

UNITED STATES BANKRUPTCY COURT NORTHERN DISTRICT OF TEXAS

PROOF OF CLAIM

Name of Debtor:

OPUS WEST CONSTRUCTION CORPORATION

Case Number:

09-34360-11

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

Name of Creditor (the person or other entity to whom the debtor owes money or property):
W.J. MALONEY PLUMBING CO., INC.

Name and address where notices should be sent:

W.J. Maloney Plumbing Co., Inc.
c/o Gregory J. Gnepper, Esq.
Gammage & Burnham
Two North Central Avenue, 18th Floor
Phoenix, Arizona 85004

Telephone number: (602) 256-0566

Name and address where payment should be sent (if different from above):

Telephone number:

RECEIVED

SEP 25 2009

BMC GROUP

☐ Check this box to indicate that this claim is not a claim that has been filed in court.

Court Claim Number: SEP 14 2009

(If known)
TAWANA C. MARSHALL, CLERK
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
Filed on:

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

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

1. Amount of Claim as of Date Case Filed: \$ 17,710.80

If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority, complete item 5.

☒ Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.

2. Basis for Claim: See attached

(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: _____

3a. Debtor may have scheduled account as: _____

(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.)

Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: ☐ Real Estate ☐ Motor Vehicle ☐ Other
Describe:

Value of Property: \$ _____ Annual Interest Rate _____ %

Amount of arrearage and other charges as of time case filed included in secured claim,

if any: \$ _____ Basis for perfection: _____

Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____

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

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

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

If the documents are not available, please explain:

Date:

9/09/09

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

Gregory J. Gnepper
Gregory J. Gnepper, Attorney for W.J. Maloney Plumbing Co., Inc.

FOR COURT USE ONLY

OPUS WEST

00206

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.

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, there may be exceptions to these general rules.

Items to be completed in Proof of Claim form**Court, Name of Debtor, and Case Number:**

Fill in the federal judicial district where the bankruptcy case was filed (for example, Central District of California), the bankruptcy debtor's name, and the bankruptcy case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is located at the top of the notice.

Creditor's Name and Address:

Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

1. Amount of Claim as of Date Case Filed:

State the total amount owed to the creditor on the date of the Bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

2. Basis for Claim:

State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on the delivery of health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if the trustee or another party in interest files an objection to your claim.

3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:

State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

3a. Debtor May Have Scheduled Account As:

Use this space to report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

4. Secured Claim: Check the appropriate box and provide the requested information if the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See DEFINITIONS, below.) State the type and the value of property that secures the claim, attach copies of lien documentation, and state annual interest rate and the amount past due on the claim as of the date of the bankruptcy filing.

5. Amount of Claim Entitled to Priority Under 11 U.S.C. §507(a).

If any portion of your claim falls in one or more of the listed categories, check the appropriate box(es) and state the amount entitled to priority. (See DEFINITIONS below.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

6. Credits:

An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

7. Documents:

Attach to this proof of claim form redacted copies documenting the existence of the debt and of any lien securing the debt. You may also attach a summary. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary. FRBP 3001(c) and (d). If the claim is based on the delivery of health care goods or services, see instruction 2. Do not send original documents, as attachments may be destroyed after scanning.

Date and Signature:

The person filing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2), authorizes courts to establish local rules specifying what constitutes a signature. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. Attach a complete copy of any power of attorney. Criminal penalties apply for making a false statement on a proof of claim.

DEFINITIONS**Debtor**

A debtor is the person, corporation, or other entity that has filed a bankruptcy case.

Creditor

A creditor is a person, corporation, or other entity owed a debt by the debtor that arose on or before the date of the bankruptcy filing. See 11 U.S.C. §101 (10)

Claim

A claim is the creditor's right to receive payment on a debt owed by the debtor that arose on the date of the bankruptcy filing. See 11 U.S.C. §101 (5). A claim may be secured or unsecured.

Proof of Claim

A proof of claim is a form used by the creditor to indicate the amount of the debt owed by the debtor on the date of the bankruptcy filing. The creditor must file the form with the clerk of the same bankruptcy court in which the bankruptcy case was filed.

Secured Claim Under 11 U.S.C. §506(a)

A secured claim is one backed by a lien on property of the debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors. The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car.

A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien. A claim also may be secured if the creditor owes the debtor money (has a right to setoff).

Unsecured Claim

An unsecured claim is one that does not meet the requirements of a secured claim. A claim may be partly unsecured if the amount of the claim exceeds the value of the property on which the creditor has a lien.

Claim Entitled to Priority Under 11 U.S.C. §507(a)

Priority claims are certain categories of unsecured claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.

Redacted

A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor should redact and use only the last four digits of any social-security, individual's tax-identification, or financial-account number, all but the initials of a minor's name and only the year of any person's date of birth.

Evidence of Perfection

Evidence of perfection may include a mortgage, lien, certificate of title, financing statement, or other document showing that the lien has been filed or recorded.

INFORMATION**Acknowledgment of Filing of Claim**

To receive acknowledgment of your filing, you may either enclose a stamped self-addressed envelope and a copy of this proof of claim or you may access the court's PACER system (www.pacer.psc.uscourts.gov) for a small fee to view your filed proof of claim.

Offers to Purchase a Claim

Certain entities are in the business of purchasing claims for an amount less than the face value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court or the debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 3001(e), any applicable provisions of the Bankruptcy Code (11 U.S.C. § 101 *et seq.*), and any applicable orders of the bankruptcy court.

**ATTACHMENT TO UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS, OPUS WEST CONSTRUCTION CORPORATION
BANKRUPTCY CASE NO. 09-34360-11
ATTACHMENT TO PROOF OF CLAIM OF W.J. MALONEY PLUMBING CO., INC.**

Claimant submits this supplemental statement to its proof of claim, which is subject to the conditions set forth herein and a reservation of rights to amend, alter, or supplement as investigation continues.

Creditor contracted with Debtor to purchase plumbing materials and labor in connection with the following three (3) projects:

1. Project generally described as Pima Center I – Building E, located at 90th Street and Via de Ventura, Scottsdale, Arizona 85258. A copy of the contract is attached hereto as Exhibit A.

Debtor owes to Creditor \$16,245.80, plus interest and attorneys' fees and costs on this project. Debtor has failed to pay such amounts despite Creditor's demand.

2. Project generally described as "Scottsdale Waterfront," Scottsdale, Arizona 85258. A copy of the contract is attached hereto as Exhibit B.

Debtor owes to Creditor \$1,045.00, plus interest and attorneys' fees and costs. Debtor has failed to pay such amounts despite Creditor's demand.

3. Project generally described as Glendale Corporate Center Phase 2, located at 5251 N. 99th Avenue, Glendale, Arizona 85305. A copy of the contract is attached hereto as Exhibit C.

Debtor owes to Creditor \$420.00, plus interest and attorneys' fees and costs. Debtor has failed to pay such amounts despite Creditor's demand.

The total amount owed to Claimant by Debtor is **\$17,710.80**.

