

# UNOFFICIAL COPY



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Upon recordation return to:

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

Doc#: 0700444038 Fee: \$44.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 01/04/2007 11:57 AM Pg: 1 of 11

*This space reserved for recorder's use only*

## ASSIGNMENT OF RENTS AND LEASES

**THIS ASSIGNMENT OF RENTS AND LEASES** (this "Assignment") is made and delivered effective as of the 29<sup>th</sup> day of December, 2006 by **OPUS REAL ESTATE IL VII BR2, L.L.C.**, a Delaware limited liability company ("Assignor"), to and for the benefit of **LASALLE BANK NATIONAL ASSOCIATION**, a national banking association, its successors and assigns, as Agent for itself and the other Banks (as defined in the Loan Agreement referenced below) ("Assignee").

### RECITALS:

A. Pursuant to the terms and conditions of that certain Construction Loan Agreement of even date herewith (as amended, restated or replaced from time to time, the "Loan Agreement") by and among Assignor, Assignee, as agent, and the Banks, the Banks have agreed to make construction loans in the aggregate principal amount of Thirty One Million Seven Hundred Thousand and 00/100 Dollars (\$31,700,000.00) (collectively, the "Loans") to Assignor. Assignor is executing that certain Promissory Note of even date herewith executed by Assignor in favor of LaSalle Bank National Association, a national banking association, as a Bank, in the principal amount of \$31,700,000.00. to evidence the Loans (such note, as amended, modified, restated or replaced from time to time, the "Note").

B. A condition precedent to Banks' making of the Loans to Assignor is the execution and delivery by Assignor of this Assignment.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto mutually agree as follows:

1. **Definitions.** All capitalized terms which are not defined herein shall have the meanings ascribed thereto in that certain Construction Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filing of even date herewith from Assignor for the benefit of Assignee (as amended, modified, replaced or restated from time to time, "Mortgage") given as security for the Loans.

2. **Grant of Security Interest.** Assignor hereby grants, transfers, sets over and assigns to Assignee, for the benefit of the Banks, all of the right, title and interest of Assignor in and to (i) all of the rents, revenues, issues, profits, proceeds, receipts, income, accounts and other receivables arising out of or from the land legally described in Exhibit A attached hereto and made a part hereof

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and all buildings and other improvements located thereon (said land and improvements being hereinafter referred to collectively as the "Premises"), including, without limitation, lease termination fees, purchase option fees and other fees and expenses payable under any lease; (ii) all leases and subleases (collectively, the "Leases"), now or hereafter existing, of all or any part of the Premises together with all guaranties of any of such Leases and all security deposits delivered by tenants thereunder, whether in cash or letter of credit; (iii) all rights and claims for damage against tenants arising out of defaults under the Leases, including rights to termination fees and compensation with respect to rejected Leases pursuant to Section 365(a) of the Federal Bankruptcy Code or any replacement Section thereof; and (iv) all tenant improvements and fixtures located on the Premises. This Assignment is an absolute transfer and assignment of the foregoing interests to Assignee, subject to the rights granted to Assignee in Section 5, given to secure:

a) Payment by Assignor when due of (i) the indebtedness evidenced by the Note and any and all renewals, extensions, replacements, amendments, modifications and refinancings thereof; (ii) any and all other indebtedness and obligations that may be due and owing to Assignee or the Banks by Assignor under or with respect to the Loan Documents (as defined in the Loan Agreement); and (iii) all costs and expenses paid or incurred by Assignee in enforcing its rights hereunder, including without limitation, court costs and reasonable attorneys' fees; and

(b) Observance and performance by Assignor of the covenants, conditions, agreements, representations, warranties and other liabilities and obligations of Assignor or any other obligor to or benefiting Assignee which are evidenced or secured by or otherwise provided in the Note, this Assignment or any of the other Loan Documents, together with all amendments and modifications thereof.

