests, consents, demands and other communications required or which any party desires to give hereunder shall be in writing and shall be deemed sufficiently given or furnished if delivered by personal delivery, by courier, or by registered or certified United States mail, postage prepaid, addressed to the party to whom directed at the addresses specified at the end of this Agreement (unless changed by similar notice in writing given by the particular party whose address is to be changed) or by telegram, telex, or facsimile. Any such notice or communication shall be deemed to have been given either at the time of personal delivery or, in the case of courier or mail, as of the date of first attempted delivery at the address and in the manner provided herein, or, in the case of telegram, telex or facsimile, upon receipt; provided, that service of a notice required by any applicable statute shall be considered complete when the requirements of that statute are met. Notwithstanding the foregoing, no notice of change of address shall be effective except upon actual receipt. This Section 13 shall not be construed in any way to affect or impair any waiver of notice or demand provided in any Loan Document or to require giving of notice or demand to or upon any person in any situation or for any reason.

14. Invalid Provisions. A determination that any provision of this Agreement is unenforceable or invalid shall not affect the enforceability or validity of any other provision and a determination that the application of any provision of this Agreement to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to other persons or circumstances.

15. Construction. Whenever in this Agreement the singular number is used, the same shall include plural where appropriate, and vice versa; and words of any gender in this Agreement shall include each other gender where appropriate. The headings in this Agreement are for convenience only and shall be disregarded in the interpretation hereof. Reference to

"person" or "entity" means firms, associations, partnerships, joint ventures, trusts, limited liability companies, corporations and other legal entities, including public or governmental bodies, agencies or instrumentalities, as well as natural persons. The words "include" and "including" shall be interpreted as if followed by the words "without limitation."

16. Joint and Several Liability and Waivers by Obligor.

(a) Each Obligor agrees that it is jointly and severally liable to Indemnified Parties for the payment of all obligations arising under this Agreement, and that such liability is independent of the obligations of the other Obligor. Any Indemnified Party may bring an action against any Obligor, whether or not any action is brought against the other Obligor.

(b) Each Obligor agrees that any release which may be given by any Indemnified Party to the other Obligor will not release such Obligor from its obligations under this Agreement.

(c) Each Obligor waives any right to assert against any Indemnified Party any defense, setoff, counterclaim, or claims which such Obligor may have against the other Obligor or any other party liable to Indemnified Parties or any of them for the obligations of Obligor under this Agreement.

(d) Each Obligor agrees that it is solely responsible for keeping itself informed as to the financial condition of the other Obligor and of all circumstances which bear upon the risk of nonpayment. Each Obligor waives any right it may have to require Indemnified Parties to disclose to such Obligor any information which Indemnified Parties or any of them may now or hereafter acquire concerning the financial condition of the other Obligor.

(e) Each Obligor waives all rights to notices of acceptance of this Agreement and further waives all rights to notices of default or nonperformance by any other Obligor under this Agreement.

(f) Each Obligor waives any right of subrogation, reimbursement, indemnification and contribution (contractual, statutory or otherwise), including any claim or right of subrogation under any Debtor Relief Law, which such Obligor may now or hereafter have against any other Obligor or any other person with respect to the obligations incurred under this Agreement. Each Obligor waives any right to enforce any remedy that any Indemnified Party now has or may hereafter have against any other Obligor.

17. Applicable Law; Forum. This Agreement is performable in Maricopa County, Arizona, and the laws of the State of Arizona, and applicable United States federal law shall govern the rights and duties of the parties hereto and the validity, enforcement and interpretation hereof. Obligor hereby irrevocably submit generally and unconditionally for itself and in respect of its property to the jurisdiction of any state court, or any United States federal court, sitting in the State of Arizona and to the jurisdiction of any state court or any United States federal court, sitting in the state in which any of the Property is located, over any suit, action or proceeding arising out of or relating to this Agreement or the Loan. Obligor hereby irrevocably wave to the fullest extent permitted by law, any objection that Obligor may now or hereafter have to the laying of venue in any such court and any claim that any such court is an



inconvenient forum. Obligors hereby agree and consent that, in addition to any methods of service or process provided for under applicable law, all service of process in any such suit, action or proceeding in any state court, or any United States federal court, sitting in the state specified above, may be made by certified or registered mail, return receipt requested, directed to Obligors at their address for notice stated below, or at a subsequent address of which Lender received actual notice from Obligors in accordance with the Loan Documents, and service so made shall be complete five (5) days after the same shall have been so mailed. Nothing herein shall affect the right of Lender to serve process in any manner permitted by law or limit the right of Lender to bring proceedings against Obligors in any other court or jurisdiction.

18. Lender Assigns; Disclosure of Information. Lender may, at any time, sell, transfer, or assign the Loan and any and all servicing rights with respect thereto, or grant participations therein or issue mortgage pass-through certificates or other securities evidencing a beneficial interest in a rated or unrated public offering or private placement. In the event of any such sale, transfer or assignment of the Loan or any part thereof, the rights and benefits under this Agreement may be transferred therewith to the extent applicable to the Loan or part thereof being sold, transferred or assigned. Obligors waive notice of any sale, transfer or assignment of the Loan or any part thereof, and agree that failure to give notice of any such sale, transfer or assignment will not affect the liabilities of Obligors hereunder. Lender is hereby authorized to disseminate any information it now has or hereafter obtains pertaining to the Property or this Agreement, including credit and/or other information on Obligors and/or any party liable, directly or indirectly, for any part of the obligations under this Agreement, to any actual or prospective assignee or participant with respect to the Loan, to any of Lender's affiliates, to any regulatory body having jurisdiction over Lender, and to any other parties as necessary or appropriate in Lender's reasonable judgment.

19. Execution; Modification. This Agreement may be executed in any number of identical counterparts, each of which shall be deemed an original for all purposes and all of which constitute, collectively, one agreement. This Agreement may be amended only by an instrument in writing intended for that purpose executed jointly by an authorized representative of each party hereto.

20. WAIVER OF JURY TRIAL. OBLIGORS AND LENDER HEREBY WAIVE TRIAL BY JURY IN RESPECT OF ANY "CLAIM" AS DEFINED IN SECTION 1. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY OBLIGORS AND LENDER, AND OBLIGORS AND LENDER HEREBY REPRESENT THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY PERSON OR ENTITY TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS AGREEMENT. OBLIGORS AND LENDER ARE EACH HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION 20 IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER OF JURY TRIAL. EACH OBLIGOR FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS AGREEMENT AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE

WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

21. FINAL AGREEMENT. THIS AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

22. Prior Indemnification and Release Agreement. This Agreement is delivered by the Borrower and Guarantor in substitution and replacement of the Existing Environmental Indemnification Agreement.

IN WITNESS WHEREOF, Borrower and Lender have caused this Agreement to be executed as of the date first written above.

The address of Borrower is:

c/o Opus West Corporation  
2555 East Camelback Road, Suite 800  
Phoenix, Arizona 85016-9267  
Attention: Vice President

BORROWER:

HVSL TUCSON, L.L.C., a Delaware limited liability company

BY: OWR HERMOSA, INC., a Delaware corporation, its Manager

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

The address of Guarantor is:

2555 East Camelback Road, Suite 800  
Phoenix, Arizona 85016-9267

GUARANTOR:

OPUS WEST CORPORATION, a Minnesota corporation

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

The address of Lender is:

1110 North Old World Third Street  
Suite 320  
Milwaukee, Wisconsin 53202

LENDER:

M&I MARSHALL & ILSLEY BANK, a  
Wisconsin banking corporation

By: Pamela S. Haack  
Name: Pamela S. Haack  
Title: Vice President

By: Margaret J. Jaberger  
Name: Margaret Jaberger  
Title: Vice President

**EXHIBIT "A"**

(Description of Land)

LOT 123, HAROLD BELL WRIGHT ESTATES, PIMA COUNTY, ARIZONA, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE PIMA COUNTY RECORDER IN BOOK 9 OF MAPS, PAGE 52, AND ALL THAT PORTION OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 7, TOWNSHIP 14 SOUTH, RANGE 15 EAST, GILA AND SALT RIVER BASE AND MERIDIAN, PIMA COUNTY, ARIZONA, IN THE ORIGINAL RIGHT-OF-WAY OF EAST SPEEDWAY, VACATED BY ORDINANCE OF THE CITY OF TUCSON, AS RECORDED IN SAID RECORDER'S OFFICE IN DOCKET 3014 AT PAGE 112 AND CONVEYED BY QUIT CLAIM DEED RECORDED IN SAID DOCKET 3014 AT PAGE 120;

**EXHIBIT "B"**

**(Environmental Documents)**

1. Revised Phase I Environmental Site Assessment Report  
Smuggler's Inn  
6350 East Speedway Boulevard  
Tucson, Arizona, dated May 17, 2006  
(GEC -- SA&B Project No. 05-0701.R02)
2. Comprehensive Asbestos Survey  
Smuggler's Inn  
6350 East Speedway Boulevard  
Tucson, Arizona, dated September 15, 2006  
(GEC -- SA&B Project No. 06-0036B.R02)
3. Hazardous Materials Survey  
Smuggler's Inn  
6350 East Speedway Boulevard  
Tucson, Arizona, dated September 25, 2006  
(GEC -- SA&B Project No. 06-0036C.R02)
4. Revised Phase I Environmental Site Assessment  
Coxco Gas Station  
6302 East Speedway Boulevard  
Tucson, Arizona, dated May 17, 2006  
(GEC -- SA&B Project No. 06-0036.R01)
5. Environmental Consulting Services  
Coxco Gas Station  
6302 East Speedway Boulevard  
Tucson, Arizona, dated July 21, 2006  
(GEC -- SA&B Project No. 06-0036A.R01)
6. Comprehensive Asbestos Survey  
Coxco Service Station  
6350 East Speedway Boulevard  
Tucson, Arizona, dated August 29, 2006  
(GEC -- SA&B Project No. 06-0036B.R01)
7. Hazardous Materials Survey  
Coxco Service Station  
6350 East Speedway Boulevard  
Tucson, Arizona, dated September 25, 2006  
(GEC -- SA&B Project No. 06-0036C.R02)

# EXHIBIT "I"

**ENVIRONMENTAL INDEMNIFICATION AND RELEASE AGREEMENT**

(Northern Village Senior Apartments, Phoenix, Arizona - Land Loan)

This Environmental Indemnification and Release Agreement (this "Agreement") is made as of the 27th day of March, 2006, by and between NVSL PHOENIX, L.L.C., a Delaware limited liability company ("Borrower"), and OPUS WEST CORPORATION, a Minnesota corporation ("Guarantor"), and RICHTER-SCHROEDER COMPANY, INC., a Wisconsin corporation (together with its successors and assigns, "Lender").

**RECITALS**

Borrower has requested that Lender make a loan (the "Loan") to Borrower evidenced by a Promissory Note of even date herewith made by Borrower payable to the order of Lender in the principal face amount of SEVEN MILLION FIVE HUNDRED TWENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$7,525,000.00), which Loan is secured by, among other things, a Construction Deed of Trust, Assignment, Security Agreement and Fixture Filing (the "Deed of Trust") of even date herewith encumbering certain real and personal property as therein described (collectively, the "Property"), including the land described in Exhibit "A" which is attached hereto and made a part hereof. As a condition precedent to making the Loan, Lender has required that Borrower and Guarantor execute and deliver this Agreement to Lender. The term "Loan Documents" is used herein as defined in the Deed of Trust. This Agreement is one of the Loan Documents, but this Agreement is not secured by the Deed of Trust. Therefore, no enforcement action under this Agreement will be subject to the bar date set forth in A.R.S. Section 33-814.A.

**AGREEMENTS**

1. **Definitions.** As used in this Agreement, the terms defined in the Preamble and in the Recitals hereto shall have the respective meanings specified therein, and the following additional terms shall have the meanings specified:

"Claim" means any controversy or claim between one or more Obligors and Lender, whether arising in contract or tort or by statute, that arises out of or relates to this Agreement, including any renewals, extensions or modifications hereof.

"Cut-Off Date" means the earlier of the following two dates: (a) the date on which the indebtedness and obligations secured by the Deed of Trust have been paid and performed in full and the Deed of Trust has been released; or (b) the date on which the lien of the Deed of Trust is fully and finally foreclosed or a conveyance by deed in lieu of such foreclosure is fully and finally effective and possession of the Property has been given to and accepted by the purchaser or grantee free of occupancy and claims to occupancy by Obligors and their heirs, devisees, representatives, successors and assigns; provided, however, that if such payment, performance, release, foreclosure or conveyance is challenged in proceedings under any Debtor Relief Law or otherwise, the Cut-Off Date shall be deemed not to have occurred until such challenge is validly released, dismissed with prejudice or otherwise barred by law from further assertion.

"Debtor Relief Law" means any federal, state or local law, domestic or foreign, as now or hereafter in effect relating to bankruptcy, insolvency, liquidation, receivership, reorganization, arrangement, composition, extension or adjustment of debts, or any similar law affecting the rights of creditors.

"Default" has the meaning ascribed to such term in the Deed of Trust and includes any breach of any covenant, representation or warranty and any other default under this Agreement, subject to any applicable notice and cure period.

"Default Rate" has the meaning ascribed to such term in the Note.

"Environmental Assessment" means a report (including all drafts thereof) of an environmental assessment of the Property of such scope as may be requested by Lender or another Indemnified Party, including the taking of soil borings and air and groundwater samples and other above- and below-ground testing, by a consulting firm acceptable to such Indemnified Party and made in accordance with the established guidelines of such Indemnified Party.