EXHIBIT A

#6339111

0 000 000

LAL
AVG

Pima Center I - Building E / 10510.00
15400 / Design-Build Plumbing
WJ Maloney Plumbing Co., Inc. / Alan Boughton
Contact Phone # (602) 944-5516
Contact Fax # (602) 944-0966
Payment Terms: Standard

SUBCONTRACT AGREEMENT (Labor and Materials)

This Subcontract Agreement ("Subcontract") is made as of this 18th day of July, 2007, by and between OPUS West Construction Corporation ("Contractor"), with its office located at 2555 East Camelback Road - Suite 800, Phoenix, AZ 85016, and WJ Maloney Plumbing Co., Inc. ("Subcontractor") with its office located at 9119 North 7th Street, Suite 103, Phoenix, AZ 85020.

Contractor and Subcontractor agree as follows:

1. Subcontract Documents. The term "Subcontract Documents" is defined in Paragraph 1 of the attached Rider "A".
2. Project. Contractor is providing design and construction-related services to Owner (defined below) in connection with the project generally described as Pima Center I - Building E ("Project"), located at 90th Street and Via de Ventura, Scottsdale, 85258 ("Project Site"), and consisting of the total work provided by Contractor under contract documents between Owner and Contractor.
3. Owner. The Owner of the Project is PC-101, Inc. ("Owner").
4. Architect/Engineer. The architect and engineers ("Architect/Engineer") of record for the Project are:
 Architect of Record: Butler Design Group Inc
 Civil Engineer: Erickson & Meeks Engineering, LLC
 Structural Engineer of Record: Opus Architects & Engineers
5. Scope of Work. Subcontractor's scope of work for the Project is described in the attached Rider "A" and is defined therein as the Work.
6. Schedule. Time is of the essence. Accordingly, all time limits and requirements for completion set forth in the Subcontract Documents, including any intermediate milestones (collectively referred to in the Subcontract Documents as the "Schedule"), are of the essence of this Subcontract. Subcontractor shall begin its Work as soon as the Project is ready for the Work or within three (3) calendar days after being notified orally or in writing to proceed by Contractor. The Substantial Completion of the Work (defined in the General Conditions of Subcontract) shall be achieved as required by job progress, so as to allow the entire Project to be substantially completed on or before 08/29/2008. Subcontractor shall conform to all progress and schedule requirements of the Subcontract Documents and as directed by Contractor's project manager, and must achieve the milestones (if any) as described in the attached Rider "A".
7. Subcontract Sum. Contractor shall pay Subcontractor the sum of \$ 148,644.00 ("Subcontract Sum"). The Subcontract Sum includes freight and delivery charges and all applicable state and local taxes including sales and use tax, and if required by law, these taxes must be separately stated on any payment applications, invoices or similar documents delivered by Subcontractor to Contractor for completion of the Work in accordance with the terms and conditions of the Subcontract Documents. A breakdown of the components of the Subcontract Sum is set forth in the attached Rider "A".
8. Riders. The following Riders are attached to and made a part of this Subcontract:
 - 8.1 Rider A (Scope of Work)
 - 8.2 Rider B (Indemnification)
 - 8.3 Rider C (Insurance)

Contractor and Subcontractor sign as follows:

Approved by Contractor's project manager Vincent Genetti 15 Aug 07
 Vincent Genetti

CONTRACTOR
OPUS West Construction Corporation

By: [Signature]
 James Godwin
 (Print Name)
 Senior Director of Construction
 (Title)
8.17.07
 (Date)

SUBCONTRACTOR
WJ Maloney Plumbing Co., Inc.

By: [Signature]
 Mary K. Maloney
 (Print Name)
 President
 (Title)
8/1/07
 (Date)

RIDER A

This Rider A is attached to and made a part of the Subcontract between OPUS West Construction Corporation and WJ Maloney Plumbing Co., Inc. dated 07/18/2007. All capitalized terms used, but not defined in this Rider "A" have the meaning ascribed to them in the Subcontract.

1. Work/Subcontract Documents.

Subcontractor shall furnish all necessary labor, materials, equipment, skills, services (including design and engineering, if applicable), supervision and appurtenances necessary to complete all Section Design-Build Plumbing work ("Work") for the Project, including but not limited to, strict compliance with the following documents (the "Subcontract Documents"):

Drawings and Specifications

Description	Number	Last Revision
Pima I Building E Outline Specs		01/21/2007
General Conditions of Subcontract	General Conditions of Subcontract	06/01/2005
Special Conditions of Subcontract	Special Conditions of Subcontract	05/02/2007
Supplemental General Conditions	Supplemental General Conditions	06/01/2005
Preliminary Site Plan and Building Layout	N/A	05/17/2007
Pima Center I - Building E Division 15 - Mechanical	Division 15	07/03/2007
Pima Center I - Building E Division 16 - Electrical	Division 16	07/03/2007

Field Bulletins

Date	Number	Name
N/A		

Supplemental Design Documents

Description	Date
Report on Geotechnical Investigation on Pima Center I, submitted by Speedie and Associates, Project Number 041163SA	08/23/2004

Other Documents

N/A

Subcontractor acknowledges that Contractor has made available to Subcontractor all of the Subcontract Documents, and Subcontractor shall be responsible for obtaining copies pertinent to its Work. Subcontractor represents that it has carefully examined the Subcontract Documents.

Modifications and Clarifications

This Subcontract includes, but is not limited to, the following items:

- 1.0 Subcontractor must have written approval from Contractor to proceed with procurement and construction activities.
- 2.0 Subcontractor shall endorse its Commercial General Liability and Umbrella/Excess Liability policies to add Opus West Construction Corporation, Opus West Corporation, and PC 101, Inc. as "additional insureds."

This Subcontract excludes the following:

- 1.0 Gross Receipts Tax
- 2.0 Performance or Payment Bond
- 3.0 General Building Permit
- 4.0 Development Fees

2. Schedule. Subcontractor will achieve the following milestones (referred to as the "Schedule"):

N/A

Schedule Notes

1. In accordance with attached Opus Pima Center I - E Development Schedule dated May 8, 2007.
2. In accordance with mutually agreed requirements as described in periodic project schedules and Superintendent's two and three week schedules.

3. Subcontract Sum Breakdown: The breakdown of the Subcontract Sum is as follows:

Subcontract Recap

Sub-Job Number	Sub-Job Name	Name	Rate
10510.00	Pima Center I - Building E	Design Engineering Fees	\$5,700.00
10510.00	Pima Center I - Building E	Sanitary Sewer System	\$28,077.00
10510.00	Pima Center I - Building E	Roof Drainage System	\$16,575.00
10510.00	Pima Center I - Building E	Domestic water and hose bibs	\$23,327.00
10510.00	Pima Center I - Building E	Fixtures	\$27,677.00
10510.00	Pima Center I - Building E	Post Bid Adjustment: Relocate roof drains to location near center of roof and change material from PVC to Cast Iron.	\$47,288.00
Total			\$ 148,644.00

Subcontract Sum Breakdown

Name	Account Code	Amount
Plumbing Systems - Subcontract	10510.00-J10-15400.00-S	\$120,967.00
Plumbing Fixtures - Subcontract	10510.00-J10-15404.00-S	\$27,677.00
Total		\$148,644.00

4. Unit Pricing.

If requested by Contractor, Subcontractor will provide additional units of work, as directed, at the unit prices set forth below. Unit prices will apply to all building construction and will include, without limitation, all material, labor, equipment, compensation, general conditions, benefits, overhead, clean-up, supervision, profit, parking, shop drawings, small tools and all sales, use and other applicable taxes. Unit prices do not include design. Unit prices will also apply to net quantity changes in the Work made pursuant to the Subcontract Documents.