3. **Representations and Warranties of Assignor.** Assignor represents and warrants to Assignee that:

(a) this Assignment, as executed by Assignor, constitutes the legal and binding obligation of Assignor enforceable in accordance with its terms and provisions subject to applicable bankruptcy laws and laws affecting creditors' rights generally;

(b) the Assignor is the lessor under all Leases in existence as of the date hereof;

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

(d) Assignor has not executed any instrument or performed any act which may prevent Assignee from operating under any of the terms and provisions hereof or which would limit Assignee in such operation;

4. **Covenants of Assignor.** Assignor covenants and agrees that so long as this Assignment shall be in effect:

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(a) Assignor shall not lease any portion of the Premises unless Assignor obtains Assignee's prior written reasonable consent to all aspects of such lease which consent shall be deemed given if the Assignee fails to notify the Assignor that the Assignee's consent is being withheld within ten (10) Business Days after the loan officer of the Assignee with primary responsibility for administering the Loan has received (i) the Assignor's request for consent (which request, to be effective, shall specifically and conspicuously refer to the ten (10) day deemed consent provision of this subsection) and (ii) all other information reasonably necessary for the Assignee to adequately evaluate such request (including, without limitation, a copy of the proposed lease, credit information regarding the proposed tenant (if furnished to Assignor) and a statement of the leasing commissions, tenant improvement costs, tenant incentives and other cost and expenses to be incurred in connection with such Lease). Leases on terms substantially consistent with the terms in the letters of intent previously approved by Assignee shall be deemed approved. Notwithstanding the foregoing, Assignee's consent shall not be required for any Lease of less than 5,000 square feet of rentable space for a term of not less than ten (10) years at a rental rate of at least 95% of Assignor's then current proforma rental rates approved by Agent either on a standard form approved by Assignee on a form used by Assignor or its affiliates for the tenant under such Lease at projects developed by Assignor or its affiliates that are similar to the project.

(b) Assignor shall observe and perform all of the covenants, terms, conditions and agreements contained in the Leases to be observed or performed by the lessor thereunder, and Assignor shall not do or suffer to be done anything to impair the security thereof. Assignor shall not (i) release the liability of any tenant under any Lease unless required to do so by the terms of the Lease, (ii) consent to any tenant's withholding of rent or making monetary advances and off-setting the same against future rentals except as specifically provided therein, (iii) consent to any tenant's claim of a total or partial eviction, (iv) consent to a tenant termination or cancellation of any Lease, except as specifically provided therein, or (v) enter into any oral leases with respect to all or any portion of the Premises;

(c) Assignor shall not collect any of the rents, issues, income or profits assigned hereunder more than thirty days in advance of the time when the same shall become due, except for security or similar deposits unless Assignor escrows such payments with Assignee, unless Assignor escrows such payments with Assignee;

(d) Assignor shall not make any other assignment of its entire or any part of its interest in or to any or all Leases, or any or all rents, issues, income or profits assigned hereunder, except as specifically permitted by the Loan Documents;

(e) Assignor shall not materially modify the terms and provisions of any Lease, nor shall Assignor give any consent (including, but not limited to, any consent to any assignment of, or subletting under, any Lease, except as expressly permitted thereby) or approval, required or permitted by such terms and provisions or cancel or terminate any Lease, without Assignee's prior written consent; provided, however, that Assignor may cancel or terminate any Lease as a result of a material default by the tenant thereunder and failure of such tenant to cure the default within the applicable time periods set forth in the Lease;

(f) Except as permitted by any Lease, Assignor shall not accept a surrender of any Lease or convey or transfer, or suffer or permit a conveyance or transfer, of the premises

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demised under any Lease or of any interest in any Lease so as to effect, directly or indirectly, proximately or remotely, a merger of the estates and rights of, or a termination or diminution of the obligations of, any tenant thereunder; any termination fees payable under a Lease for the early termination or surrender thereof shall be paid jointly to Assignor and Assignee and Assignee shall make such fees available to Assignor for costs of retenuing the demised space, including broker commissions, tenant improvement costs, legal fees, design costs, and other tenant concession amounts;

(g) Assignor shall not alter, modify or change the terms of any guaranty of any Lease, or cancel or terminate any such guaranty or do or permit to be done anything which would terminate any such guaranty as a matter of law;

(n) Assignor shall not waive or excuse the obligation to pay rent under any Lease except for rent abatements as may be provided in any Lease;

(i) Assignor shall, at its sole cost and expense, appear in and defend any and all actions and proceedings arising under, relating to or in any manner connected with any Lease or the obligations, duties or liabilities of the lessor or any tenant or guarantor thereunder, and shall pay all costs and expenses of Assignee, including court costs and reasonable attorneys' fees, in any such action or proceeding in which Assignee may appear; provided Assignee tenders the defense of any such matter to Assignor within a commercially reasonable time and that such matter shall be defended by counsel selected by Assignor and reasonably acceptable to Assignee;