"Environmental Claim" means any investigative, enforcement, cleanup, removal, containment, remedial or other private or governmental or regulatory action at any time threatened, instituted or completed pursuant to any applicable Environmental Requirement, against Borrower or Obligor against or with respect to the Property or any condition, use or activity on the Property (including any such action against Lender), and any claim at any time threatened or made by any person against Obligor or against or with respect to the Property or any condition, use or activity on the Property (including any such claim against Lender), relating to damage, contribution, cost recovery, compensation, loss or injury resulting from or in any way arising in connection with any Hazardous Material or any Environmental Requirement.

"Environmental Damages" means all claims, demands, liabilities (including strict liability), losses, damages (including consequential damages), causes of action, judgments, penalties, fines, costs and expenses (including fees, costs and expenses of attorneys, consultants, contractors, experts and laboratories), of any and every kind and character, contingent or otherwise, matured or unmatured, known or unknown, foreseeable or unforeseeable, made, incurred, suffered, brought, or imposed at any time and from time to time, and arising in whole or in part from any of the following matters, regardless of whether caused by an Obligor or a tenant or subtenant, or a prior owner of the Property or its tenant or subtenant, or any third party:

(a) The presence of any Hazardous Material on the Property, or any escape, seepage, leakage, spillage, emission, release, discharge or disposal of any Hazardous Material on or from the Property, or the migration or release or threatened migration or release of any Hazardous Material to, from or through the Property, on or before the Cut-Off Date; or

(b) Any act, omission, event or circumstance existing or occurring in connection with the handling, treatment, containment, removal, storage, decontamination, clean-up, transport or disposal of any Hazardous Material which is or was present on the Property on or before the Cut-Off Date; or



(c) The breach of any representation, warranty, covenant or agreement contained in this Agreement because of any event or condition occurring or existing on or before the Cut-Off Date; or

(d) Any violation on or before the Cut-Off Date, of any Environmental Requirement in effect on or before the Cut-Off Date, regardless of whether any act, omission, event or circumstance giving rise to the violation constituted a violation at the time of the occurrence or inception of such act, omission, event or circumstance; or

(e) Any Environmental Claim, or the filing or imposition of any environmental lien against the Property, because of, resulting from, in connection with, or arising out of any of the matters referred to in clauses (a) through (d) preceding.

Without limiting the generality of the foregoing, "Environmental Damages" includes: (i) the investigation or remediation of any such Hazardous Material or violation of any such Environmental Requirement, including the preparation of any feasibility studies or reports and the performance of any cleanup, remediation, removal, response, abatement, containment, closure, restoration, monitoring or similar work required by any Environmental Requirement or necessary to have full use and benefit of the Property as contemplated by the Loan Documents (including any of the same in connection with any foreclosure action or transfer in lieu thereof); (ii) injury or damage to any person, property or natural resource occurring on or off the Property, including the cost of demolition and rebuilding of any improvements on real property; (iii) all liability to pay or indemnify any person or governmental authority for costs expended in connection with any of the matters included within this definition of Environmental Damages; (iv) the investigation and defense of any claim, whether or not such claim is ultimately defeated; and (v) the settlement of any claim or judgment.

"Environmental Documents" means those documents listed on Exhibit "B" which is attached hereto and made a part hereof.

"Environmental Law" means any federal, state or local law, statute, ordinance, code, rule, regulation, license, authorization, decision, order, injunction, decree, or rule of common law, and any judicial interpretation of any of the foregoing, which pertains to health, safety, any Hazardous Material, or the environment (including ground or air or water or noise pollution or contamination, and underground or aboveground tanks) and shall include the Solid Waste Disposal Act, 42 U.S.C. § 6901, et seq.; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601, et seq. ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"); the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1251, et seq.; the Clean Air Act, 42 U.S.C. § 7401, et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq.; the Safe Drinking Water Act, 42 U.S.C. § 300f, et seq.; and any other state or federal environmental statutes, and all rules, regulations, orders and decrees now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.

"Environmental Requirement" means any Environmental Law, agreement or restriction (including any condition or requirement imposed by any insurance or surety

company), as the same now exists or may be changed or amended or come into effect in the future, which pertains to health, safety, any Hazardous Material, or the environment, including ground, air, water or noise pollution or contamination, and underground or aboveground tanks.

"Hazardous Material" means any substance, whether solid, liquid or gaseous: (a) which is listed, defined or regulated as a "hazardous substance," "hazardous waste" or "solid waste," or otherwise classified as hazardous or toxic, in or pursuant to any Environmental Requirement; or (b) which is or which contains asbestos, radon, any polychlorinated biphenyl, urea formaldehyde foam insulation, explosive or radioactive material, or motor fuel or other petroleum hydrocarbons; or (c) which causes or poses a threat to cause a contamination or nuisance on the Property or any adjacent property or a hazard to the environment or to the health or safety of persons on the Property. Notwithstanding the foregoing, the term "Hazardous Material" shall not include any substance stored or used by Borrower or its designees in the ordinary course of construction or business and in compliance with Environmental Law.

"Indemnified Party" means each of the following persons and entities: (a) Lender or any subsequent holder of the Note; (b) Trustee; (c) any persons or entities owned or controlled by, owning or controlling, or under common control or affiliated with, Lender, any subsequent holder of the Note, and/or Trustee; (d) any participants of the Loan; (e) the directors, officers, partners, employees, attorneys and agents of each of the foregoing persons and entities; and (f) the heirs, personal representatives, successors and assigns of each of the foregoing persons and entities.

"Loan Documents" has the meaning ascribed to such term in the Deed of Trust.

"Obligor" means any individual Borrower or Guarantor and "Obligors" means some or all of the persons and entities comprising Borrower and/or Guarantor, collectively.

"On" or "on", when used with respect to the Property or any property adjacent to the Property, means "on, in, under, above or about."

"Trustee" means the Trustee under the Deed of Trust.

2. Representations and Warranties. Each Obligor, to the best of each Obligor's knowledge, hereby represents and warrants to, and covenants with, Lender, without regard to whether Lender has or hereafter obtains any knowledge or report of the environmental condition of the Property, except as disclosed in the Environmental Documents, as follows:

(a) During the period of Borrower's ownership of the Property, the Property has not been used for industrial or manufacturing purposes, for landfill, dumping or other waste disposal activities or operations, for generation, storage, use, sale, treatment, processing, recycling or disposal of any Hazardous Material, for underground or aboveground storage tanks, or for any other use that could give rise to the release of any Hazardous Material on the Property; to the best of Obligors' knowledge, no such use of the Property occurred at any time prior to the period of Borrower's ownership of the Property; and to the best of Obligors' knowledge, no such use on any adjacent property occurred at any time prior to the date hereof;

(b) To the best of Obligors' knowledge, there is no Hazardous Material, storage tank (or similar vessel) whether underground or otherwise, sump or well currently on the Property;

(c) Obligors have received no notice and have no knowledge of any Environmental Claim or any completed, pending or proposed or threatened investigation or inquiry concerning the presence or release of any Hazardous Material on the Property or concerning whether any condition, use or activity on the Property is in violation of any Environmental Requirement;

(d) The present conditions, uses and activities of and on the Property do not violate any Environmental Requirement and the use of the Property which Borrower (and each tenant and subtenant, if any) makes and intends to make of the Property complies and will comply with all applicable Environmental Requirements;

(e) The Property does not appear on and to the best of Obligors' knowledge has never been on the National Priorities List, any federal or state "superfund" or "superlien" list, or any other list or database of properties maintained by any local, state or federal agency or department showing properties which are known to contain or which are suspected of containing a Hazardous Material;

(f) No action has been taken to designate the Property as a hazardous waste property or border zone property or otherwise to restrict the land use of the Property (including through a moratorium on new land uses), nor does any Obligor know of any basis for such designation or other restriction;

(g) Obligors have never applied for and been denied environmental impairment liability insurance coverage relating to the Property; and

(h) No Obligor, and to Obligors' knowledge, no tenant or subtenant, has obtained or is required to obtain any permit or authorization to construct, occupy, operate, use or conduct any activity on any of the Property by reason of any Environmental Requirement.

3. Violations. Obligors will not cause, commit, permit or allow to continue (i) any violation of any Environmental Requirement (a) by any person or entity, including any Obligor, or (b) by or with respect to the Property or any use of or activity on the Property, or (ii) the attachment of any lien to the Property under any Environmental Law. Obligors will not place, install, dispose of or release, or cause, permit, or allow the placing, installation, disposal, spilling, leaking, dumping or release of, any Hazardous Material (other than the Hazardous Materials located on the Property and not required to be removed pursuant to the Environmental Documents) or storage tank (or similar vessel) on the Property and will keep the Property free of Hazardous Material. Notwithstanding the foregoing provisions of this Section 3, Obligors shall not be in Default under this Section 3 should Obligors store minimal quantities of substances on the Property which technically could be considered Hazardous Material; provided that such substances are of a type and are held only in a quantity normally used in connection with the construction, occupancy or operation of comparable buildings (such as cleaning fluids and supplies normally used in the day-to-day operation of business offices), and such substances are

being held, stored and used in complete and strict compliance with all applicable Environmental Requirements. The indemnity in Section 6 of this Agreement shall always apply to such substances, and it shall be and continue to be the responsibility of Obligor to take all remedial actions required under and in accordance with Section 5 of this Agreement in the event of any unlawful release of any such substance.

4. Notice to Lender. Obligor shall promptly deliver to Lender a copy of each report pertaining to the Property or to any Obligor with regard to the Property prepared by or on behalf of any Obligor pursuant to any Environmental Requirement. Obligor shall promptly advise Lender in writing of any Environmental Claim or of the discovery of any Hazardous Material on the Property as soon as any Obligor first obtains knowledge thereof, including a full description of the nature and extent of the Environmental Claim and/or Hazardous Material and all relevant circumstances.

5. Remedial Actions.

(a) Except as permitted under Section 3 above, if any Hazardous Material is discovered on the Property at any time and regardless of the cause, Obligor shall promptly at Obligor's sole risk and expense remove, treat, and dispose of the Hazardous Material in compliance with all applicable Environmental Requirements and solely under Obligor's (or any of their) name (or if such removal is prohibited by any Environmental Requirement take whatever action as is required by any Environmental Requirement) in addition to taking such other action as is necessary to have the full use and benefit of the Property as contemplated by the Loan Documents. Within fifteen (15) days after completion of such remedial actions, Obligor shall obtain and deliver to Lender an Environmental Assessment of the Property made after such completion and confirming to Lender's satisfaction that all required remedial action as stated above has been taken and successfully completed and that there is no evidence or suspicion of any contamination or risk of contamination on the Property or any adjacent property, or of violation of any Environmental Requirement, with respect to any such Hazardous Material.

(b) After the occurrence and during the continuance of a Default, Lender may but shall never be obligated to, remove or cause the removal of any Hazardous Material from the Property (other than the Hazardous Materials located on the Property and not required to be removed pursuant to the Environmental Documents or if removal is prohibited by any Environmental Requirement, take or cause the taking of such other action as is required by any Environmental Requirement) if Obligor fails to promptly commence such remedial actions following discovery and thereafter diligently prosecute the same to the satisfaction of Lender (without limitation of Lender's rights to declare a Default under any of the Loan Documents and to exercise all rights and remedies available by reason thereof). Lender and its designees are hereby granted access to the Property at any time or times, upon reasonable written notice, and a license which is coupled with an interest and irrevocable, to remove or cause such removal or to take or cause the taking of any such other action.

6. Indemnity. Obligor hereby agree to protect, indemnify, defend and hold Indemnified Parties and each of them harmless for, from and against, and, if and to the extent paid, reimburse them on demand for, any and all Environmental Damages. Without limitation,

the foregoing indemnity shall apply to each Indemnified Party with respect to Environmental Damages which in whole or in part are caused by or arise out of the negligence of such (and/or any other) Indemnified Party. However, such indemnity shall not apply to the extent that the subject of the indemnification is caused by or arises out of the gross negligence or willful misconduct of an Indemnified Party. Upon demand by Lender, Obligors shall diligently defend any Environmental Claim, except any Environmental Claim which arises from the gross negligence or willful misconduct of an Indemnified Party, which affects the Property or is made or commenced against Lender, whether alone or together with Obligors or any other person, all at Obligors' own cost and expense and by counsel to be approved by Lender in the exercise of its reasonable judgment. In the alternative, at any time Lender may elect to conduct its own defense through counsel selected by Lender and at the cost and expense of Obligors.

7. Consideration; Survival; Cumulative Rights. Obligors acknowledge that Lender has relied and will rely on the representations, warranties, covenants and agreements herein in closing and funding the Loan and that the execution and delivery of this Agreement is an essential condition but for which Lender would not close or fund the Loan. The representations, warranties, covenants and agreements in this Agreement shall be binding upon Obligors and their successors, assigns and legal representatives and shall inure to the benefit of Lender and its successors, assigns and legal representatives and participants in the Loan; and shall terminate as set forth in the last sentence of this Section 7. The obligations of Obligors under this Agreement are not secured by the Deed of Trust. Any amount to be paid under this Agreement by Obligors (or any of them) shall be a demand obligation owing by Obligors (which Obligors hereby promise to pay). Lender's rights under this Agreement shall be in addition to all rights of Lender under the Loan Documents or at law or in equity, and payments by Obligors under this Agreement shall not reduce Obligors' obligations and liabilities under any of the Loan Documents. The liability of Obligors or any other person under this Agreement shall not be limited or impaired in any way by any provision in the Loan Documents or applicable law limiting Obligors' or such other person's liability or Lender's recourse or rights to a deficiency judgment, or by any change, extension, release, inaccuracy, breach or failure to perform by any party under the Loan Documents, Obligors' (and, if applicable, such other person's) liability hereunder being direct and primary and not as a guarantor or surety. Notwithstanding the foregoing, any Guarantor's obligations under this Agreement are separate from and in addition to such Guarantor's obligations under any separate Guaranty Agreement executed in connection with the Loan. Obligors hereby assign and irrevocably transfers to Lender any and all rights of subrogation, contribution, indemnification, reimbursement or similar rights it may have against any other Obligor or any other person for Environmental Damages. Nothing in this Agreement or in any other Loan Document shall limit or impair any rights or remedies of Lender, Trustee and/or any other Indemnified Party against Obligors or any other person under any Environmental Requirement or otherwise at law or in equity, including without limitation any rights of contribution or indemnification. Notwithstanding anything contained herein to the contrary, the indemnity obligations of Obligors and all other obligations of Obligors hereunder shall terminate on that date that is twenty-four (24) months after the Cut-Off Date.