The following unit prices shall be in effect for the duration of the project:

Unit Price List

Name	Rate	Quantity UOM
01. Furnish and install one (1) bathroom group consisting of two back-to-back wall mounted, flush valve type water closets, two back-to-back wall mounted lavatories, two floor drains, one handicapped water cooler, and one six gallon water heater mounted overhead.	\$8,440.00	Each
02. Furnish and install one (1) bathroom group consisting of one wall mounted water closet and one wall hung lavatory, one floor drain, one six gallon water heater mounted overhead, and one handicapped water cooler and one janitor's receptor.	\$6,210.00	Each
03. Furnish and install one (1) wall hung water closet with flush valve and carrier, waste, vent and water pipe.	\$1,445.00	Each
04. Furnish and install one (1) urinal, including all services.	\$1,460.00	Each
05. Furnish and install one (1) below counter mounted lavatory with waste, vent and water pipe.	\$1,485.00	Each
06. Furnish and install one (1) floor set, 36" x 24" janitor's receptor including all services.	\$1,475.00	Each
07. Furnish and install one (1) bi-level electric water cooler, waste, vent and water pipe.	\$2,590.00	Each
08. Furnish and install one (1) 22" x 25" stainless steel sink, single compartment.	\$2,500.00	Each
09. Furnish and install one (1) 1/4" cold water line from above ceiling down to shut-off valve for vending area.	\$250.00	Each
10. Furnish and install one (1) floor drain.	\$1,975.00	Each
11. Furnish and install one (1) "instantaneous" water heater.	\$495.00	Each
12. Furnish and install one (1) six (6) gallon electric water heater.	\$580.00	Each
13. Furnish and install one (1) thirty (30) gallon electric water heater.	\$1,455.00	Each
14. Furnish and install one (1) wall hydrant complete, including 60 feet of 3/4" piping.	\$1,250.00	Each
15. Furnish and install sanitary waste and vent piping including fittings to fixtures in excess of eight feet, excluding cutting and patching of floor slabs.	\$21.60	Foot
16. Furnish and install one (1) drain, waste, and vent stack, four inch waste and two inch vent stubbed to each floor, with full size vent through roof for each occupied level. Furnish and install one (1) domestic cold water riser with 1" valved supply to each occupied level. Assume main sanitary and domestic water lines within 25 feet of risers.	\$1,600.00	Each
17. Furnish and install domestic water piping, including fittings and insulation, to fixtures in excess of eight feet. Cutting and patching of floor slabs not included.	\$17.63	Foot
18. Apprentice labor rate	\$39.00	Hour
19. Journeyman labor rate	\$69.00	Hour
20. Foreman labor rate	\$72.00	Hour

5. Alternates.

If requested by Contractor, Subcontractor will promptly provide the alternate work set forth below for the stated amount. When requested by Contractor, the alternate work will become part of the Work defined in Paragraph 1 above.

Alternates

Line Number	Name	Amount
1	Cancellation of Procurement and Construction Services	\$(142,944.00)

The alternate prices shall be in effect for the duration of the project:

Alternates Notes

The alternate prices shall be in effect until Contractor provides written authorization to Subcontractor to proceed with procurement and construction activities.

END OF RIDER A

Pima Center I - Building E / 10510.00
Design-Build Plumbing

RIDER B

This Rider B is attached to and made a part of the Subcontract between OPUS West Construction Corporation and WJ Maloney Plumbing Co., Inc. dated 07/18/2007. All capitalized terms used but not defined in this Rider B have the meaning ascribed to them in the Subcontract or the General Conditions of Subcontract, as applicable. To the extent of any conflict between the provisions of this Rider B and the provisions of any other Subcontract Document, this Rider B shall be controlling.

Section 1. Licensing.

Subcontractor represents and warrants that it and each of its Sub-subcontractors are and will remain duly and validly licensed to the full extent required under all applicable Laws for the performance by each such party of their respective portion of the Work under this Subcontract, and that each such party shall maintain such required license(s) in good standing throughout the full and complete performance of the Work by such party hereunder. Subcontractor will submit proof of such licensure to Contractor upon request.

Section 2. Change Orders.

Any "Change Order" shall be set forth in writing, on Contractor's form, signed by an authorized representative of Contractor, and shall be executed by Contractor prior to Subcontractor proceeding with the requested change in the Work under the applicable conditions of the Subcontract Documents.

Section 3. Pay When and If Paid.

At all times Subcontractor shall be paid only to the extent that Contractor has been paid by Owner for the Work performed by Subcontractor. Notwithstanding any other provision of this Subcontract, and notwithstanding any provisions between Contractor and Owner with respect to payment, the parties agree that payment by Owner to Contractor shall be an express condition precedent to Contractor's obligation to pay Subcontractor. The parties clearly and unambiguously agree that payment by Contractor to Subcontractor is expressly contingent upon Contractor receiving its funds from progress and final payments received from Owner. All payments to Subcontractor shall be made by the Contractor solely out of the progress and final payments funds actually received by the Contractor from the Owner, and from no other source whatsoever. Subcontractor acknowledges that it is sharing, to the extent of payments to be made to Subcontractor, in the risk that Owner may fail to make one or more payments to the Contractor for all or a portion of the Work.

Section 4. Title to Work.

Title to all Work, including materials, equipment, and systems, covered by an Application for Payment, whether incorporated in the Project or not, will pass to Contractor and Owner upon the earlier of (a) receipt of such payment (net of any retainage), or (b) incorporation of such Work into the Project.

Section 5. Indemnification

(a) Subject to Subsections (b) and (c) below, Subcontractor will defend, indemnify and hold harmless Contractor, Owner and Architect/Engineer, and their respective officers, directors, partners, members, agents, and employees (each an "Indemnitee" and collectively, the "Indemnitees") from and against any and all claims, demands, obligations, actions, causes of action, damages, costs, losses, liabilities and expenses (including, without limitation, attorneys' fees and costs and other litigation, mediation, arbitration, or dispute resolution expenses), arising from or in any way connected with Subcontractor's performance or non-performance of this Subcontract (all of the foregoing being referred to as "Claims"). Any such defense of an Indemnitee will be provided by Subcontractor by legal counsel reasonably satisfactory to such Indemnitee. Subject to Subsections (b) and (c) below, Subcontractor's obligations to defend and indemnify (i) include (without limitation) all Claims, whether occurring before, during or after the performance of this Subcontract, which arise from or relate to the activities, products, actions or omissions of Subcontractor, its Sub-subcontractors, anyone directly or indirectly employed by them, or anyone for whose acts any of them may be liable (collectively, the "Subcontractor Parties"); (ii) shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Subcontractor or any Subcontractor Party under workers' or workman's compensation acts, disability acts, other employee benefits acts, or any insurance required to be carried by Subcontractor under the Subcontract Documents; and (iii) specifically and expressly include (without limitation) any Claims caused in part by the negligence (whether active or passive) or other misconduct of any Indemnitee. Subcontractor's failure to procure specific contractual liability and other types of insurance for the benefit of any Indemnitee, as required under the Subcontract Documents, will not render the foregoing provisions unenforceable under any applicable law.