(j) Assignor shall give prompt notice to Assignee of any notice of any default by the lessor under any Lease received from any tenant or guarantor thereunder;

(k) Assignor shall enforce the observance and performance of each covenant, term, condition and agreement contained in each Lease to be observed and performed by the tenants and guarantors thereunder and shall immediately notify Assignee of any material breach by the tenant or guarantor under any such Lease;

(l) Assignor shall not permit any of the Leases to become subordinate to any lien or liens other than liens securing the indebtedness secured hereby or liens for general real estate taxes not delinquent; and

(m) Assignor shall not execute hereafter any Lease unless there shall be included therein a provision providing that the tenant thereunder acknowledges that such Lease has been assigned pursuant to this Assignment and agrees not to look to Assignee as mortgagee, mortgagee in possession or successor in title to the Premises for accountability for any security deposit required by lessor under such Lease unless such sums have actually been received in cash by Assignee as security for tenant's performance under such Lease.

(n) Once the tenants are in possession under the Leases, not less than thirty (30) days after the end of each calendar quarter, the Assignor shall deliver to the Assignee a certified rent roll for the Premises as of the last day of such period in a form reasonably satisfactory to Assignee.

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5. **Rights Prior to Default.** Unless or until an Event of Default (as defined in Paragraph 6) shall occur, Assignor shall have the right to collect, at the time (but in no event more than thirty days in advance unless Assignor deposits such rents in escrow with Assignee) provided for the payment thereof, all rents, issues, income and profits assigned hereunder, and to retain, use and enjoy the same and enforce its rights under the Leases and any purchase agreements in accordance with their terms and to perform the terms, covenants and conditions required hereunder. Upon the occurrence of an Event of Default, Assignor's right to collect such rents, issues, income and profits shall immediately terminate without further notice thereof to Assignor. Assignee shall have the right to notify the tenants under the Leases of the existence of this Assignment at any time.

6. **Events of Default.** An "Event of Default" shall occur under this Assignment upon the occurrence of (a) a breach by Assignor of any of the covenants, agreements, representations, warranties or other provisions hereof which is not cured or waived within the applicable grace or cure period, if any, set forth in the Mortgage or (b) any other Event of Default described in the Note, Mortgage or the other Loan Documents.

7. **Rights and Remedies Upon Default.** At any time upon or following the occurrence of any Event of Default, Assignee, at its option, may exercise any one or more of the following rights and remedies without any obligation to do so, without in any way waiving such Event of Default, without further notice or demand on Assignor, without regard to the adequacy of the security for the obligations secured hereby, without releasing Assignor from any obligation, and with or without bringing any action or proceeding to foreclose the Mortgage or any other lien or security interest granted by the Loan Documents:

(a) Declare the unpaid balance of the principal sum of the Note, together with all accrued and unpaid interest thereon, immediately due and payable;

(b) Enter upon and take possession of the Premises, either in person or by agent or by a receiver appointed by a court, and have, hold, manage, lease and operate the same on such terms and for such period of time as Assignee may deem necessary or proper, with full power to make from time to time all alterations, renovations, repairs or replacements thereto or thereof as may seem proper to Assignee, to make, enforce, modify and accept the surrender of Leases, to obtain and evict tenants, to fix or modify rents, and to do any other act which Assignee deems necessary or proper;

(c) Either with or without taking possession of the Premises, demand, sue for, settle, compromise, collect, and give acquittances for all rents, issues, income and profits of and from the Premises and pursue all remedies for enforcement of the Leases and all the lessor's rights therein and thereunder. This Assignment shall constitute an authorization and direction to the tenants under the Leases to pay all rents and other amounts payable under the Leases to Assignee, upon certification to Assignor of occurrence of Event of Default, upon receipt from Assignee of written notice to thereafter pay all such rents and other amounts to Assignee and to comply with any notice or demand by Assignee for observance or performance of any of the covenants, terms, conditions and agreements contained in the Leases to be observed or performed by the tenants thereunder, and Assignor shall facilitate in all reasonable ways Assignee's collection of such rents, issues, income and profits, and upon request will execute written notices to the tenants under the Leases to thereafter pay all such rents and other amounts to Assignee;

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(d) Make any payment or do any act required herein of Assignor in such manner and to such extent as Assignee may deem necessary, and any amount so paid by Assignee shall become immediately due and payable by Assignor with interest thereon until paid at the Default Rate (as defined in the Loan Agreement) and shall be secured by this Assignment;

(e) Exercise any other remedy available to it under any of the other Loan Documents, at law or in equity.