8. Environmental Assessments. If any Indemnified Party shall ever have reason to believe that any Hazardous Material affects the Property, or if any Environmental Claim is made or threatened, or if a Default shall have occurred, or upon the occurrence of the Cut-Off Date if requested by any Indemnified Party, Obligors shall at their expense provide to such Indemnified

Party from time to time, in each case within forty-five (45) days after request by such Indemnified Party, an Environmental Assessment made after the date of such request. Obligors will cooperate with each consulting firm making any such Environmental Assessment and will supply to the consulting firm, from time to time and promptly on request, all information available to Obligors to facilitate the completion of the Environmental Assessment. If Obligors fail to furnish any Indemnified Party within twenty (20) days after such Indemnified Party's request with a copy of an agreement with an acceptable environmental consulting firm to provide such Environmental Assessment, Lender may cause any such Environmental Assessment to be made at Obligors' expense and risk, other than costs for repair or property damaged by the Environmental Assessment, which shall be the sole responsibility of the Indemnified Party. Lender and its designees are hereby granted access to the Property at any time or times, upon reasonable written notice, and a license which is coupled with an interest and irrevocable, to make or cause to be made such Environmental Assessments. All costs and expenses incurred by any Indemnified Party in connection with any Environmental Assessment conducted in accordance with this Section 8 shall be paid by Obligors. Lender may disclose to interested parties any information Lender ever has about the environmental condition or the compliance of the Property, but shall be under no duty to disclose such information except as may be required by law. Lender shall be under no duty to make any Environmental Assessment of the Property, and in no event shall any such Environmental Assessment by Lender be or give rise to a representation that any Hazardous Material is or is not present on the Property, or that there has been or shall be compliance with any Environmental Requirement, nor shall Obligors or any other person be entitled to rely on any Environmental Assessment made by or at the request of Lender.

9. Information. The results of all investigations conducted and/or Environmental Assessments prepared by or for any Indemnified Party shall be and at all times remain the property of the Indemnified Party and under no circumstances shall any Indemnified Party have any obligation whatsoever to disclose or otherwise make available to Obligors or any other party such results or any other information obtained by any Indemnified Party in connection with such investigations and reports. Notwithstanding the foregoing, Indemnified Parties hereby reserve the right, and Obligors hereby expressly authorize any Indemnified Party, to make available to any party (including any governmental agency or authority and any prospective bidder at any foreclosure sale of the Property) any and all Environmental Assessments that any Indemnified Party may have with respect to the Property. Obligors consent to Indemnified Parties notifying any party (either as part of a notice of sale or otherwise) of the availability of any or all of the Environmental Assessments and the information contained therein. Obligors acknowledge that Indemnified Parties cannot control or otherwise assure the truthfulness or accuracy of the Environmental Assessments, and further acknowledge that the release of the Environmental Assessments, or any information contained therein, to prospective bidders at any foreclosure sale of the Property may have a material and adverse effect upon the amount that a party may bid at such sale. Obligors agree that Indemnified Parties shall have no liability whatsoever as a result of delivering any or all of the Environmental Assessments or any information contained therein to any third party, and Obligors hereby release and forever discharge Indemnified Parties from any and all claims, damages, or causes of action, arising out of, connected with or incidental to the Environmental Assessments or the delivery thereof.

10. Cross-Default with Loan Documents. Any Default under this Agreement shall constitute a Default under the Loan Documents. In addition, any Default under any of the Loan Documents shall constitute a Default hereunder.

11. Payable on Demand; Remedies. Any amounts to be paid under this Agreement by Obligors (or any of them) from time to time shall be payable by Obligors within twenty (20) days after written demand by Lender or any other Indemnified Party.

12. No Waiver. No delay or omission by Lender to exercise any right under this Agreement shall impair any such right nor shall it be construed to be a waiver thereof. No waiver of any single breach or default under this Agreement shall be deemed a waiver of any other breach or default. Any waiver, consent or approval under this Agreement must be in writing to be effective.

13. Notices. All notices, requests, consents, demands and other communications required or which any party desires to give hereunder shall be in writing and shall be deemed sufficiently given or furnished if delivered by personal delivery, by courier, or by registered or certified United States mail, postage prepaid, addressed to the party to whom directed at the addresses specified at the end of this Agreement (unless changed by similar notice in writing given by the particular party whose address is to be changed) or by telegram, telex, or facsimile. Any such notice or communication shall be deemed to have been given either at the time of personal delivery or, in the case of courier or mail, as of the date of first attempted delivery at the address and in the manner provided herein, or, in the case of telegram, telex or facsimile, upon receipt; provided, that service of a notice required by any applicable statute shall be considered complete when the requirements of that statute are met. Notwithstanding the foregoing, no notice of change of address shall be effective except upon actual receipt. This Section 13 shall not be construed in any way to affect or impair any waiver of notice or demand provided in any Loan Document or to require giving of notice or demand to or upon any person in any situation or for any reason.

14. Invalid Provisions. A determination that any provision of this Agreement is unenforceable or invalid shall not affect the enforceability or validity of any other provision and a determination that the application of any provision of this Agreement to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to other persons or circumstances.

15. Construction. Whenever in this Agreement the singular number is used, the same shall include plural where appropriate, and vice versa; and words of any gender in this Agreement shall include each other gender where appropriate. The headings in this Agreement are for convenience only and shall be disregarded in the interpretation hereof. Reference to "person" or "entity" means firms, associations, partnerships, joint ventures, trusts, limited liability companies, corporations and other legal entities, including public or governmental bodies, agencies or instrumentalities, as well as natural persons. The words "include" and "including" shall be interpreted as if followed by the words "without limitation."

16. Joint and Several Liability and Waivers by Obligor.

(a) Each Obligor agrees that it is jointly and severally liable to Indemnified Parties for the payment of all obligations arising under this Agreement, and that such liability is independent of the obligations of the other Obligor. Any Indemnified Party may bring an action against any Obligor, whether or not any action is brought against the other Obligor.

(b) Each Obligor agrees that any release which may be given by any Indemnified Party to the other Obligor will not release such Obligor from its obligations under this Agreement.

(c) Each Obligor waives any right to assert against any Indemnified Party any defense, setoff, counterclaim, or claims which such Obligor may have against the other Obligor or any other party liable to Indemnified Parties or any of them for the obligations of Obligor under this Agreement.

(d) Each Obligor agrees that it is solely responsible for keeping itself informed as to the financial condition of the other Obligor and of all circumstances which bear upon the risk of nonpayment. Each Obligor waives any right it may have to require Indemnified Parties to disclose to such Obligor any information which Indemnified Parties or any of them may now or hereafter acquire concerning the financial condition of the other Obligor.

(e) Each Obligor waives all rights to notices of acceptance of this Agreement and further waives all rights to notices of default or nonperformance by any other Obligor under this Agreement.

(f) Each Obligor waives any right of subrogation, reimbursement, indemnification and contribution (contractual, statutory or otherwise), including any claim or right of subrogation under any Debtor Relief Law, which such Obligor may now or hereafter have against any other Obligor or any other person with respect to the obligations incurred under this Agreement. Each Obligor waives any right to enforce any remedy that any Indemnified Party now has or may hereafter have against any other Obligor.

17. Applicable Law; Forum. This Agreement is performable in Maricopa County, Arizona, and the laws of the State of Arizona, and applicable United States federal law shall govern the rights and duties of the parties hereto and the validity, enforcement and interpretation hereof. Obligor hereby irrevocably submit generally and unconditionally for itself and in respect of its property to the jurisdiction of any state court, or any United States federal court, sitting in the State of Arizona and to the jurisdiction of any state court or any United States federal court, sitting in the state in which any of the Property is located, over any suit, action or proceeding arising out of or relating to this Agreement or the Loan. Obligor hereby irrevocably wave to the fullest extent permitted by law, any objection that Obligor may now or hereafter have to the laying of venue in any such court and any claim that any such court is an inconvenient forum. Obligor hereby agree and consent that, in addition to any methods of service or process provided for under applicable law, all service of process in any such suit, action or proceeding in any state court, or any United States federal court, sitting in the state specified above, may be made by certified or registered mail, return receipt requested, directed to



Obligors at their address for notice stated below, or at a subsequent address of which Lender received actual notice from Obligors in accordance with the Loan Documents, and service so made shall be complete five (5) days after the same shall have been so mailed. Nothing herein shall affect the right of Lender to serve process in any manner permitted by law or limit the right of Lender to bring proceedings against Obligors in any other court or jurisdiction.

18. Lender Assigns; Disclosure of Information. Lender may, at any time, sell, transfer, or assign the Loan and any and all servicing rights with respect thereto, or grant participations therein or issue mortgage pass-through certificates or other securities evidencing a beneficial interest in a rated or unrated public offering or private placement. In the event of any such sale, transfer or assignment of the Loan or any part thereof, the rights and benefits under this Agreement may be transferred therewith to the extent applicable to the Loan or part thereof being sold, transferred or assigned. Obligors waive notice of any sale, transfer or assignment of the Loan or any part thereof, and agree that failure to give notice of any such sale, transfer or assignment will not affect the liabilities of Obligors hereunder. Lender is hereby authorized to disseminate any information it now has or hereafter obtains pertaining to the Property or this Agreement, including credit and/or other information on Obligors and/or any party liable, directly or indirectly, for any part of the obligations under this Agreement, to any actual or prospective assignee or participant with respect to the Loan, to any of Lender's affiliates, to any regulatory body having jurisdiction over Lender, and to any other parties as necessary or appropriate in Lender's reasonable judgment.

19. Execution; Modification. This Agreement may be executed in any number of identical counterparts, each of which shall be deemed an original for all purposes and all of which constitute, collectively, one agreement. This Agreement may be amended only by an instrument in writing intended for that purpose executed jointly by an authorized representative of each party hereto.

20. WAIVER OF JURY TRIAL. OBLIGORS AND LENDER HEREBY WAIVE TRIAL BY JURY IN RESPECT OF ANY "CLAIM" AS DEFINED IN SECTION 1. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY OBLIGORS AND LENDER, AND OBLIGORS AND LENDER HEREBY REPRESENT THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY PERSON OR ENTITY TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS AGREEMENT. OBLIGORS AND LENDER ARE EACH HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION 20 IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER OF JURY TRIAL. EACH OBLIGOR FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS AGREEMENT AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

21. THIS AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR,

CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.  
THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

IN WITNESS WHEREOF, Borrower and Lender have caused this Agreement to be  
executed as of the date first written above.

The address of Borrower is:

c/o Opus West Corporation  
2555 East Camelback Road, Suite 800  
Phoenix, Arizona 85016-9267  
Attention: Vice President

BORROWER:

NVSL PHOENIX, L.L.C., a Delaware limited  
liability company

BY: OWR NORTHERN VILLAGE, INC., a  
Delaware corporation,  
Its Manager

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

The address of Guarantor is:

2555 East Camelback Road, Suite 800  
Phoenix, Arizona 85016-9267

GUARANTOR:

OPUS WEST CORPORATION, a Minnesota  
corporation

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

The address of Lender is:

1110 North Old World Third Street  
Suite 320  
Milwaukee, Wisconsin 53202

LENDER:

RICHTER-SCHROEDER COMPANY, INC.,  
a Wisconsin corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.  
THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

IN WITNESS WHEREOF, Borrower and Lender have caused this Agreement to be  
executed as of the date first written above.

The address of Borrower is:

c/o Opus West Corporation  
2555 East Camelback Road, Suite 800  
Phoenix, Arizona 85016-9267  
Attention: Vice President

BORROWER:

NVSL PHOENIX, L.L.C., a Delaware limited  
liability company

BY: OWR NORTHERN VILLAGE, INC., a  
Delaware corporation,  
Its Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

The address of Guarantor is:

2555 East Camelback Road, Suite 800  
Phoenix, Arizona 85016-9267

GUARANTOR:

OPUS WEST CORPORATION, a Minnesota  
corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

The address of Lender is:

1110 North Old World Third Street  
Suite 320  
Milwaukee, Wisconsin 53202

LENDER:

RICHTER-SCHROEDER COMPANY, INC.,  
a Wisconsin corporation

By: L. A. Lindsay  
Name: Lisa A. Lindsay  
Title: Senior Vice President

**EXHIBIT "A"**

**PARCEL NO. 1:**

That portion of GLO Lot 7 and the South half of the Northeast quarter of the Northwest quarter of Section 4, Township 2 North, Range 3 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, based on an assumed bearing of South 00 degrees 16 minutes 00 seconds West for the West line of said Lot 7, and the South half of the Northeast quarter of the Northwest quarter of Section 4, described as follows:

From the Northwest corner of said Lot 7, measure South 00 degrees 16 minutes 00 seconds West along the West line of said Lot 7, a distance of 68.70 feet to a point on the centerline of Northern Avenue;

Thence continuing along said West line South 00 degrees 16 minutes 00 seconds West, a distance of 405.05 feet to the POINT OF BEGINNING;

Thence North 89 degrees 26 minutes 30 seconds East, 308.79 feet;

Thence South 00 degrees 33 minutes 30 seconds East, 56.38 feet;

Thence North 89 degrees 26 minutes 30 seconds East, 289.75 feet to a point 50.00 feet West of the West line of that certain parcel described in Docket 4742, Page 535, Maricopa County records;

Thence South along a line 50.00 feet West of and parallel with the West line of that certain parcel described in Docket 4742, Page 535, a distance of 537.89 feet;

Thence South 71 degrees 17 minutes 00 seconds West, 121.22 feet to a point on the Northeasterly line of Storm Drain Easement described as Docket 2916, Page 218, Maricopa County records;

Thence along said Northeasterly line the following 3 courses:

North 26 degrees 36 minutes 14 seconds West, 15.07 feet;

North 35 degrees 57 minutes 39 seconds West, 107.86 feet;

North 44 degrees 47 minutes 36 seconds West, 122.44 feet to a point on the West line of the East half of the Southwest quarter of the Northeast quarter of the Northwest quarter of said Section 4;

Thence along said West line North 00 degrees 12 minutes 06 seconds West, a distance of 92.75 feet to the Southeast corner of the North half of the Northwest quarter of said Southwest quarter of the Northeast quarter of the Northwest quarter of said Section 4;

Thence along the South line of the North half of said Northwest quarter of the Southwest quarter of the Northeast quarter of the Northwest quarter of said Section 4, South 89 degrees 17 minutes 05 seconds West, a distance of 76.86 feet to a point on said Northeasterly line of the Storm Drain Easement described as Docket 2916, page 218, Maricopa County records;

Thence along said Northeasterly line North 44 degrees 32 minutes 20 seconds West, a distance of 359.00 feet to a point on the West line of said Lot 7 of Section 4;

Thence North 00 degrees 16 minutes 00 seconds East, 91.99 feet to the Point of Beginning.