(b) Notwithstanding the provisions of Subsection (a) above, Subcontractor is not obligated to indemnify an Indemnitee for a Claim which is ultimately determined, upon final adjudication, settlement or other resolution of the Claim ("Finally Determined"), to have been caused solely by the active negligence or willful misconduct of that Indemnitee; provided, however, that this exception does not limit or relieve Subcontractor's defense obligations prior to the Claim being so Finally Determined or Subcontractor's obligations to indemnify all other Indemnitees which are not Finally Determined to have participated in such negligence or misconduct.

(c) The parties intend that Subcontractor's indemnity and defense obligations under this Subcontract will be enforced to the fullest extent allowable under applicable law, and agree that if any of the provisions of this Section are, to any extent, held to be invalid, illegal or unenforceable for any reason, any remaining portion thereof and all other provisions of this Section will not be affected by such holding, but will remain valid and in force to the fullest extent permitted by law.

END OF RIDER B

RIDER C

This Rider C is attached to and made a part of the Subcontract between OPUS West Construction Corporation, and WJ Maloney Plumbing Co., Inc. dated 07/18/2007. All capitalized terms used but not defined in this Rider "C" have the meaning ascribed to them in the Subcontract or General Conditions of Subcontract, as applicable.

Liability/Worker's Compensation Insurance. Prior to commencing the Work, Subcontractor shall purchase and maintain during the progress of the Work and any periods of warranty and additional work performed by Subcontractor, insurance that will protect against claims for bodily injury, death, damage to property or other damages arising out of or in connection with the performance of the Work (including warranty and additional work) by Subcontractor, Sub-subcontractor or by anyone employed by any of them, or by anyone for whose acts any of them may be liable. Subcontractor's liability insurance may be maintained in a combination of primary and umbrella policies, and the cost of such insurance shall be included in the Subcontract Sum. Subcontractor's policies of insurance shall have the following minimum limits, coverage and requirements:

- | | |
|--|---|
| (a) Workers' Compensation | Statutory Limits |
| Employer's Liability, including "Stop Gap" coverage and USL&H if applicable | \$1,000,000 each accident
\$1,000,000 disease-policy limit
\$1,000,000 disease-each employee |
| Commercial General Liability
(Electrical, HVAC, Plumbing, Fire Protection Sprinkler, Steel Erection, Elevator, Excavating, Roofing, Foundation and Curtain Wall Subcontractors) | \$5,000,000 each occurrence
\$5,000,000 products/completed operations aggregate
\$5,000,000 general aggregate (minimum \$2,000,000 per project) |
| Commercial General Liability
(All Other Subcontractors) | \$2,000,000 each occurrence
\$2,000,000 products/completed operations aggregate
\$2,000,000 general aggregate (per project) |
| Commercial Automobile Liability | \$1,000,000 any one accident or loss |
| Professional Liability (to the extent required of Subcontractor under the Subcontract Documents) | \$1,000,000 each claim
\$1,000,000 annual aggregate |
- (b) The Commercial General Liability insurance required under Paragraph 1(a) will (i) be on ISO Form CG 00 01 or its equivalent, (ii) include coverage for products/completed operations, (iii) be maintained for a period of three (3) years after completion of the Work, (iv) specifically cover as "insured contracts" the Subcontractor's indemnity obligations as set forth in this Subcontract and other contractual indemnities assumed by the Subcontractor under the Subcontract Documents and (v) provide a \$2,000,000 minimum general aggregate limit of liability on a per project basis.
- The Commercial Automobile Liability insurance required under Paragraph 1(a) will include coverage for all owned, hired and non-owned automobiles. Professional Liability, if applicable to the Subcontractor's Work, shall be maintained for a period of three (3) years after completion of the Work. Any retroactive date on such Professional Liability policy shall be prior to the commencement of any Work under this Subcontract.
- (c) Employer's Liability, Commercial General Liability and Automobile Liability insurance may be arranged under separate policies for the full minimum limits required, or by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability policy.
- (d) The Subcontractor shall endorse its Commercial General Liability, Commercial Automobile Liability, and Umbrella/Excess Liability policies to add the Contractor and the Owner (and others as specifically required by the Subcontract Documents) as "additional insureds". Such insurance afforded to the Contractor and the Owner as "additional insureds" under the Subcontractor's policies will be primary insurance and not excess over, or contributing with, any insurance purchased or maintained by the Contractor or the Owner. The "additional insured" endorsement to Subcontractor's Commercial General Liability policy will be on ISO Form 20 10 07 04 and 20 37 07 04 or their equivalent and will include coverage for ongoing and completed operations.
- (e) All insurance policies required under Paragraph 1 or the Subcontract Documents will (i) be issued by insurance companies that have an A.M. Best rating of A- VII or better and (ii) contain a provision that coverage afforded thereunder shall not be cancelled or restrictive modifications added, without thirty (30) days prior written notice by certified mail to the Contractor. If Subcontractor fails to purchase and maintain the insurance coverage required herein, Contractor may, but shall not be obligated to, obtain such insurance and either charge all costs for such insurance to the Subcontractor or offset the costs of such insurance against amounts due Subcontractor under the Subcontract.
- (f) Certificates of Insurance will be filed with the Contractor prior to the start of the Subcontractor's Work on the Project Site. Such Certificates of Insurance will be in a form and substance acceptable to the Contractor and will provide satisfactory evidence that the Subcontractor has complied with all insurance requirements, including Contractor's, Owner's and any other required parties status as "additional insureds".
- (g) Contractor may exclude Subcontractor from the Project Site and withhold payments to Subcontractor until a properly executed certificate of insurance evidencing the insurance required herein is received by Contractor.
- (h) It is understood and agreed that the insurance coverages and limits required by this Subcontract shall not limit the extent of Subcontractor's responsibilities and liabilities specified within the Subcontract documents or under law.

2 Contractor's Builder's Risk Insurance.

- 2.1 Unless otherwise provided in the Subcontract Documents, Contractor will cause builder's risk insurance to be purchased and maintained with a "causes of loss" or equivalent policy form covering work to be performed by Contractor (including those working for or under Contractor) at the Project Site to the full insurable value thereof, on a replacement cost basis and subject to reasonable deductibles. Covered "causes of loss" means risks of direct physical loss or damage to covered property unless specifically excluded or limited under the policy. This insurance will include the interests of Owner, Contractor, Subcontractor and Sub-subcontractors in respect to the work to be performed by Contractor at the Project, and shall insure against perils of fire (with extended coverage), theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, temporary falsework, shoring and forms and debris removal, and such other matters as are insured against in the form of the policy maintained by Contractor. Unless specifically provided in writing, such insurance will not include coverage for any property, structure(s) and contents (whether real or personal) owned by the Owner or third parties existing as of commencement of Contractor's work or otherwise. Contractor will carry earthquake and flood insurance if Contractor deems it appropriate.