8. **Application of Proceeds.** All sums collected and received by Assignee out of the rents, issues, income and profits of the Premises following the occurrence of any one or more Events of Default shall be applied in accordance with the Illinois Mortgage Foreclosure Law (Chapter 735, Sections 5/15-1101 et seq., Illinois Compiled Statutes) and, unless otherwise specified in such act, in such order as Assignee shall elect in its sole and absolute discretion.

9. **Limitation of Assignee's Liability.** Assignee shall not be liable for any loss sustained by Assignor resulting from Assignee's failure to let the Premises or from any other act or omission of Assignee in managing, operating or maintaining the Premises following the occurrence of an Event of Default. Assignee shall not be obligated to observe, perform or discharge, nor does Assignee hereby undertake to observe, perform or discharge any covenant, term, condition or agreement contained in any Lease to be observed or performed by the lessor thereunder, or any obligation, duty or liability of Assignor under or by reason of this Assignment. Assignor shall and does hereby agree to indemnify, defend (using counsel reasonably satisfactory to Assignee) and hold Assignee and the Banks harmless from and against any and all liability, loss or damage (excluding consequential or indirect damages except to the extent arising from third party claims) which Assignee or the Banks may incur under any Lease or under or by reason of this Assignment and of and from any and all claims and demands whatsoever which may be asserted against Assignee or the Banks by reason of any alleged obligation or undertaking on its part to observe or perform any of the covenants, terms, conditions and agreements contained in any Lease; provided, however, in no event shall Assignor be liable for any liability, loss or damage which Assignor incurs as a result of Assignee's and the Banks' negligence or willful misconduct or as a result of matters arising after the earlier to occur of the date (i) Assignee or its designee obtains possession and control of the Premises or (ii) legal title to the Premises is transferred by foreclosure, deed in lieu or otherwise. Should Assignee or the Banks incur any such liability, loss or damage under any Lease or under or by reason of this Assignment, or in the defense of any such claim or demand, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall become immediately due and payable by Assignor with interest thereon at the Default Rate (as defined in the Loan Agreement) and shall be secured by this Assignment. This Assignment shall not operate to place responsibility upon Assignee for the care, control, management or repair of the Premises or for the carrying out of any of the covenants, terms, conditions and agreements contained in any Lease, nor shall it operate to make Assignee responsible or liable for any waste committed upon the Premises by any tenant, occupant or other party, or for any dangerous or defective condition of the Premises, or for any negligence in the management, upkeep, repair or control of the Premises resulting in loss or injury or death to any tenant, occupant, licensee, employee or stranger. Nothing set forth herein or in the Mortgage, and no exercise by Assignee of any of the rights set forth herein or in the Mortgage shall constitute or be construed as constituting Assignee a "mortgagee in possession" of the Premises, in the absence of the taking of actual possession of the Premises by Assignee pursuant to the provisions hereof or of the Mortgage.

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10. **No Waiver.** Nothing contained in this Assignment and no act done or omitted to be done by Assignee pursuant to the rights and powers granted to it hereunder shall be deemed to be a waiver by Assignee of its rights and remedies under any of the Loan Documents. This Assignment is made and accepted without prejudice to any of the rights and remedies of Assignee under the terms and provisions of such instruments, and Assignee may exercise any of its rights and remedies under the terms and provisions of such instruments either prior to, simultaneously with, or subsequent to any action taken by it hereunder. Assignee may take or release any other security for the performance of the obligations secured hereby, may release any party primarily or secondarily liable therefor, and may apply any other security held by it for the satisfaction of the obligations secured hereby without prejudice to any of its rights and powers hereunder.

11. **Further Assurances.** Assignor shall execute or cause to be executed such additional instruments (including, but not limited to, general or specific assignments of such Leases as Assignee may designate) and shall do or cause to be done such further acts, as Assignee may request, in order to permit Assignee to perfect, protect, preserve and maintain the assignment made to Assignee by this Assignment.

12. **Security Deposits.** Assignor acknowledges that Assignee has not received for its own account any security deposited by any tenant pursuant to the terms of the Leases and that Assignee assumes no responsibility or liability for any security so deposited.