**PARCEL NO. 2:**

**That portion of GLO Lot 7, Section 4, Township 2 North, Range 3 East of the Gila and Salt River Base and Meridian described as follows:**

**From the Northwest corner of said Lot 7, run South 00 degrees 16 minutes West, along the West line of said Lot 7, a distance of 68.70 feet to a point on the centerline of Northern Avenue;**

**thence continuing South 00 degrees 16 minutes West, 65.22 feet to the POINT OF BEGINNING of the parcel of land herein-described and the Northwest corner thereof;**

**thence North 85 degrees 33 minutes East, along the Southerly right-of-way line of Northern Avenue, 50.17 feet;**

**thence South 00 degrees 16 minutes West, along a line 50.00 feet East, and parallel with the West line of said Lot 7, 343.23 feet;**

**thence South 89 degrees 26 minutes 30 seconds West, 50.01 feet to a point on the West line of said Lot 7;**

**thence North 00 degrees 16 minutes East, along the West line of said Lot 7, a distance of 339.83 feet to the POINT OF BEGINNING;**

**EXHIBIT "B"**

(Environmental Documents)

Phase I Environmental Site Assessment, Bud Brown's Barn, 909 East Northern Avenue,  
Phoenix, Arizona (GEC-SA&B Project No. 05-0526.ROI) prepared by GEC SA&B dated  
September 23, 2005.

# EXHIBIT “J”

3058444-10000

**AMENDED AND RESTATED ENVIRONMENTAL INDEMNIFICATION  
AND RELEASE AGREEMENT**

(Northern Village Senior Apartments, Phoenix, AZ - Construction Loan)

This Amended and Restated Environmental Indemnification and Release Agreement (this "Agreement") is made as of the 28<sup>th</sup> day of December, 2006, by and between NVSL PHOENIX, L.L.C., a Delaware limited liability company ("Borrower"), OPUS WEST CORPORATION, a Minnesota corporation ("Guarantor"), and M&I MARSHALL & ILSLEY BANK, a Wisconsin banking corporation ("Lender").

RECITALS

Borrower has previously entered into an Environmental Indemnification and Release Agreement dated March 27, 2006 (the "Existing Environmental Indemnification Agreement") in connection with a loan made by the Lender to the Borrower in the principal amount of \$7,525,000.00 (the "Existing Loan"), the proceeds of which were used by the Borrower to acquire the land described in Exhibit "A" which is attached hereto and made a part hereof (the "Land").

In connection with the Borrower's development of the Land, the Borrower has executed a Deed of Trust Note in the principal amount of \$41,200,000.00 in order to evidence a loan made by Lender to the Borrower (the "Loan"). The Loan is secured by, among other things, an Amended and Restated Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing of even date herewith (the "Deed of Trust") encumbering certain real and personal property as therein described (collective, the "Property"). The term "Loan Documents" is used herein as defined in the Deed of Trust. This Agreement is one of the Loan Documents, but this Agreement is not secured by the Deed of Trust. Therefore, no enforcement action under this Agreement will be subject to the bar date set forth in A.R.S. Section 33-814.A.

In order to induce the Lender to make the Loan, the Borrower hereby agrees that the Existing Environmental Indemnification Agreement is hereby amended, restated and superseded in its entirety to read as follows:

AGREEMENTS

1. Definitions. As used in this Agreement, the terms defined in the Preamble and in the Recitals hereto shall have the respective meanings specified therein, and the following additional terms shall have the meanings specified:

"Claim" means any controversy or claim between one or more Obligors and Lender, whether arising in contract or tort or by statute, that arises out of or relates to this Agreement, including any renewals, extensions or modifications hereof.

"Cut-Off Date" means the earlier of the following two dates: (a) the date on which the indebtedness and obligations secured by the Deed of Trust have been paid and performed in full and the Deed of Trust has been released; or (b) the date on which the lien of the Deed of Trust is fully and finally foreclosed or a conveyance by deed in lieu of such foreclosure is fully



and finally effective and possession of the Property has been given to and accepted by the purchaser or grantee free of occupancy and claims to occupancy by Obligors and their heirs, devisees, representatives, successors and assigns; provided, however, that if such payment, performance, release, foreclosure or conveyance is challenged in proceedings under any Debtor Relief Law or otherwise, the Cut-Off Date shall be deemed not to have occurred until such challenge is validly released, dismissed with prejudice or otherwise barred by law from further assertion.

"Debtor Relief Law" means any federal, state or local law, domestic or foreign, as now or hereafter in effect relating to bankruptcy, insolvency, liquidation, receivership, reorganization, arrangement, composition, extension or adjustment of debts, or any similar law affecting the rights of creditors.

"Default" has the meaning ascribed to such term in the Deed of Trust and includes any breach of any covenant, representation or warranty and any other default under this Agreement, subject to any applicable notice and cure period.

"Default Rate" has the meaning ascribed to such term in the Note.

"Environmental Assessment" means a report (including all drafts thereof) of an environmental assessment of the Property of such scope as may be requested by Lender or another Indemnified Party, including the taking of soil borings and air and groundwater samples and other above- and below-ground testing, by a consulting firm acceptable to such Indemnified Party and made in accordance with the established guidelines of such Indemnified Party.

"Environmental Claim" means any written investigative, enforcement, cleanup, removal, containment, remedial or other private or governmental or regulatory action at any time threatened, instituted or completed pursuant to any applicable Environmental Requirement, against Borrower or Obligor against or with respect to the Property or any condition, use or activity on the Property (including any such action against Lender), and any claim at any time threatened or made by any person against Obligor or against or with respect to the Property or any condition, use or activity on the Property (including any such claim against Lender), relating to damage, contribution, cost recovery, compensation, loss or injury resulting from or in any way arising in connection with any Hazardous Material or any Environmental Requirement.

"Environmental Damages" means all written claims, demands, liabilities (including strict liability), losses, damages (including consequential damages), causes of action, judgments, penalties, fines, costs and expenses (including fees, costs and expenses of attorneys, consultants, contractors, experts and laboratories), of any and every kind and character, contingent or otherwise, matured or unmatured, known or unknown, foreseeable or unforeseeable, made, incurred, suffered, brought, or imposed at any time and from time to time, and arising in whole or in part from any of the following matters, regardless of whether caused by an Obligor or a tenant or subtenant, or a prior owner of the Property or its tenant or subtenant, or any third party:

(a) The presence of any Hazardous Material on the Property, or any escape, seepage, leakage, spillage, emission, release, discharge or disposal of any Hazardous Material on

or from the Property, or the migration or release or threatened migration or release of any Hazardous Material to, from or through the Property, on or before the Cut-Off Date; or

(b) Any act, omission, event or circumstance existing or occurring in connection with the handling, treatment, containment, removal, storage, decontamination, clean-up, transport or disposal of any Hazardous Material which is or was present on the Property on or before the Cut-Off Date; or

(c) The breach of any representation, warranty, covenant or agreement contained in this Agreement because of any event or condition occurring or existing on or before the Cut-Off Date; or

(d) Any violation on or before the Cut-Off Date, of any Environmental Requirement in effect on or before the Cut-Off Date, regardless of whether any act, omission, event or circumstance giving rise to the violation constituted a violation at the time of the occurrence or inception of such act, omission, event or circumstance; or

(e) Any Environmental Claim, or the filing or imposition of any environmental lien against the Property, because of, resulting from, in connection with, or arising out of any of the matters referred to in clauses (a) through (d) preceding.

Without limiting the generality of the foregoing, "Environmental Damages" includes: (i) the investigation or remediation of any such Hazardous Material or violation of any such Environmental Requirement, including the preparation of any feasibility studies or reports and the performance of any cleanup, remediation, removal, response, abatement, containment, closure, restoration, monitoring or similar work required by any Environmental Requirement or necessary to have full use and benefit of the Property as contemplated by the Loan Documents (including any of the same in connection with any foreclosure action or transfer in lieu thereof); (ii) injury or damage to any person, property or natural resource occurring on or off the Property, including the cost of demolition and rebuilding of any improvements on real property; (iii) all liability to pay or indemnify any person or governmental authority for costs expended in connection with any of the matters included within this definition of Environmental Damages; (iv) the investigation and defense of any claim, whether or not such claim is ultimately defeated; and (v) the settlement of any claim or judgment.

"Environmental Documents" means those documents listed on Exhibit "B" which is attached hereto and made a part hereof.

"Environmental Law" means any federal, state or local law, statute, ordinance, code, rule, regulation, license, authorization, decision, order, injunction, decree, or rule of common law, and any judicial interpretation of any of the foregoing, which pertains to health, safety, any Hazardous Material, or the environment (including ground or air or water or noise pollution or contamination, and underground or aboveground tanks) and shall include the Solid Waste Disposal Act, 42 U.S.C. § 6901, et seq.; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601, et seq. ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"); the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, et seq.; the Federal Water Pollution Control Act,

33 U.S.C. § 1251, et seq.; the Clean Air Act, 42 U.S.C. § 7401, et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq.; the Safe Drinking Water Act, 42 U.S.C. § 300f, et seq.; and any other state or federal environmental statutes, and all rules, regulations, orders and decrees now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.

"Environmental Requirement" means any Environmental Law, agreement or restriction (including any condition or requirement imposed by any insurance or surety company), as the same now exists or may be changed or amended or come into effect in the future, which pertains to health, safety, any Hazardous Material, or the environment, including ground, air, water or noise pollution or contamination, and underground or aboveground tanks.

"Hazardous Material" means any substance, whether solid, liquid or gaseous: (a) which is listed, defined or regulated as a "hazardous substance," "hazardous waste" or "solid waste," or otherwise classified as hazardous or toxic, in or pursuant to any Environmental Requirement; or (b) which is or which contains asbestos, radon, any polychlorinated biphenyl, urea formaldehyde foam insulation, explosive or radioactive material, or motor fuel or other petroleum hydrocarbons; or (c) which causes or poses a threat to cause a contamination or nuisance on the Property or any adjacent property or a hazard to the environment or to the health or safety of persons on the Property. Notwithstanding the foregoing, the term "Hazardous Material" shall not include any substance stored or used by Borrower or its designees in the ordinary course of construction or business and in compliance with Environmental Law.

"Indemnified Party" means each of the following persons and entities: (a) Lender or any subsequent holder of the Note; (b) Trustee; (c) any persons or entities owned or controlled by, owning or controlling, or under common control or affiliated with, Lender, any subsequent holder of the Note, and/or Trustee; (d) any participants of the Loan; (e) the directors, officers, partners, employees, attorneys and agents of each of the foregoing persons and entities; and (f) the heirs, personal representatives, successors and assigns of each of the foregoing persons and entities.

"Loan Documents" has the meaning ascribed to such term in the Deed of Trust.

"Obligor" means any individual Borrower or Guarantor and "Obligors" means some or all of the persons and entities comprising Borrower and/or Guarantor, collectively.

"On" or "on", when used with respect to the Property or any property adjacent to the Property, means "on, in, under, above or about."

"Trustee" means the Trustee under the Deed of Trust.

2. Representations and Warranties. Each Obligor, to the best of each Obligor's knowledge, hereby represents and warrants to, and covenants with, Lender, except as disclosed in the Environmental Documents, as follows:

(a) During the period of Borrower's ownership of the Property, the Property has not been used for industrial or manufacturing purposes, for landfill, dumping or other waste disposal activities or operations, for generation, storage, use, sale, treatment, processing,

recycling or disposal of any Hazardous Material, for underground or aboveground storage tanks, or for any other use that could give rise to the release of any Hazardous Material on the Property; to the best of Obligors' knowledge, no such use of the Property occurred at any time prior to the period of Borrower's ownership of the Property; and to the best of Obligors' knowledge, no such use on any adjacent property occurred at any time prior to the date hereof;

(b) To the best of Obligors' knowledge, there is no Hazardous Material, storage tank (or similar vessel) whether underground or otherwise, sump or well currently on the Property;

(c) Obligors have received no written notice and have no knowledge of any Environmental Claim or any completed, pending or proposed or threatened investigation or inquiry concerning the presence or release of any Hazardous Material on the Property or concerning whether any condition, use or activity on the Property is in violation of any Environmental Requirement;

(d) To the best of Obligors' knowledge, the present conditions, uses and activities of and on the Property do not violate any Environmental Requirement and the use of the Property which Borrower (and each tenant and subtenant, if any) makes and intends to make of the Property complies and will comply with all applicable Environmental Requirements;

(e) The Property does not appear on and to the best of Obligors' knowledge has never been on the National Priorities List, any federal or state "superfund" or "superlien" list, or any other list or database of properties maintained by any local, state or federal agency or department showing properties which are known to contain or which are suspected of containing a Hazardous Material;

(f) No action has been taken to designate the Property as a hazardous waste property or border zone property or otherwise to restrict the land use of the Property (including through a moratorium on new land uses), nor does any Obligor know of any basis for such designation or other restriction;

(g) Obligors have never applied for and been denied environmental impairment liability insurance coverage relating to the Property; and

(h) No Obligor, and to Obligors' knowledge, no tenant or subtenant, has obtained or is required to obtain any permit or authorization to construct, occupy, operate, use or conduct any activity on any of the Property by reason of any Environmental Requirement.