To the extent of coverage afforded by builder's risk or any other property or equipment floater insurance applicable to the Work or the Project or equipment used in the performance of the Work or Project, regardless of whether such insurance is owned by or for the benefit of Subcontractor, Contractor or Owner or their respective subcontractors and agents, Contractor and Subcontractor agree to waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Owner and any of its contractors, subcontractors, agents and employees, whether under subrogation or otherwise, for loss or damage to the extent covered by such insurance, except such rights as they may have to the proceeds of such insurance. If policies of insurance referred to in this paragraph require an endorsement to provide for continued coverage where there is a waiver of subrogation, then the owners of such policies will cause them to be so endorsed. A waiver of subrogation shall be effective as to a party even though that party would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the party had an insurable interest in the property damaged.

If (i) the Project suffers an insurable loss, (ii) the loss is due in part to the negligence of Subcontractor and (iii) an insurance deductible amount (not to exceed \$10,000.00) is applied to the loss payable under builder's risk or other property insurance applicable to the Project, Subcontractor will be liable to Contractor for the deductible amount; however, Contractor may, in its discretion, apportion the deductible amount among other parties responsible for the loss. Subcontractor will promptly pay Contractor, upon demand, for any such deductible amount, and Contractor may offset the deductible amount against any amounts due Subcontractor under the Subcontract. Neither Contractor nor Owner represents that builder's risk or property insurance, if any, applicable to the Project or the Work is adequate to protect the interests of Subcontractor. It is Subcontractor's obligation to determine whether it should purchase and maintain supplementary property insurance to protect its interests in the Work.

- 2.2 Any insured loss is to be adjusted by Owner and Contractor and made payable to Contractor, as trustee, or to Owner and Contractor, as joint trustees for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage or loss payable clause.
- 2.3 Subcontractor hereby releases and agrees to defend and indemnify Contractor and Owner from all claims for loss or damage to or loss of use of Subcontractor's property in or about the Project Site and shall purchase such insurance in respect thereto as Subcontractor deems appropriate. Subcontractor shall require a similar release and indemnity by Sub-subcontractors.

END OF RIDER C

EXHIBIT B



September 11, 2008

Invoice #: 791SWF !

Scottsdale Waterfront

Attn. Joel Wage

State of Arizona Registrar of Contractor License Numbers
ROC07132 ♦ ROC070458 ♦ ROC035922 ♦ ROC035921 ♦ ROC104695



Approval	<u>[Signature]</u>	Contractor Cost Total	
Date	<u>9/5/08</u>	Contractor Mark Up __%	
		Customer Cost	
		Material Total	

[illegible]

*S = Supervisor	F = Foreman	J = Journeyman	H/A = Helper/Apprentice	Labor Total \$	552-
Equipment/Subcontractor	Rate	Time	\$ Extension		
Camera (Sewer)					350-

	Equip. Total	
Bldg. _____	Labor Total	552-
	Material Total	
	Equipment Charge	350-
	Total	
<u>100</u> % Complete	Tax	
	Today's Total	902-

0160446 (770) BIRTHDAY Wishes 1 'm01 a 'w01 m / 21 01 14

WHITE # CUSTOMER COPY: CAVIETY # OFFICE COPY: BANK ST E COPY

[illegible]

WHITE - CUSTOMER COPY - CANARY - OFFICE COPY - PINK - FILE COPY

EXHIBIT C



642GKF
B.T.
CAZ

Glendale Corporate Center Phase 2 / 10627.00
15400 / Design Build - Plumbing: Building F
WJ Maloney Plumbing Co., Inc. / Alan Boughton
Contact Phone # (602) 944-5516
Contact Fax # (602) 944-0966
Payment Terms: Standard

SUBCONTRACT AGREEMENT (Labor and Materials)

This Subcontract Agreement ("Subcontract") is made as of this 25th day of June, 2007, by and between OPUS West Construction Corporation ("Contractor"), with its office located at 2555 East Camelback Road, Suite 800, Phoenix, AZ 85016, and WJ Maloney Plumbing Co., Inc. ("Subcontractor") with its office located at 9119 North 7th Street, Suite 103, Phoenix, AZ 85020.

Contractor and Subcontractor agree as follows:

1. **Subcontract Documents.** The term "Subcontract Documents" is defined in Paragraph 1 of the attached Rider "A".
2. **Project.** Contractor is providing design and construction-related services to Owner (defined below) in connection with the project generally described as Glendale Corporate Center Phase 2 ("Project"), located at 5251 N. 99th Ave, Glendale, 85305 ("Project Site"), and consisting of the total work provided by Contractor under contract documents between Owner and Contractor.
3. **Owner.** The Owner of the Project is Opus West Corporation ("Owner").
4. **Architect/Engineer.** The architect and engineers ("Architect/Engineer") of record for the Project are:
Architect: Opus Architects & Engineers, Inc.
Civil Engineer: Hunter Engineering
Structural Engineer: Opus Architects & Engineers, Inc.
5. **Scope of Work.** Subcontractor's scope of work for the Project is described in the attached Rider "A" and is defined therein as the Work.
6. **Schedule.** Time is of the essence. Accordingly, all time limits and requirements for completion set forth in the Subcontract Documents, including any intermediate milestones (collectively referred to in the Subcontract Documents as the "Schedule"), are of the essence of this Subcontract. Subcontractor shall begin its Work as soon as the Project is ready for the Work or within three (3) calendar days after being notified orally or in writing to proceed by Contractor. The Substantial Completion of the Work (defined in the General Conditions of Subcontract) shall be achieved as required by job progress, so as to allow the entire Project to be substantially completed on or before . Subcontractor shall conform to all progress and schedule requirements of the Subcontract Documents and as directed by Contractor's project manager, and must achieve the milestones (if any) as described in the attached Rider "A".
7. **Subcontract Sum.** Contractor shall pay Subcontractor the sum of \$ 222,930.00 ("Subcontract Sum"). The Subcontract Sum includes freight and delivery charges and all applicable state and local taxes including sales and use tax, and if required by law, these taxes must be separately stated on any payment applications, invoices or similar documents delivered by Subcontractor to Contractor for completion of the Work in accordance with the terms and conditions of the Subcontract Documents. A breakdown of the components of the Subcontract Sum is set forth in the attached Rider "A".
8. **Riders.** The following Riders are attached to and made a part of this Subcontract:
8.1 Rider A (Scope of Work)
8.2 Rider B (Indemnification)
8.3 Rider C (Insurance)

Contractor and Subcontractor sign as follows:

Approved by Contractor's project manager:

Bryan Thompson

CONTRACTOR
OPUS West Construction Corporation

By:

James Godwin

(Print Name)

Senior Director of Construction

(Title)

(Date)

2-10-07

SUBCONTRACTOR
WJ Maloney Plumbing Co., Inc.