13. **Severability.** If any provision of this Assignment is deemed to be invalid by reason of the operation of law, or by reason of the interpretation placed thereon by any administrative agency or any court, Assignee and Assignor shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Assignment and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby and shall remain in full force and effect.

14. **Successors and Assigns.** This Assignment is binding upon Assignor and its legal representatives, successors and assigns, and the rights, powers and remedies of Assignee under this Assignment shall inure to the benefit of Assignee and its successors and assigns.

15. **Written Modifications.** This Assignment shall not be amended, modified or supplemented without the written agreement of Assignor and Assignee at the time of such amendment, modification or supplement.

16. **Duration.** This Assignment shall become null and void at such time as Assignor shall have paid the principal sum of the Note, together with all interest thereon, and shall have fully paid all of the other obligations secured hereby and by the other Loan Documents.

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

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18. **Notices.** All notices, demands, requests and other correspondence which are required or permitted to be given hereunder shall be deemed sufficiently given when delivered or mailed in the manner and to the addresses of Assignor and Assignee, as the case may be, as specified in the Mortgage.

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

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

**OPUS REAL ESTATE IL VII BR2, L.L.C.**, a  
Delaware limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: **Wade C. Lau**  
**Vice President**

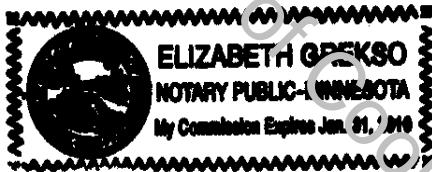
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STATE OF Minnesota )  
 ) ss.  
COUNTY OF Hennepin )

I, Elizabeth Grekso a Notary Public in and for said County, in the State aforesaid, do hereby certify that Wade Lau, the Vice President of **OPUS REAL ESTATE IL VII BR2, L.L.C.**, a Delaware limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Vice President, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 26<sup>th</sup> day of December, 2006.



Elizabeth Grekso  
NOTARY PUBLIC

(SEAL)

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## EXHIBIT "A"

### LEGAL DESCRIPTION

PARCEL 1:

Lot 7 of the Burr Ridge Village Center Planned Unit Development Subdivision, recorded October 2, 2006 as document number 0627510200 in Cook County Illinois.

PARCEL 2:

Easements for drainage, ingress and egress, together with all benefits contained in Declaration of Covenants, Conditions, Restrictions and Easements for Burr Ridge Park dated October 24, 1983, recorded January 3, 1984 as Document Number 26915063, and First Amendment thereto dated July 23, 1984 recorded March 19, 1985 as Document Number 27479281, and Second Amendment thereto dated November 7, 1988 recorded November 22, 1988 as Document Number 88538724.

Parcel 3:

Easements established, together with all benefits contained in Declaration of Covenants, Conditions, Restrictions and Easements for Burr Ridge Park Owners Association dated October 24, 1983, recorded April 12, 1984 as Document Number 27042757, and First Amendment thereto dated February 1, 1985 recorded March 19, 1985 as Document Number 27479286, and Second Amendment thereto dated May 3, 1988 recorded July 7, 1988 as Document Number 88301597, Third Amendment thereto dated August 31, 1988 recorded November 22, 1988 as Document Number 88538724, and Fourth Amendment thereto dated November 28, 1989 recorded February 14, 1990 as Document Number 90073172, and Fifth Amendment thereto dated March 10, 1993 recorded March 20, 1993 as Document Number 93224621, Sixth Amendment thereto dated August 7, 2000 and recorded October 25, 2000 as Document Number 00839539.

Parcel 4:

Easements established together with all benefits contained in Declaration of Reciprocal Easements, Covenants, Conditions and Restrictions (Burr Ridge Village Center) dated August 29, 2006, executed by Opus North Corporation, declarant, recorded October 4, 2006 as Document Number 0627734129, and the terms and conditions as contained therein.

Parcel 5:

Storm water and access easements established together with all benefits contained in Amended and Restated Declaration of Easements, Covenants, Restrictions and Signage dated August 15, 2006 and recorded September 20, 2006 as Document Number 0626331049.

Parcel 6:

Easements established for drainage and storm water purposes, together with all benefits contained in Plat of Easement recorded June 22, 2001 as document 0010548968, and the terms and conditions contained herein.

Address: Southeast Corner of I-55 and County Line Road in Burr Ridge, Cook County, Illinois  
PIN Number: 18-30-300-028-0000