3. Violations. Obligors will not cause, commit, permit or allow to continue (i) any violation of any Environmental Requirement (a) by any person or entity, including any Obligor, or (b) by or with respect to the Property or any use of or activity on the Property, or (ii) the attachment of any lien to the Property under any Environmental Law. Obligors will not place, install, dispose of or release, or cause, permit, or allow the placing, installation, disposal, spilling, leaking, dumping or release of, any Hazardous Material (other than the Hazardous Materials located on the Property and not required to be removed pursuant to the Environmental Documents) or storage tank (or similar vessel) on the Property and will keep the Property free of Hazardous Material. Notwithstanding the foregoing provisions of this Section 3, Obligors shall

not be in Default under this Section 3 should Obligors store minimal quantities of substances on the Property which technically could be considered Hazardous Material; provided that such substances are of a type and are held only in a quantity normally used in connection with the construction, occupancy or operation of comparable buildings (such as cleaning fluids and supplies normally used in the day-to-day operation of business offices), and such substances are being held, stored and used in complete and strict compliance with all applicable Environmental Requirements. The indemnity in Section 6 of this Agreement shall always apply to such substances, and it shall be and continue to be the responsibility of Obligors to take all remedial actions required under and in accordance with Section 5 of this Agreement in the event of any unlawful release of any such substance.

4. Notice to Lender. Obligors shall promptly deliver to Lender a copy of each written report pertaining to the Property or to any Obligor with regard to the Property prepared by or on behalf of any Obligor pursuant to any Environmental Requirement. Obligors shall promptly advise Lender in writing of any Environmental Claim or of the discovery of any Hazardous Material on the Property as soon as any Obligor first obtains knowledge thereof, including a full description of the nature and extent of the Environmental Claim and/or Hazardous Material and all relevant circumstances.

5. Remedial Actions.

(a) Except as permitted under Section 3 above, if any Hazardous Material is discovered on the Property at any time and regardless of the cause, Obligors shall promptly at Obligors' sole risk and expense remove, treat, and dispose of the Hazardous Material in compliance with all applicable Environmental Requirements and solely under Obligor's (or any of their) name (or if such removal is prohibited by any Environmental Requirement take whatever action as is required by any Environmental Requirement) in addition to taking such other action as is necessary to have the full use and benefit of the Property as contemplated by the Loan Documents. Within fifteen (15) days after completion of such remedial actions, Obligors shall obtain and deliver to Lender an Environmental Assessment of the Property made after such completion and confirming to Lender's satisfaction that all required remedial action as stated above has been taken and successfully completed and that there is no evidence or suspicion of any contamination or risk of contamination on the Property or any adjacent property, or of violation of any Environmental Requirement, with respect to any such Hazardous Material.

(b) After the occurrence and during the continuance of a Default, Lender may but shall never be obligated to, remove or cause the removal of any Hazardous Material from the Property (other than the Hazardous Materials located on the Property and not required to be removed pursuant to the Environmental Documents or if removal is prohibited by any Environmental Requirement, take or cause the taking of such other action as is required by any Environmental Requirement) if Obligors fail to promptly commence such remedial actions following discovery and thereafter diligently prosecute the same to the satisfaction of Lender (without limitation of Lender's rights to declare a Default under any of the Loan Documents and to exercise all rights and remedies available by reason thereof). Lender and its designees are hereby granted access to the Property at any time or times, upon reasonable written notice, and a

license which is coupled with an interest and irrevocable, to remove or cause such removal or to take or cause the taking of any such other action.

6. Indemnity. Obligors hereby agree to protect, indemnify, defend and hold Indemnified Parties and each of them harmless for, from and against, and, if and to the extent paid, reimburse them on demand for, any and all Environmental Damages. Without limitation, the foregoing indemnity shall apply to each Indemnified Party with respect to Environmental Damages which in whole or in part are caused by or arise out of the negligence of such (and/or any other) Indemnified Party. However, such indemnity shall not apply to the extent that the subject of the indemnification is caused by or arises out of the gross negligence or willful misconduct of an Indemnified Party. Upon demand by Lender, Obligors shall diligently defend any Environmental Claim, except any Environmental Claim which arises from the gross negligence or willful misconduct of an Indemnified Party, which affects the Property or is made or commenced against Lender, whether alone or together with Obligors or any other person, all at Obligors' own cost and expense and by counsel to be approved by Lender in the exercise of its reasonable judgment. In the alternative, at any time Lender may elect to conduct its own defense through counsel selected by Lender and at the cost and expense of Obligors.

7. Consideration; Survival; Cumulative Rights. Obligors acknowledge that Lender has relied and will rely on the representations, warranties, covenants and agreements herein in closing and funding the Loan and that the execution and delivery of this Agreement is an essential condition but for which Lender would not close or fund the Loan. The representations, warranties, covenants and agreements in this Agreement shall be binding upon Obligors and their successors, assigns and legal representatives and shall inure to the benefit of Lender and its successors, assigns and legal representatives and participants in the Loan; and shall terminate as set forth in the last sentence of this Section 7. The obligations of Obligors under this Agreement are not secured by the Deed of Trust. Any amount to be paid under this Agreement by Obligors (or any of them) shall be a demand obligation owing by Obligors (which Obligors hereby promise to pay). Lender's rights under this Agreement shall be in addition to all rights of Lender under the Loan Documents or at law or in equity, and payments by Obligors under this Agreement shall not reduce Obligors' obligations and liabilities under any of the Loan Documents. The liability of Obligors or any other person under this Agreement shall not be limited or impaired in any way by any provision in the Loan Documents or applicable law limiting Obligors' or such other person's liability or Lender's recourse or rights to a deficiency judgment, or by any change, extension, release, inaccuracy, breach or failure to perform by any party under the Loan Documents, Obligors' (and, if applicable, such other person's) liability hereunder being direct and primary and not as a guarantor or surety. Notwithstanding the foregoing, any Guarantor's obligations under this Agreement are separate from and in addition to such Guarantor's obligations under any separate Guaranty Agreement executed in connection with the Loan. Obligors hereby assign and irrevocably transfers to Lender any and all rights of subrogation, contribution, indemnification, reimbursement or similar rights it may have against any other Obligor or any other person for Environmental Damages. Nothing in this Agreement or in any other Loan Document shall limit or impair any rights or remedies of Lender, Trustee and/or any other Indemnified Party against Obligors or any other person under any Environmental Requirement or otherwise at law or in equity, including without limitation any rights of contribution or indemnification. Notwithstanding anything contained herein to the

contrary, the indemnity obligations of Obligors and all other obligations of Obligors hereunder shall terminate on that date that is twenty-four (24) months after the Cut-Off Date.

8. Environmental Assessments. If any Indemnified Party shall ever have reason to believe that any Hazardous Material affects the Property, or if any Environmental Claim is made or threatened, or if a Default shall have occurred and be continuing, or upon the occurrence of the Cut-Off Date if requested by any Indemnified Party, Obligors shall at their expense provide to such Indemnified Party from time to time, in each case within forty-five (45) days after request by such Indemnified Party, an Environmental Assessment made after the date of such request. Obligors will cooperate with each consulting firm making any such Environmental Assessment and will supply to the consulting firm, from time to time and promptly on request, all information available to Obligors to facilitate the completion of the Environmental Assessment. If Obligors fail to furnish any Indemnified Party within twenty (20) days after such Indemnified Party's request with a copy of an agreement with an acceptable environmental consulting firm to provide such Environmental Assessment, Lender may cause any such Environmental Assessment to be made at Obligors' expense and risk, other than costs for repair or property damaged by the Environmental Assessment, which shall be the sole responsibility of the Indemnified Party. Lender and its designees are hereby granted access to the Property at any time or times, upon reasonable written notice, and a license which is coupled with an interest and irrevocable, to make or cause to be made such Environmental Assessments. All costs and expenses incurred by any Indemnified Party in connection with any Environmental Assessment conducted in accordance with this Section 8 shall be paid by Obligors. Lender may disclose to interested parties any information Lender ever has about the environmental condition or the compliance of the Property, but shall be under no duty to disclose such information except as may be required by law. Lender shall be under no duty to make any Environmental Assessment of the Property, and in no event shall any such Environmental Assessment by Lender be or give rise to a representation that any Hazardous Material is or is not present on the Property, or that there has been or shall be compliance with any Environmental Requirement, nor shall Obligors or any other person be entitled to rely on any Environmental Assessment made by or at the request of Lender.

9. Information. The results of all investigations conducted and/or Environmental Assessments prepared by or for any Indemnified Party shall be and at all times remain the property of the Indemnified Party and under no circumstances shall any Indemnified Party have any obligation whatsoever to disclose or otherwise make available to Obligors or any other party such results or any other information obtained by any Indemnified Party in connection with such investigations and reports. Notwithstanding the foregoing, Indemnified Parties hereby reserve the right, and Obligors hereby expressly authorize any Indemnified Party, to make available to any party (including any governmental agency or authority and any prospective bidder at any foreclosure sale of the Property) any and all Environmental Assessments that any Indemnified Party may have with respect to the Property. Obligors consent to Indemnified Parties notifying any party (either as part of a notice of sale or otherwise) of the availability of any or all of the Environmental Assessments and the information contained therein. Obligors acknowledge that Indemnified Parties cannot control or otherwise assure the truthfulness or accuracy of the Environmental Assessments, and further acknowledge that the release of the Environmental Assessments, or any information contained therein, to prospective bidders at any foreclosure sale of the Property may have a material and adverse effect upon the amount that a party may bid at

such sale. Obligors agree that Indemnified Parties shall have no liability whatsoever as a result of delivering any or all of the Environmental Assessments or any information contained therein to any third party, and Obligors hereby release and forever discharge Indemnified Parties from any and all claims, damages, or causes of action, arising out of, connected with or incidental to the Environmental Assessments or the delivery thereof.

10. Cross-Default with Loan Documents. Any Default under this Agreement shall constitute a Default under the Loan Documents. In addition, any Default under any of the Loan Documents shall constitute a Default hereunder.

11. Payable on Demand; Remedies. Any amounts to be paid under this Agreement by Obligors (or any of them) from time to time shall be payable by Obligors within twenty (20) days after written demand by Lender or any other Indemnified Party.

12. No Waiver. No delay or omission by Lender to exercise any right under this Agreement shall impair any such right nor shall it be construed to be a waiver thereof. No waiver of any single breach or default under this Agreement shall be deemed a waiver of any other breach or default. Any waiver, consent or approval under this Agreement must be in writing to be effective.

13. Notices. All notices, requests, consents, demands and other communications required or which any party desires to give hereunder shall be in writing and shall be deemed sufficiently given or furnished if delivered by personal delivery, by courier, or by registered or certified United States mail, postage prepaid, addressed to the party to whom directed at the addresses specified at the end of this Agreement (unless changed by similar notice in writing given by the particular party whose address is to be changed) or by telegram, telex, or facsimile. Any such notice or communication shall be deemed to have been given either at the time of personal delivery or, in the case of courier or mail, as of the date of first attempted delivery at the address and in the manner provided herein, or, in the case of telegram, telex or facsimile, upon receipt; provided, that service of a notice required by any applicable statute shall be considered complete when the requirements of that statute are met. Notwithstanding the foregoing, no notice of change of address shall be effective except upon actual receipt. This Section 13 shall not be construed in any way to affect or impair any waiver of notice or demand provided in any Loan Document or to require giving of notice or demand to or upon any person in any situation or for any reason.

14. Invalid Provisions. A determination that any provision of this Agreement is unenforceable or invalid shall not affect the enforceability or validity of any other provision and a determination that the application of any provision of this Agreement to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to other persons or circumstances.

15. Construction. Whenever in this Agreement the singular number is used, the same shall include plural where appropriate, and vice versa; and words of any gender in this Agreement shall include each other gender where appropriate. The headings in this Agreement are for convenience only and shall be disregarded in the interpretation hereof. Reference to "person" or "entity" means firms, associations, partnerships, joint ventures, trusts, limited



liability companies, corporations and other legal entities, including public or governmental bodies, agencies or instrumentalities, as well as natural persons. The words "include" and "including" shall be interpreted as if followed by the words "without limitation."

16. Joint and Several Liability and Waivers by Obligors.

(a) Each Obligor agrees that it is jointly and severally liable to Indemnified Parties for the payment of all obligations arising under this Agreement, and that such liability is independent of the obligations of the other Obligors. Any Indemnified Party may bring an action against any Obligor, whether or not any action is brought against the other Obligors.

(b) Each Obligor agrees that any release which may be given by any Indemnified Party to the other Obligors will not release such Obligor from its obligations under this Agreement.

(c) Each Obligor waives any right to assert against any Indemnified Party any defense, setoff, counterclaim, or claims which such Obligor may have against the other Obligors or any other party liable to Indemnified Parties or any of them for the obligations of Obligors under this Agreement.