By:

Mary K. Maloney

(Print Name)

President

(Title)

(Date)

7/30/07

RIDER A

This Rider A is attached to and made a part of the Subcontract between OPUS West Construction Corporation and WJ Maloney Plumbing Co., Inc. dated 06/25/2007. All capitalized terms used, but not defined in this Rider "A" have the meaning ascribed to them in the Subcontract.

1. Work/Subcontract Documents.

Subcontractor shall furnish all necessary labor, materials, equipment, skills, services (including design and engineering, if applicable), supervision and appurtenances necessary to complete all Section **Design Build - Plumbing: Building F** work ("Work") for the Project, including but not limited to, strict compliance with the following documents (the "Subcontract Documents"):

Drawings and Specifications

Description	Number	Last Revision
Special Conditions of Subcontract-July 16, 2006		07/16/2006
Supplemental General Conditions-June 2005		06/01/2005
General Conditions of Subcontract-June 2005		06/01/2005
Building F Division 16 Specification		05/11/2007
Building F Division 15 Specification		05/11/2007
Cover Sheet	CS	05/11/2007
Title Sheet	T1.1	05/11/2007
Grading and Drainage Plan Cover Sheet	C1	02/28/2007
Grading and Drainage Plan	C2	05/04/2007
Grading and Drainage Plan	C3	05/04/2007
Grading and Drainage Plan	C4	02/28/2007
Grading and Drainage Plan	C5	05/04/2007
Grading and Drainage Plan	C6	05/04/2007
Grading and Drainage Plan	C7	05/04/2007
Details	C8	05/04/2007
Typical Sections	C9	05/04/2007
Utility Plan	C10	05/04/2007
Utility Plan	C11	05/04/2007
Utility Plan	C12	05/04/2007
Utility Plan	C13	05/04/2007
Utility Plan	C14	05/04/2007
Utility Plan	C15	05/04/2007
Utility Plan	C16	05/04/2007
Utility Plan	C17	05/04/2007
Utility Plan	C18	05/04/2007
Utility Plan	C19	05/04/2007
Offsite Improvements-99th Avenue	C20	05/04/2007
Offsite Improvements-99th Avenue	C21	05/04/2007
Offsite Improvements-99th Avenue	C22	05/04/2007
Offsite Improvements-99th Avenue	C23	05/04/2007

Signing & Striping Plan-99th Avenue	C24	05/04/2007
Signing & Striping Plan-99th Avenue	C25	05/04/2007
Signing & Striping Plan-99th Avenue	C26	05/04/2007
Grading and Drainage Plan	C6	05/04/2007
MCDOT Signing Summary	MCDOT Signing Summary	05/04/2007
Stormwater Management Plan Cover Sheet	SW1	12/20/2006
Stormwater Management Plan	SW2	05/04/2007
BMP Details	SW3	05/04/2007
Dust Control Details	SW4	05/04/2007
LA.01	LA.01	05/15/2007
LA.02	LA.02	05/15/2007
LA.03	LA.03	05/15/2007
LA.04	LA.04	05/15/2007
LA.05	LA.05	05/15/2007
LA.06	LA.06	05/15/2007
Fire Resistive Assembly Schedule	AC.1	05/11/2007
Site Plan	A1.1	05/11/2007
Enlarged Site Plans	A1.2	05/11/2007
Site Details	A1.3	05/11/2007
Floor Plan Level 1 and Level 2	A2.1	05/11/2007
Slab Edge Plan Level 3 & Roof	A2.10	05/11/2007
Floor Plan Level 3 and Roof Plan	A2.2	05/11/2007
Enlarged Floor Plans	A2.3	05/11/2007
Enlarged Floor Plans	A2.4	05/11/2007
Enlarged Floor Plans	A2.5	05/11/2007
Enlarged Floor Plans	A2.6	05/11/2007
Enlarged Floor Plans	A2.7	05/11/2007
Enlarged Floor Plans	A2.8	05/11/2007
Slab Edge Plan Levels 1 & 2	A2.9	05/11/2007
Exterior Elevations	A3.1	05/11/2007
Enlarged Exterior Elevations	A3.2	05/11/2007
Wall Sections	A4.1	05/11/2007
Wall Sections	A4.2	05/11/2007
Stair and Elevator Sections	A4.3	05/11/2007
Construction Details	A5.2	05/11/2007
Construction Details	A5.3	05/11/2007
Partition Schedule and Details	A6.1	05/11/2007
Door Schedules	A6.2	05/11/2007
Interior Elevations	A7.1	05/11/2007
Interior Elevations	A7.2	05/11/2007
Interior Details	A8.1	05/11/2007

Construction Details	A5.1	05/11/2007
Title Sheet	S1	05/11/2007
Foundation Plan	S2	05/11/2007
Level Two Framing Plan	S3	05/11/2007
Level Three Framing Plan	S4	05/11/2007
Roof Framing Plan	S5	05/11/2007
Sections & Details	S6	05/11/2007
Sections & Details	S7	05/11/2007
Sections & Details	S8	05/11/2007
Mechanical Schedules, Notes and Details	M-0	05/11/2007
Level 1 and Level 2 Mechanical Plan	M-1	05/11/2007
Level 3 and Roof Mechanical Plan	M-2	05/11/2007
Overall Electrical Site Plan	E1.0F	05/17/2007
Electrical Site Lighting Plan - 'F'	E1.1F	05/17/2007
Building 'F' Electrical Plan - Level 1	E2.0F	05/17/2007
Building 'F' Electrical Plan - Level 2	E2.1F	05/17/2007
Building 'F' Electrical Plan - Level 3	E2.2F	05/17/2007
Building 'F' Electrical Plan - Roof	E2.3F	05/17/2007
Building 'F' One-Line Diagram	E3.0F	05/17/2007
Building 'F' Panel Schedules 1st Floor	E3.1F	05/17/2007
Building 'F' Panel Schedules 2nd Floor	E3.2F	05/17/2007
Building 'F' Panel Schedules 3rd Floor	E3.3F	05/17/2007
Building 'F' Fault Current Calculations	E3.4F	05/17/2007
Electrical Symbols, Notes, Schedules - 'F'	E4.0F	05/17/2007
Electrical Symbols, Notes, Schedules - 'F'	E4.1F	05/17/2007
Hydraulic Reference Site Plan	FP1.0	05/18/2007
1st Floor Piping Plan	FP2.1	05/18/2007
2nd Floor Piping Plan	FP2.2	05/18/2007
3rd Floor Piping Plan	FP2.3	05/18/2007

Field Bulletins

Date	Number	Name
N/A		

Supplemental Design Documents

N/A

Other Documents

N/A

Subcontractor acknowledges that Contractor has made available to Subcontractor all of the Subcontract Documents, and Subcontractor shall be responsible for obtaining copies pertinent to its Work. Subcontractor represents that it has carefully examined the Subcontract Documents.

Modifications and Clarifications

This Subcontract includes, but is not limited to, the following items:

- 1 Subcontractor must have written approval from Contractor to proceed with procurement and construction activities.
- 2 Contract Amount shall be in effect until Contractor provides written authorization to Subcontractor to proceed with procurement and construction activities.
- 3 Subcontractor to invoice per the requirements noted in the General and Special Conditions and also include a breakdown per the amounts and cost codes indicated in the Schedule of Values provided in this Rider.

This Subcontract excludes the following:

- 1 Gross receipts tax
- 2 Payment or performance bond
- 3 General building permit

2. Schedule. Subcontractor will achieve the following milestones (referred to as the "Schedule"):

N/A

Schedule Notes

1. In accordance with mutually agreed requirements as described in periodic project schedules and Superintendent's two and three week look ahead schedules.
2. Per project schedule dated 4/20/07.

3. Subcontract Sum Breakdown. The breakdown of the Subcontract Sum is as follows:**Subcontract Recap**

Sub-Job Number	Sub-Job Name	Name	Rate
10627.00	Glendale Corporate Center Phase 2	Plumbing Design and Installation - Building F	\$222,930.00
Total			\$ 222,930.00

Subcontract Sum Breakdown

Name	Account Code	Amount
Plumbing Systems - Subcontract	10627.00-J10-15400.00-S	\$222,930.00
Total		\$222,930.00

4. Unit Pricing.

If requested by Contractor, Subcontractor will provide additional units of work, as directed, at the unit prices set forth below. Unit prices will apply to all building construction and will include, without limitation, all material, labor, equipment, compensation, general conditions, benefits, overhead, clean-up, supervision, profit, parking, shop drawings, small tools and all sales, use and other applicable taxes. Unit prices do not include design. Unit prices will also apply to net quantity changes in the Work made pursuant to the Subcontract Documents.

The following unit prices shall be in effect for the duration of the project:

Unit Price List

N/A

5. Alternates.

If requested by Contractor, Subcontractor will promptly provide the alternate work set forth below for the stated amount. When requested by Contractor, the alternate work will become part of the Work defined in Paragraph 1 above.

Alternates

Line Number	Name	Amount
1	Cancellation of procurement and construction of plumbing services.	\$(218,730.00)

The alternate prices shall be in effect for the duration of the project:

Alternates Notes

END OF RIDER A

RIDER B

This Rider B is attached to and made a part of the Subcontract between OPUS West Construction Corporation and WJ Maloney Plumbing Co., Inc. dated 06/25/2007. All capitalized terms used but not defined in this Rider B have the meaning ascribed to them in the Subcontract or the General Conditions of Subcontract, as applicable. To the extent of any conflict between the provisions of this Rider B and the provisions of any other Subcontract Document, this Rider B shall be controlling.

Section 1. Licensing.

Subcontractor represents and warrants that it and each of its Sub-subcontractors are and will remain duly and validly licensed to the full extent required under all applicable Laws for the performance by each such party of their respective portion of the Work under this Subcontract, and that each such party shall maintain such required license(s) in good standing throughout the full and complete performance of the Work by such party hereunder. Subcontractor will submit proof of such licensure to Contractor upon request.

Section 2. Change Orders.

Any "Change Order" shall be set forth in writing, on Contractor's form, signed by an authorized representative of Contractor, and shall be executed by Contractor prior to Subcontractor proceeding with the requested change in the Work under the applicable conditions of the Subcontract Documents.

Section 3. Pay When and If Paid.

At all times Subcontractor shall be paid only to the extent that Contractor has been paid by Owner for the Work performed by Subcontractor. Notwithstanding any other provision of this Subcontract, and notwithstanding any provisions between Contractor and Owner with respect to payment, the parties agree that payment by Owner to Contractor shall be an express condition precedent to Contractor's obligation to pay Subcontractor. The parties clearly and unambiguously agree that payment by Contractor to Subcontractor is expressly contingent upon Contractor receiving its funds from progress and final payments received from Owner. All payments to Subcontractor shall be made by the Contractor solely out of the progress and final payments funds actually received by the Contractor from the Owner, and from no other source whatsoever. Subcontractor acknowledges that it is sharing, to the extent of payments to be made to Subcontractor, in the risk that Owner may fail to make one or more payments to the Contractor for all or a portion of the Work.

Section 4. Title to Work.

Title to all Work, including materials, equipment, and systems, covered by an Application for Payment, whether incorporated in the Project or not, will pass to Contractor and Owner upon the earlier of (a) receipt of such payment (net of any retainage), or (b) incorporation of such Work into the Project.

Section 5. Indemnification

(a) Subject to Subsections (b) and (c) below, Subcontractor will defend, indemnify and hold harmless Contractor, Owner and Architect/Engineer, and their respective officers, directors, partners, members, agents, and employees (each, an "Indemnitee" and collectively, the "Indemnitees") from and against any and all claims, demands, obligations, actions, causes of action, damages, costs, losses, liabilities and expenses (including, without limitation, attorneys' fees and costs and other litigation, mediation, arbitration, or dispute resolution expenses), arising from or in any way connected with Subcontractor's performance or non-performance of this Subcontract (all of the foregoing being referred to as "Claims"). Any such defense of an Indemnitee will be provided by Subcontractor by legal counsel reasonably satisfactory to such Indemnitee. Subject to Subsections (b) and (c) below, Subcontractor's obligations to defend and indemnify (i) include (without limitation) all Claims, whether occurring before, during or after the performance of this Subcontract, which arise from or relate to the activities, products, actions or omissions of Subcontractor, its Sub-subcontractors, anyone directly or indirectly employed by them, or anyone for whose acts any of them may be liable (collectively, the "Subcontractor Parties"); (ii) shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Subcontractor or any Subcontractor Party under workers' or workman's compensation acts, disability acts, other employee benefits acts, or any insurance required to be carried by Subcontractor under the Subcontract Documents; and (iii) specifically and expressly include (without limitation) any Claims caused in part by the negligence (whether active or passive) or other misconduct of any Indemnitee. Subcontractor's failure to procure specific contractual liability and other types of insurance for the benefit of any Indemnitee, as required under the Subcontract Documents, will not render the foregoing provisions unenforceable under any applicable law.

(b) Notwithstanding the provisions of Subsection (a) above, Subcontractor is not obligated to indemnify an Indemnitee for a Claim which is ultimately determined, upon final adjudication, settlement or other resolution of the Claim ("Finally Determined"), to have been caused solely by the active negligence or willful misconduct of that Indemnitee; provided, however, that this exception does not limit or relieve Subcontractor's defense obligations prior to the Claim being so Finally Determined or Subcontractor's obligations to indemnify all other Indemnities which are not Finally Determined to have participated in such negligence or misconduct.

(c) The parties intend that Subcontractor's indemnity and defense obligations under this Subcontract will be enforced to the fullest extent allowable under applicable law, and agree that if any of the provisions of this Section are, to any extent, held to be invalid, illegal or unenforceable for any reason, any remaining portion thereof and all other provisions of this Section will not be affected by such holding, but will remain valid and in force to the fullest extent permitted by law.