(d) Each Obligor agrees that it is solely responsible for keeping itself informed as to the financial condition of the other Obligors and of all circumstances which bear upon the risk of nonpayment. Each Obligor waives any right it may have to require Indemnified Parties to disclose to such Obligor any information which Indemnified Parties or any of them may now or hereafter acquire concerning the financial condition of the other Obligors.

(e) Each Obligor waives all rights to notices of acceptance of this Agreement and further waives all rights to notices of default or nonperformance by any other Obligor under this Agreement.

(f) Each Obligor waives any right of subrogation, reimbursement, indemnification and contribution (contractual, statutory or otherwise), including any claim or right of subrogation under any Debtor Relief Law, which such Obligor may now or hereafter have against any other Obligor or any other person with respect to the obligations incurred under this Agreement. Each Obligor waives any right to enforce any remedy that any Indemnified Party now has or may hereafter have against any other Obligor.

17. Applicable Law; Forum. This Agreement is performable in Maricopa County, Arizona, and the laws of the State of Arizona, and applicable United States federal law shall govern the rights and duties of the parties hereto and the validity, enforcement and interpretation hereof. Obligors hereby irrevocably submit generally and unconditionally for itself and in respect of its property to the jurisdiction of any state court, or any United States federal court, sitting in the State of Arizona and to the jurisdiction of any state court or any United States federal court, sitting in the state in which any of the Property is located, over any suit, action or proceeding arising out of or relating to this Agreement or the Loan. Obligors hereby irrevocably waive to the fullest extent permitted by law, any objection that Obligors may now or hereafter have to the laying of venue in any such court and any claim that any such court is an inconvenient forum. Obligors hereby agree and consent that, in addition to any methods of

service or process provided for under applicable law, all service of process in any such suit, action or proceeding in any state court, or any United States federal court, sitting in the state specified above, may be made by certified or registered mail, return receipt requested, directed to Obligors at their address for notice stated below, or at a subsequent address of which Lender received actual notice from Obligors in accordance with the Loan Documents, and service so made shall be complete five (5) days after the same shall have been so mailed. Nothing herein shall affect the right of Lender to serve process in any manner permitted by law or limit the right of Lender to bring proceedings against Obligors in any other court or jurisdiction.

18. Lender Assigns; Disclosure of Information. Lender may, at any time, sell, transfer, or assign the Loan and any and all servicing rights with respect thereto, or grant participations therein or issue mortgage pass-through certificates or other securities evidencing a beneficial interest in a rated or unrated public offering or private placement. In the event of any such sale, transfer or assignment of the Loan or any part thereof, the rights and benefits under this Agreement may be transferred therewith to the extent applicable to the Loan or part thereof being sold, transferred or assigned. Obligors waive notice of any sale, transfer or assignment of the Loan or any part thereof, and agree that failure to give notice of any such sale, transfer or assignment will not affect the liabilities of Obligors hereunder. Lender is hereby authorized to disseminate any information it now has or hereafter obtains pertaining to the Property or this Agreement, including credit and/or other information on Obligors and/or any party liable, directly or indirectly, for any part of the obligations under this Agreement, to any actual or prospective assignee or participant with respect to the Loan, to any of Lender's affiliates, to any regulatory body having jurisdiction over Lender, and to any other parties as necessary or appropriate in Lender's reasonable judgment.

19. Execution; Modification. This Agreement may be executed in any number of identical counterparts, each of which shall be deemed an original for all purposes and all of which constitute, collectively, one agreement. This Agreement may be amended only by an instrument in writing intended for that purpose executed jointly by an authorized representative of each party hereto.

20. WAIVER OF JURY TRIAL. OBLIGORS AND LENDER HEREBY WAIVE TRIAL BY JURY IN RESPECT OF ANY "CLAIM" AS DEFINED IN SECTION 1. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY OBLIGORS AND LENDER, AND OBLIGORS AND LENDER HEREBY REPRESENT THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY PERSON OR ENTITY TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS AGREEMENT. OBLIGORS AND LENDER ARE EACH HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION 20 IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER OF JURY TRIAL. EACH OBLIGOR FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS AGREEMENT AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

21. FINAL AGREEMENT. THIS AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

22. Prior Indemnification and Release Agreement. This Agreement is delivered by the Borrower and Guarantor in substitution and replacement of the Existing Environmental Indemnification Agreement.

IN WITNESS WHEREOF, Borrower and Lender have caused this Agreement to be executed as of the date first written above.

The address of Borrower is:

c/o Opus West Corporation  
2555 East Camelback Road, Suite 800  
Phoenix, Arizona 85016-9267  
Attention: Vice President

BORROWER:

NVSL PHOENIX, L.L.C., a Delaware limited liability company

BY: OWR NORTHERN VILLAGE, INC., a Delaware corporation, its Manager

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

The address of Guarantor is:

2555 East Camelback Road, Suite 800  
Phoenix, Arizona 85016-9267

GUARANTOR:

OPUS WEST CORPORATION, a Minnesota corporation

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

The address of Lender is:

1110 North Old World Third Street  
Suite 320  
Milwaukee, Wisconsin 53202

LENDER:

M&I MARSHALL & ILSLEY BANK, a  
Wisconsin banking corporation

By: Pamela VanBuren

Name: Pamela VanBuren

Title: Vice President

By: Margaret Laberg

Name: Margaret Laberg

Title: Vice President

EXHIBIT "A"

(Description of Land)

PARCEL NO. 1:

THAT PORTION OF GLO LOT 7 AND THE SOUTH HALF OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 4, TOWNSHIP 2 NORTH, RANGE 3 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, BASED ON AN ASSUMED BEARING OF SOUTH 00 DEGREES 16 MINUTES 00 SECONDS WEST FOR THE WEST LINE OF SAID LOT 7, AND THE SOUTH HALF OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 4, DESCRIBED AS FOLLOWS:

FROM THE NORTHWEST CORNER OF SAID LOT 7, MEASURE SOUTH 00 DEGREES 16 MINUTES 00 SECONDS WEST ALONG THE WEST LINE OF SAID LOT 7, A DISTANCE OF 68.70 FEET TO A POINT ON THE CENTERLINE OF NORTHERN AVENUE;

THENCE CONTINUING ALONG SAID WEST LINE SOUTH 00 DEGREES 16 MINUTES 00 SECONDS WEST, A DISTANCE OF 405.05 FEET TO THE POINT OF BEGINNING;

THENCE NORTH 89 DEGREES 26 MINUTES 30 SECONDS EAST, 308.79 FEET;

THENCE SOUTH 00 DEGREES 33 MINUTES 30 SECONDS EAST, 56.38 FEET;

THENCE NORTH 89 DEGREES 26 MINUTES 30 SECONDS EAST, 289.75 FEET TO A POINT 50.00 FEET WEST OF THE WEST LINE OF THAT CERTAIN PARCEL DESCRIBED IN DOCKET 4742, PAGE 535, MARICOPA COUNTY RECORDS;

THENCE SOUTH ALONG A LINE 50.00 FEET WEST OF AND PARALLEL WITH THE WEST LINE OF THAT CERTAIN PARCEL DESCRIBED IN DOCKET 4742, PAGE 535, A DISTANCE OF 537.89 FEET;

THENCE SOUTH 71 DEGREES 17 MINUTES 00 SECONDS WEST, 121.22 FEET TO A POINT ON THE NORTHEASTERLY LINE OF STORM DRAIN EASEMENT DESCRIBED AS DOCKET 2916, PAGE 218, MARICOPA COUNTY RECORDS;

THENCE ALONG SAID NORTHEASTERLY LINE THE FOLLOWING 3 COURSES:

NORTH 26 DEGREES 36 MINUTES 14 SECONDS WEST, 15.07 FEET;

NORTH 35 DEGREES 57 MINUTES 39 SECONDS WEST, 107.86 FEET;

NORTH 44 DEGREES 47 MINUTES 36 SECONDS WEST, 122.44 FEET TO A POINT ON THE WEST LINE OF THE EAST HALF OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 4;

THENCE ALONG SAID WEST LINE NORTH 00 DEGREES 12 MINUTES 06 SECONDS WEST, A DISTANCE OF 92.75 FEET TO THE SOUTHEAST CORNER OF THE NORTH HALF OF THE NORTHWEST QUARTER OF SAID SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 4;

THENCE ALONG THE SOUTH LINE OF THE NORTH HALF OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 4, SOUTH 89 DEGREES 17 MINUTES 05 SECONDS WEST, A DISTANCE OF 76.86 FEET TO A POINT ON SAID NORTHEASTERLY LINE OF THE STORM DRAIN EASEMENT DESCRIBED AS DOCKET 2916, PAGE 218, MARICOPA COUNTY RECORDS;

Exhibit "A"

1 of 2

THENCE ALONG SAID NORTHEASTERLY LINE NORTH 44 DEGREES 32 MINUTES 20 SECONDS WEST, A DISTANCE OF 359.00 FEET TO A POINT ON THE WEST LINE OF SAID LOT 7 OF SECTION 4;

THENCE NORTH 00 DEGREES 16 MINUTES 00 SECONDS EAST, 91.99 FEET TO THE POINT OF BEGINNING.

PARCEL NO. 2:

THAT PORTION OF GLO LOT 7, SECTION 4, TOWNSHIP 2 NORTH, RANGE 3 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN DESCRIBED AS FOLLOWS:

FROM THE NORTHWEST CORNER OF SAID LOT 7, RUN SOUTH 00 DEGREES 16 MINUTES WEST, ALONG THE WEST LINE OF SAID LOT 7, A DISTANCE OF 68.70 FEET TO A POINT ON THE CENTERLINE OF NORTHERN AVENUE;

THENCE CONTINUING SOUTH 00 DEGREES 16 MINUTES WEST, 65.22 FEET TO THE POINT OF BEGINNING OF THE PARCEL OF LAND HEREIN-DESCRIBED AND THE NORTHWEST CORNER THEREOF;

THENCE NORTH 85 DEGREES 33 MINUTES EAST, ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF NORTHERN AVENUE, 50.17 FEET;

THENCE SOUTH 00 DEGREES 16 MINUTES WEST, ALONG A LINE 50.00 FEET EAST, AND PARALLEL WITH THE WEST LINE OF SAID LOT 7, 343.23 FEET;

THENCE SOUTH 89 DEGREES 26 MINUTES 30 SECONDS WEST, 50.01 FEET TO A POINT ON THE WEST LINE OF SAID LOT 7;

THENCE NORTH 00 DEGREES 16 MINUTES EAST, ALONG THE WEST LINE OF SAID LOT 7, A DISTANCE OF 339.83 FEET TO THE POINT OF BEGINNING.

**EXHIBIT "B"**

(Environmental Documents)

Phase I Environmental Site Assessment, Bud Brown's Barn, 909 East Northern Avenue,  
Phoenix, Arizona (GEC-SA&B Project No. 05-0526.ROI) prepared by GEC SA&B dated  
September 23, 2005.

# EXHIBIT “K”



### **ENVIRONMENTAL INDEMNITY AGREEMENT**

This **ENVIRONMENTAL INDEMNITY AGREEMENT** dated as of October 11, 2006 (the "**Agreement**"), is made by **IRVINE CENTER PARTNERS III, L.L.C.**, a Delaware limited liability company (the "**Borrower**") and **OPUS WEST CORPORATION**, a Minnesota corporation ("**Guarantor**") to and for the benefit of **LASALLE BANK NATIONAL ASSOCIATION**, a national banking association, together with its successors and assigns, as Agent for itself and the other Banks (as defined in the Loan Agreement referenced below) (the "**Agent**").

### **RECITALS:**

A. Pursuant to the terms and conditions of that certain Construction Loan Agreement of even date herewith (as amended from time to time, the "**Loan Agreement**") by and among Borrower, Agent, as agent, and the Banks, the Banks have extended to Borrower loans in the aggregate principal amount of Ninety Three Million Three Hundred Thousand and 00/100 Dollars (\$93,300,000.00) (collectively, the "**Loans**").

B. The Loans are 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, (as amended, modified, restated or replaced from time to time, the "**Note**"). The Note is secured by, among other things, a 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 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 "**Property**") (capitalized terms used and not specifically defined herein shall bear the same meaning as in the Deed of Trust).

C. As a condition precedent to making the Loans, the Banks have required that Indemnitors (as defined below) indemnify the Agent and Banks with respect to environmental conditions and operations at the Property as set forth below.

**NOW, THEREFORE**, to induce the Banks to extend the Loans to Borrower and in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Indemnitors hereby covenant and agree for the benefit of Agent and the other Indemnified Parties (as defined below), as follows:

#### **1. Environmental Matters.**

- (a) **Definitions.** For purposes of this Agreement the following terms have the following meanings:

"**Environmental Laws**" means any and all federal, state and local laws (whether under common law, statute, rule, regulation or otherwise), requirements under permits or other authorizations issued with respect thereto, and other orders, decrees, judgments, directives or other requirements of any governmental authority relating to or imposing liability or standards of

conduct (including disclosure or notification) concerning protection of human health or the environment or Hazardous Substances or any activity involving Hazardous Substances, all as previously and in the future to be amended.

**"Hazardous Substance"** means, but is not limited to, any substance, chemical, material or waste (A) the presence of which causes a nuisance or trespass of any kind; (B) which is regulated by any federal, state or local governmental authority because of its toxic, flammable, corrosive, reactive, carcinogenic, mutagenic, infectious, radioactive, or other hazardous property or because of its effect on the environment, natural resources or human health and safety, including, but not limited to, petroleum and petroleum products, asbestos-containing materials, polychlorinated biphenyls, lead and lead-based paint, radon, radioactive materials, flammables and explosives; or (C) which is designated, classified, or regulated as being a hazardous or toxic substance, material, pollutant, waste (or a similar such designation) under any federal, state or local law, regulation or ordinance, including under any Environmental Law such as the Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. §9601 *et seq.*), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. §11001 *et seq.*), the Hazardous Substances Transportation Act (49 U.S.C. §1801 *et seq.*), or the Clean Air Act (42 U.S.C. §7401 *et seq.*). Notwithstanding anything to the contrary in this definition, the term Hazardous Substance shall not include any substance, chemical, material or waste that is used by the Borrower in the ordinary course of business and is in compliance with any current or future Environmental Law.

**"Indemnified Parties"** means and includes Agent, Banks, their respective parents, subsidiaries, and affiliated companies, assignees of any of Banks' interests in the Loans or the Loan Documents, any servicer or originator of the Loans, and the officers, directors, employees, agents and contractors of any of the foregoing parties.

**"Indemnitors"** means Borrower and Guarantor, jointly and severally.

**"Documents"** means the Loan Agreement, Note, the Deed of Trust, this Agreement and any other document given by any Indemnitor to evidence or secure the Loans, as such documents may be amended from time to time.

**"Release"** means any release, deposit, discharge, emission, leaking, leaching, spilling, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping, disposing or other movement of Hazardous Substances.

**"Reports"** means the environmental studies and reports identified on Exhibit B attached hereto and made a part hereof.

- (b) **Environmental Representations and Warranties.** Except as otherwise fully disclosed by Indemnitors to Indemnified Parties in writing detailing any exceptions to the following environmental representations and warranties or fully disclosed to Indemnified Parties in the Reports, Indemnitors hereby represent and warrant to Indemnified Parties that, to the best of each of the Indemnitors' knowledge as of the date hereof:

- (i) neither the Property nor any operations of Borrower are in violation of any Environmental Laws or any permit or other authorization issued pursuant thereto;
  - (ii) no Hazardous Substances are, or to Indemnitors' knowledge and belief, have been handled, generated, stored, processed or otherwise managed on or at the Property except for those substances used by Borrower in the ordinary course of their businesses and in compliance with all Environmental Laws;
  - (iii) there are not any past or present Releases of Hazardous Substances in, on, under or from the Property;
  - (iv) the Property is not subject to any private or governmental lien or judicial or administrative notice or action relating to Hazardous Substances;
  - (v) there are no existing or closed underground storage tanks or other underground storage receptacles for Hazardous Substances on the Property;
  - (vi) Borrower has received no notice of, and there exists no investigation, action, proceeding or claim by any agency, authority or unit of government or by any third party which could result in any liability, penalty, sanction or judgment under any Environmental Laws with respect to any condition, use or operation of the Property or any of Borrower's operations, nor does Borrower know of any basis for such a claim;
  - (vii) there has been no claim by any party that any use, operation or condition of the Property or any of Borrower's operations has caused any nuisance or any other liability or adverse condition on any other property nor does Borrower know of any basis for such a claim; and
  - (viii) there are no agreements, consent orders, decrees, judgments, license or permit conditions or other orders or directives of any federal, state or local court, governmental agency or authority or agreements, whether settlement agreements or otherwise, with any third parties relating to the ownership, use, operation, sale, transfer or conveyance of the Property that require any change in the present condition of the Property or any work, repairs, construction, containment, clean up, investigations, studies, removal or other remedial action or capital expenditures with respect to the Property.
- (c) Environmental Covenants. Borrower covenants and agrees that Borrower: (i) shall keep or cause the Property to be kept free from

Hazardous Substances (except those substances used by Borrower in the ordinary course of their businesses or activities on the Property and in compliance with all Environmental Laws); (ii) shall not install or use any underground storage tanks, shall not itself engage in the use, generation, handling, storage, production, processing or management of Hazardous Substances, except in the ordinary course of their businesses or activities on the Property and in compliance with all Environmental Laws; (iii) shall not itself cause or allow and shall expressly prohibit the Release of Hazardous Substances at, on, under, or from the Property; shall itself comply and shall expressly require any other persons who may come upon the Property to comply with all Environmental Laws; (iv) shall keep the Property free and clear of all liens and other encumbrances imposed pursuant to any Environmental Law, whether due to any act or omission of Borrower or any other person or entity ("Environmental Liens")"; (v) without limiting the generality of the foregoing, during the term of this Agreement, shall not use any construction materials which contain asbestos nor install in the Improvements on the Property or permit to be installed in the Improvements on the Property, any materials which contain asbestos.

- (d) **Notice and Access.** Indemnitors shall promptly notify Agent in writing if Indemnitors know, suspect or believe there is or are (i) any Hazardous Substances, other than those used by Borrower in the ordinary course of their businesses or activities on the Property and in compliance with all Environmental Laws, present on the Property; (ii) any Release of Hazardous Substances in, on, under, from or migrating towards the Property; (iii) any non-compliance with Environmental Laws related in any way to the Property; (iv) any actual or potential Environmental Liens; (v) any investigation or action or claim, whether threatened or pending, by any governmental agency or third party pertaining to the Release of Hazardous Substances in, on, under, from, or migrating towards the Property; and (vi) any installation of wells, piping, or other equipment at the Property to investigate, remediate or otherwise address any Release of Hazardous Substances at, on, in or in the vicinity of the Property. Indemnitors shall promptly, at Indemnitors' sole cost and expense, take all reasonable actions with respect to any Hazardous Substances or other environmental condition at, on or under the Property or other affected property, including all investigative, monitoring, removal, containment and remedial actions in accordance with all applicable Environmental Laws, including the payment, at no expense to Agent, of all clean-up, administrative and enforcement costs of applicable governmental agencies which may be asserted against the Property in all instances as necessary to (A) comply with all applicable Environmental Laws; (B) protect human health or the environment; (C) allow continued use, occupation, or operation of the Property; and (D) maintain fair market value of the Property (collectively, "Completion of the Clean-up"). In the event Indemnitors fail to do so, Indemnified Parties may, but shall not be

obligated or have any duty to, cause the Completion of the Clean-up of the Property. Indemnitors hereby grant to Indemnified Parties and their agents and employees access to the Property as provided in Section 1(f) below, and a license to remove any items deemed by Indemnified Parties to be Hazardous Substances and to do all things Indemnified Parties shall deem necessary to cause the Completion of the Clean-up of the Property.

- (e) **Indemnification.** Indemnitors covenant and agree, at Indemnitors' sole cost and expense, to indemnify, defend (at trial and appellate levels, and with attorneys, consultants and experts acceptable to Indemnified Parties), and hold Indemnified Parties harmless for, from and against any and all liens, damages (including, without limitation, consequential damages), losses, liabilities, obligations, settlement payments, penalties, claims, judgments, suits, proceedings, costs, disbursements or expenses of any kind or of any nature whatsoever (including reasonable attorneys', consultants' and experts' fees and disbursements actually incurred in investigating, defending, settling or prosecuting any claim, litigation or proceeding) which may at any time be imposed upon, incurred by or asserted against Indemnified Parties or the Property, and arising directly or indirectly from or out of:
- (i) the past, present or future presence, Release or threat of Release of any Hazardous Substances on, in, under or affecting all or any portion of the Property or any surrounding areas, regardless of whether or not caused by or within the control of any Indemnitor;
  - (ii) the past, present or future violation of any Environmental Laws, relating to or affecting the Property or Borrower's operations, whether or not caused by or within the control of Indemnitor;
  - (iii) the failure by Indemnitors to comply fully with the terms and conditions of this Section 1;
  - (iv) any misrepresentation or inaccuracy in or the breach of any representation or warranty contained in this Section 1; or
  - (v) the enforcement of this Section 1, including any liabilities that arise as a result of the actions taken or caused to be taken by Indemnified Parties under this Section 1, the cost of assessment, containment and/or removal of any and all Hazardous Substances from all or any portion of the Property or any surrounding areas, the cost of any actions taken in response to the presence, Release or threat of Release of any Hazardous Substances on, in, under or affecting any portion of the Property or any surrounding areas to prevent or minimize such Release or threat of Release so that it does not migrate or otherwise cause or threaten danger to present or future public health, safety, welfare or the environment, and

costs incurred to comply with the Environmental Laws in connection with all or any portion of the Property or any surrounding areas. Indemnified Parties' rights under this Section 1 shall survive payment in full of Borrower's obligations under the Loan Documents and shall be in addition to all other rights of Indemnified Parties under the Deed of Trust, the Note and the other Loan Documents. The foregoing notwithstanding, Indemnitors' obligations under this Section 1 with regard to any Post Transfer Indemnification Responsibilities (as hereinafter defined) shall be limited to such obligations directly or indirectly arising out of or resulting from any Hazardous Substances that were present or released in, on, or around any part of the Property, or in the soil, groundwater or soil vapor on or under the Property at any time before or while Borrower held title to or was in possession or control of the Property ("Indemnitors' Continuing Responsibility"); provided, however, that any Post Transfer Indemnification Responsibilities incurred or suffered by Indemnified Parties shall be presumed, unless shown by a preponderance of the evidence to the contrary, to be Indemnitors' Continuing Responsibility. "Post Transfer Indemnification Responsibilities" shall mean any obligations hereunder to indemnify, defend, and hold Indemnified Parties harmless arising after Indemnified Parties cease to hold a security interest in the Property or acquire title to the Property as a result of foreclosure, deed in lieu of foreclosure, or other transfer of the Property.

Notwithstanding the foregoing, the indemnification obligations of Indemnitors contained herein shall not apply to any instance which has been caused by the gross negligence or willful misconduct of an Indemnified Party.

- (f) Site Visits, Observation and Testing. Agent and its agents and representatives shall have the right at any reasonable time to enter and visit the Property for the purposes of observing the Property, taking and removing soil or groundwater samples, and conducting tests on any part of the Property. Indemnified Parties have no duty, however, to visit or observe the Property or to conduct tests, and no site visit, observation or testing by any Indemnified Party shall impose any liability on any Indemnified Party. In no event shall any site visit, observation or testing by any Indemnified Party be a representation that Hazardous Substances are or are not present in, on or under the Property, or that there has been or shall be compliance with any law, regulation or ordinance pertaining to Hazardous Substances or any other applicable governmental law. Neither Borrower nor any other party is entitled to rely on any site visit, observation or testing by any Indemnified Party. Indemnified Parties owe no duty of care to protect Indemnitors or any other party against, or to inform Indemnitors or any other party of, any Hazardous Substances or any other adverse condition affecting the Property. Indemnified Parties

may in their discretion disclose to Indemnitors or any other party any report or findings made as a result of, or in connection with, any site visit, observation or testing by Indemnified Parties. Indemnitors understand and agree that Indemnified Parties make no representation or warranty to Indemnitors or any other party regarding the truth, accuracy or completeness of any such report or findings that may be disclosed. Indemnitors also understand that, depending on the results of any site visit, observation or testing by any Indemnified Party which are disclosed to Indemnitors, Indemnitors may have a legal obligation to notify one or more environmental agencies of the results and that such reporting requirements are site-specific and are to be evaluated by Indemnitors without advice or assistance from Indemnified Parties. Any Indemnified Party shall give Borrower reasonable notice before entering the Property. Such Indemnified Party shall make reasonable efforts to avoid interfering with Borrower's use of the Property in exercising any rights provided in this Section 1.

2. **Reinstatement of Obligations.** If at any time all or any part of any payment made by Borrower or received by Indemnified Parties from Borrower under or with respect to this Agreement is or must be rescinded or returned for any reason whatsoever (including the insolvency, bankruptcy or reorganization of any Indemnitor under any Debtor Relief Law (as defined below)), then the obligations of Indemnitors hereunder shall, to the extent of the payment rescinded or returned, be deemed to have continued in existence, notwithstanding such previous payment made by Indemnitors, or receipt of payment by an Indemnified Party, and the obligations of Indemnitors hereunder shall continue to be effective or be reinstated, as the case may be, as to such payment, all as though such previous payment by Indemnitors had never been made.
3. **Waivers.** To the extent permitted by law, each Indemnitor, for itself and its successors, hereby waives and agrees not to assert or take advantage of:
  - (a) Any right to require Indemnified Parties to proceed against any other person or to proceed against or exhaust any security held by Indemnified Parties at any time or to pursue any other remedy in Indemnified Parties' power or under any other agreement before proceeding against Borrower hereunder;
  - (b) The defense of the statute of limitations in any action hereunder;
  - (c) Any defense that may arise by reason of the incapacity, lack of authority, death or disability of any other person or persons or the failure of Indemnified Parties to file or enforce a claim against the estate (in administration, bankruptcy or any other proceedings) of any other person or person;

- (d) Demand, presentment for payment, notice of nonpayment, protest, notice of protest and all other notices of any kind, or the lack of any thereof, including, without limiting the generality of the foregoing, notice of the existence, creation or incurring of any new or additional indebtedness or obligation or of any action or non-action on the part of the Indemnified Parties, any endorser or creditor of either Indemnitor or any other person whomsoever under this or any other instrument in connection with any obligation or evidence of indebtedness held by Indemnified Parties;
- (e) Any right or claim of right to cause a marshalling of the assets of Indemnitors;
- (f) Any principle or provision of law, statutory or otherwise, which is or might be in conflict with the terms and provisions of this Agreement;
- (g) Any duty on the part of Indemnified Parties to disclose to Indemnitors any facts Indemnified Parties may now or hereafter know about the Property, regardless of whether Indemnified Parties have reason to believe that any such facts materially increase the risk beyond that which Indemnitors intend to assume or have reason to believe that such facts are unknown to Indemnitors or have a reasonable opportunity to communicate such facts to Indemnitors, it being understood and agreed that Indemnitors are fully responsible for being and keeping informed of the condition of the Property and of any and all circumstances bearing on the risk that liability may be incurred hereunder;
- (h) Any lack of notice of disposition or of manner of disposition of any collateral for the Loans;
- (i) Any invalidity, irregularity or unenforceability, in whole or in part, of any one or more of the Loan Documents;
- (j) Any lack of commercial reasonableness in dealing with the collateral for the Loans;
- (k) Any deficiencies in the collateral for the Loans or any deficiency in the ability of Indemnified Parties to collect or to obtain performance from any person or entities now or hereafter liable for the payment and performance of any obligation hereby guaranteed;
- (l) Any assertion or claim that the automatic stay provided by 11 U.S.C. §362 (arising upon the voluntary or involuntary bankruptcy proceeding of Indemnitors) or any other stay provided under any other debtor relief law (whether statutory, common law, case law or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable, shall operate or be interpreted to stay, interdict, condition, reduce or inhibit the ability of Indemnified Parties to enforce



any of its rights, whether now or hereafter required, which Indemnified Parties may have against Indemnitors or the collateral for the Loans; and

- (m) Any modifications of the Loan Documents or any obligation of Indemnitors relating to the Loans by operation of law or by action of any court, whether pursuant to the Bankruptcy Reform Act of 1978, as amended or recodified ("Bankruptcy Code"), or under any other present or future state or federal law regarding bankruptcy, reorganization or other relief to debtors (collectively, "Debtor Relief Law"), or otherwise.

4. **General Provisions.**

- (a) **Full Recourse.** All of the terms and provisions of this Agreement are full recourse obligations of Indemnitors and not restricted by any limitation on personal liability.
- (b) **Secured Obligations.** Indemnitors hereby acknowledge that the obligations of Indemnitors under this Agreement are secured by the lien of the Deed of Trust and the security interests and other collateral described in the Deed of Trust and the other Loan Documents.
- (c) **Survival.** This Agreement shall be deemed to be continuing in nature and shall remain in full force and effect and shall survive the payment of the indebtedness evidenced and secured by the Loan Documents and the exercise of any remedy by Indemnified Parties under the Deed of Trust or any of the other Loan Documents, including any foreclosure or deed in lieu thereof, even if, as a part of such remedy, the Loans are paid or satisfied in full.
- (d) **No Recourse Against Indemnified Parties.** Indemnitors shall not have any right of recourse against Indemnified Parties, except for Indemnified Parties' gross negligence or willful misconduct, by reason of any action Indemnified Parties may take or omit to take under the provisions of this Agreement or under the provisions of any of the Loan Documents.
- (e) **Reservation of Rights.** Nothing contained in this Agreement shall prevent or in any way diminish or interfere with any rights or remedies, including the right to contribution, which Indemnified Parties may have against Indemnitors or any other party under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (codified at Title 42 U.S.C. §9601 *et seq.*), as it may be amended from time to time, or any other applicable federal, state or local laws, all such rights being hereby expressly reserved.
- (f) **Rights Cumulative; Payments.** Indemnified Parties' rights under this Agreement shall be in addition to all rights of Indemnified Parties under the Note, the Deed of Trust and the other Loan Documents. Further, payments made by Indemnitors under this Agreement shall not reduce in

any respect Indemnitors' obligations and liabilities under the Note, the Deed of Trust and the other Loan Documents.

- (g) **No Limitation on Liability.** Each Indemnitor hereby consents and agrees that Indemnified Parties may at any time and from time to time without further consent from Indemnitors do any of the following events, and the liability of Indemnitors under this Agreement shall be unconditional and absolute and shall in no way be impaired or limited by any of the following events, whether occurring with or without notice to Indemnitors or with or without consideration: (i) any extensions of time for performance required by any of the Loan Documents or extension or renewal of the Note; (ii) any sale, assignment or foreclosure of the Note, the Deed of Trust or any of the other Loan Documents or any sale or transfer of the Property; (iii) any change in the composition of any Indemnitor; (iv) the accuracy or inaccuracy of the representations and warranties made by Indemnitors herein or in any of the Loan Documents; (v) the release of any Indemnitor or of any other person or entity from performance or observance of any of the agreements, covenants, terms or conditions contained in any of the Loan Documents by operation of law, Indemnified Parties' voluntary act or otherwise; (vi) the release or substitution in whole or in part of any security for the Loans; (vii) Agent's failure to record the Deed of Trust or to file any financing statement (or Agent's improper recording or filing thereof) or to otherwise perfect, protect, secure or insure any lien or security interest given as security for the Loans; (viii) the modification of the terms of any one or more of the Loan Documents; or (ix) the taking or failure to take any action of any type whatsoever. No such action which Indemnified Parties shall take or fail to take in connection with the Loan Documents or any collateral for the Loans, nor any course of dealing with Indemnitors or any other person, shall limit, impair or release Indemnitors' obligations hereunder, affect this Agreement in any way or afford Borrower any recourse against Indemnified Parties. Nothing contained in this Paragraph shall be construed to require Indemnified Parties to take or refrain from taking any action referred to herein.

- (h) **Entire Agreement; Amendment; Severability.** This Agreement contains the entire agreement between the parties respecting the matters herein set forth and supersedes (except as to the Deed of Trust) all prior agreements, whether written or oral, between the parties respecting such matters. Any amendments or modifications hereto, in order to be effective, shall be in writing and executed by the parties hereto. If any provision or obligation under this Agreement or any of the other Loan Documents shall be determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, that provision shall be deemed severed from the Loan Documents and the validity, legality and enforceability of the remaining provisions or obligations shall remain in full force as though

the invalid, illegal or unenforceable provision had never been a part of the Loan Documents.

- (i) **Governing Law; Binding Effect.** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois, except to the extent that the applicability of any of such laws may now or hereafter be preempted by Federal law, in which case such Federal law shall so govern and be controlling. The terms, covenants and conditions of this Agreement shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties. Indemnified Parties and any successor may, at any time, sell, transfer, or assign its interest under the Note, the Deed of Trust, the other Loan Documents, any or all servicing rights with respect thereto, and this Agreement or grant participations. Indemnified Parties may forward to each purchaser, transferee, assignee, servicer, participant or investor (all of the foregoing entities collectively referred to as an "Investor") and each prospective Investor, all documents, financial and other information which Indemnified Parties now have or may hereafter acquire relating to (a) the Loans; (b) the Property and its operation (including, without limitation, copies of all leases, subleases or any other agreements concerning the use and occupancy of the Property); and/or (c) any party connected with the Loans (including, without limitation, Borrower, any partner or member of Borrower, any constituent partner or member of Borrower, and Guarantor). The representations, warranties, obligations, covenants, and indemnity obligations of Indemnitors under this Agreement shall also benefit and apply with respect to any purchaser, transferee, assignee, participant, servicer or investor.
- (j) **Notice.** All notices or other communications required or permitted to be given pursuant hereto shall be given in the manner specified in the Deed of Trust directed to the parties at their respective addresses as provided therein; provided, however, notices to Guarantor shall be given in the manner specified in the Deed of Trust at the following addresses:

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, 11<sup>th</sup> Floor  
Phoenix, Arizona 85016-9225  
Attn: Gregory L. Mast, Esq.

- (k) **No Waiver; Time of Essence; Interpretation; Counting of Days.** The failure of any party hereto to enforce any right or remedy hereunder, or to promptly enforce any such right or remedy, shall not constitute a waiver thereof nor give rise to any estoppel against such party nor excuse any of the parties hereto from their respective obligations hereunder. Any waiver of such right or remedy must be in writing and signed by the party to be bound. Whenever used, the singular number shall include the plural, the plural the singular, and the words "Indemnified Parties" and "Indemnitors" shall include their respective successors, assigns, heirs, executors and administrators. The word "include(s)" means "include(s), without limitation," and the word "including" means "including, but not limited to." This Agreement is subject to enforcement at law or in equity, including actions for damages or specific performance. Time is of the essence of each and every term and condition of this Agreement. The term "days" when used herein shall mean calendar days. If any time period ends on a Saturday, Sunday or holiday officially recognized by the state within which the Property is located, the period shall be deemed to end on the next succeeding business day. The term "business day" as used herein shall mean a weekday, Monday through Friday, except a legal holiday or a day on which banking institutions in Chicago, Illinois, are authorized by law to be closed.
- (l) **Headings.** The headings of the sections and paragraphs of this Agreement are for convenience of reference only and shall not be construed in interpreting the provisions hereof.
- (m) **Attorneys' Fees.** Indemnitors agree to pay all of Indemnified Parties' costs and expenses, including reasonable attorneys' fees, which may be incurred in enforcing or protecting Indemnified Parties' rights or interests.

From the time(s) incurred until paid in full to Indemnified Parties, all such sums shall bear interest at the Default Rate (as defined in the Loan Agreement).

- (n) **Successive Actions.** A separate right of action hereunder shall arise each time Indemnified Parties acquire knowledge of any matter indemnified by Indemnitors under this Agreement. Separate and successive actions may be brought hereunder to enforce any of the provisions hereof at any time and from time to time. No action hereunder shall preclude any subsequent action, and Indemnitors hereby waive and covenant not to assert any defense in the nature of splitting of causes of action or merger of judgments.
- (o) **Joint and Several Liability.** If more than one person or entity is signing this Agreement as Indemnitors, their obligations under this Agreement will be joint and several. As to any Indemnitor that is a partnership, the obligations of such Indemnitor under this Agreement are the joint and several obligation of each general partner thereof. Any married person signing this Agreement agrees that recourse may be had against community property assets and against his or her separate property for the satisfaction of all obligations contained herein.
- (p) **Reliance.** Indemnified Parties would not make the Loans to Borrower without this Agreement. Accordingly, Indemnitors intentionally and unconditionally enter into the covenants and agreements herein and understands that, in reliance upon and in consideration of such covenants and agreements, the Loans shall be made and, as part and parcel thereof, specific monetary and other obligations have been, are being and shall be entered into which would not be made or entered into but for such reliance.
- (q) **Counterparts.** This Agreement 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.
- (r) **WAIVER OF TRIAL BY JURY. INDEMNITORS AND AGENT (BY ACCEPTANCE OF THIS AGREEMENT), 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. INDEMNITORS AGREE THAT THEY WILL NOT ASSERT ANY CLAIM AGAINST AGENT OR THE BANKS ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES.**

- (s) **Waiver of Bankruptcy Stay.** Indemnitors covenant and agree that upon the commencement of a voluntary or involuntary bankruptcy proceeding by or against any Indemnitor, such Indemnitor shall not seek a supplemental stay or otherwise pursuant to 11 U.S.C. § 105 or any other provision of the Bankruptcy Code or any other Debtor Relief Law, to stay, interdict, condition, reduce or inhibit the ability of Indemnified Parties to enforce any rights of Indemnified Parties against such Indemnitor by virtue of this Agreement or otherwise.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

**INDEMNITORS HEREBY ACKNOWLEDGE AND AGREE THAT THIS AGREEMENT CONTAINS CERTAIN INDEMNIFICATION PROVISIONS (INCLUDING, WITHOUT LIMITATION, THOSE CONTAINED IN SECTION 1 HEREOF) WHICH, IN CERTAIN CIRCUMSTANCES, COULD INCLUDE AN INDEMNIFICATION BY INDEMNITORS OF AGENT AND BANKS FROM CLAIMS OR LOSSES ARISING AS A RESULT OF AGENT'S OR BANKS' OWN NEGLIGENCE.**

**IN WITNESS WHEREOF**, Indemnitors have executed this Agreement as of 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: Charles Vogel  
Its: Senior Vice President

**GUARANTOR:**

**OPUS WEST CORPORATION**, a Minnesota  
corporation

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

**INDEMNITORS HEREBY ACKNOWLEDGE AND AGREE THAT THIS AGREEMENT CONTAINS CERTAIN INDEMNIFICATION PROVISIONS (INCLUDING, WITHOUT LIMITATION, THOSE CONTAINED IN SECTION 1 HEREOF) WHICH, IN CERTAIN CIRCUMSTANCES, COULD INCLUDE AN INDEMNIFICATION BY INDEMNITORS OF AGENT AND BANKS FROM CLAIMS OR LOSSES ARISING AS A RESULT OF AGENT'S OR BANKS' OWN NEGLIGENCE.**

IN WITNESS WHEREOF, Indemnitors have executed this Agreement as of 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: \_\_\_\_\_  
Its: \_\_\_\_\_

**GUARANTOR:**

**OPUS WEST CORPORATION, a Minnesota**  
corporation

By: Charles Vogel  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_



**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 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, 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**

**REPORTS**

Phase I Environmental Site Assessment dated January 30, 2006 prepared by LFR, Inc.; project reference: 2050 and 2100 Main Street, Irvine, CA.

# 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):**

<i>Creditor:</i> (12791306) M&I Marshall & Ilsley Bank 1110 N. Old World Third Street, Suite 32 Milwaukee, WI 52303	<b>Claim No: 55</b> <i>Original Filed</i> Date: 11/09/2009 <i>Original Entered</i> Date: 11/09/2009 <i>Last Amendment</i> Filed: 12/21/2009 <i>Last Amendment</i> Entered: 12/21/2009	<i>Status:</i> <i>Filed by:</i> CR <i>Entered by:</i> <i>Modified:</i>
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Unsecured claimed: \$103194056.97

**Total claimed: \$103194056.97**

**History:**

Details    55-1    11/09/2009 Claim #55 filed by M&I Marshall & Ilsley Bank, total amount claimed: \$103184056.97 (Aurzada, Keith )

Details    55-2    12/21/2009 Amended Claim #55 filed by M&I Marshall & Ilsley Bank, total amount claimed: \$103194056.97 (Aurzada, Keith )

Description:

Remarks:

## Claims Register Summary

**Case Name:** Opus West Corporation

**Case Number:** 09-34356-hdh11

**Chapter:** 11

**Date Filed:** 07/06/2009

**Total Number Of Claims:** 1

	Total Amount Claimed	Total Amount Allowed
<b>Unsecured</b>	\$103194056.97	
<b>Secured</b>		
<b>Priority</b>		
<b>Unknown</b>		
<b>Administrative</b>		
<b>Total</b>	<b>\$103194056.97</b>	<b>\$0.00</b>