END OF RIDER B

RIDER C

This Rider C is attached to and made a part of the Subcontract between OPUS West Construction Corporation, and WJ Maloney Plumbing Co., Inc. dated 06/25/2007. All capitalized terms used but not defined in this Rider "C" have the meaning ascribed to them in the Subcontract or General Conditions of Subcontract, as applicable.

- 1 Liability/Worker's Compensation Insurance. Prior to commencing the Work, Subcontractor shall purchase and maintain during the progress of the Work and any periods of warranty and additional work performed by Subcontractor, insurance that will protect against claims for bodily injury, death, damage to property or other damages arising out of or in connection with the performance of the Work (including warranty and additional work) by Subcontractor, Sub-subcontractor or by anyone employed by any of them, or by anyone for whose acts any of them may be liable. Subcontractor's liability insurance may be maintained in a combination of primary and umbrella policies, and the cost of such insurance shall be included in the Subcontract Sum. Subcontractor's policies of insurance shall have the following minimum limits, coverage and requirements:

(a) Workers' Compensation

Statutory Limits

Employer's Liability, including "Stop Gap" coverage
and USL&H if applicable

\$1,000,000 each accident
\$1,000,000 disease-policy limit
\$1,000,000 disease-each employee

Commercial General Liability
(Electrical, HVAC, Plumbing, Fire Protection Sprinkler,
Steel Erection, Elevator, Excavating,
Roofing, Foundation and Curtain Wall Subcontractors)

\$5,000,000 each occurrence
\$5,000,000 products/completed operations aggregate
\$5,000,000 general aggregate (minimum \$2,000,000 per
project)

Commercial General Liability
(All Other Subcontractors)

\$2,000,000 each occurrence
\$2,000,000 products/completed operations aggregate
\$2,000,000 general aggregate (per project)

Commercial Automobile Liability

\$1,000,000 any one accident or loss

Professional Liability (to the extent required of Subcontractor
under the Subcontract Documents)

\$1,000,000 each claim
\$1,000,000 annual aggregate

- (b) The Commercial General Liability insurance required under Paragraph 1(a) will (i) be on ISO Form CG 00 01 or its equivalent, (ii) include coverage for products/completed operations, (iii) be maintained for a period of three (3) years after completion of the Work, (iv) specifically cover as "insured contracts" the Subcontractor's indemnity obligations as set forth in this Subcontract and other contractual indemnities assumed by the Subcontractor under the Subcontract Documents and (v) provide a \$2,000,000 minimum general aggregate limit of liability on a per project basis.

The Commercial Automobile Liability insurance required under Paragraph 1(a) will include coverage for all owned, hired and non-owned automobiles. Professional Liability, if applicable to the Subcontractor's Work, shall be maintained for a period of three (3) years after completion of the Work. Any retroactive date on such Professional Liability policy shall be prior to the commencement of any Work under this Subcontract.

- (c) Employer's Liability, Commercial General Liability and Automobile Liability insurance may be arranged under separate policies for the full minimum limits required, or by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability policy.
- (d) The Subcontractor shall endorse its Commercial General Liability, Commercial Automobile Liability, and Umbrella/Excess Liability policies to add the Contractor and the Owner (and others as specifically required by the Subcontract Documents) as "additional insureds". Such insurance afforded to the Contractor and the Owner as "additional insureds" under the Subcontractor's policies will be primary insurance and not excess over, or contributing with, any insurance purchased or maintained by the Contractor or the Owner. The "additional insured" endorsement to Subcontractor's Commercial General Liability policy will be on ISO Form 20 10 07 04 and 20 37 07 04 or their equivalent and will include coverage for ongoing and completed operations.
- (e) All insurance policies required under Paragraph 1 or the Subcontract Documents will (i) be issued by insurance companies that have an A.M. Best rating of A- VII or better and (ii) contain a provision that coverage afforded thereunder shall not be cancelled or restrictive modifications added, without thirty (30) days prior written notice by certified mail to the Contractor. If Subcontractor fails to purchase and maintain the insurance coverage required herein, Contractor may, but shall not be obligated to, obtain such insurance and either charge all costs for such insurance to the Subcontractor or offset the costs of such insurance against amounts due Subcontractor under the Subcontract.
- (f) Certificates of Insurance will be filed with the Contractor prior to the start of the Subcontractor's Work on the Project Site. Such Certificates of Insurance will be in a form and substance acceptable to the Contractor and will provide satisfactory evidence that the Subcontractor has complied with all insurance requirements, including Contractor's, Owner's and any other required parties status as "additional insureds".
- (g) Contractor may exclude Subcontractor from the Project Site and withhold payments to Subcontractor until a properly executed certificate of insurance evidencing the insurance required herein is received by Contractor.
- (h) It is understood and agreed that the insurance coverages and limits required by this Subcontract shall not limit the extent of Subcontractor's responsibilities and liabilities specified within the Subcontract documents or under law.

2 Contractor's Builder's Risk Insurance.

- 2.1 Unless otherwise provided in the Subcontract Documents, Contractor will cause builder's risk insurance to be purchased and maintained with a "causes of loss" or equivalent policy form covering work to be performed by Contractor (including those working for or under Contractor) at the Project Site to the full insurable value thereof, on a replacement cost basis and subject to reasonable deductibles. Covered "causes of loss" means risks of direct physical loss or damage to covered property unless specifically excluded or limited under the policy. This insurance will include the interests of Owner, Contractor, Subcontractor and Sub-subcontractors in respect to the work to be performed by Contractor at the Project, and shall insure against perils of fire (with extended coverage), theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, temporary falsework, shoring and forms and debris removal, and such other matters as are insured against in the form of the policy maintained by Contractor. Unless specifically provided in writing, such insurance will not include coverage for any property, structure(s) and contents (whether real or personal) owned by the Owner or third parties existing as of commencement of Contractor's work or otherwise. Contractor will carry earthquake and flood insurance if Contractor deems it appropriate.

To the extent of coverage afforded by builder's risk or any other property or equipment floater insurance applicable to the Work or the Project or equipment used in the performance of the Work or Project, regardless of whether such insurance is owned by or for the benefit of Subcontractor, Contractor or Owner or their respective subcontractors and agents, Contractor and Subcontractor agree to waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Owner and any of its contractors, subcontractors, agents and employees, whether under subrogation or otherwise, for loss or damage to the extent covered by such insurance, except such rights as they may have to the proceeds of such insurance. If policies of insurance referred to in this paragraph require an endorsement to provide for continued coverage where there is a waiver of subrogation, then the owners of such policies will cause them to be so endorsed. A waiver of subrogation shall be effective as to a party even though that party would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the party had an insurable interest in the property damaged.

If (i) the Project suffers an insurable loss, (ii) the loss is due in part to the negligence of Subcontractor and (iii) an insurance deductible amount (not to exceed \$10,000.00) is applied to the loss payable under builder's risk or other property insurance applicable to the Project, Subcontractor will be liable to Contractor for the deductible amount; however, Contractor may, in its discretion, apportion the deductible amount among other parties responsible for the loss. Subcontractor will promptly pay Contractor, upon demand, for any such deductible amount, and Contractor may offset the deductible amount against any amounts due Subcontractor under the Subcontract. Neither Contractor nor Owner represents that builder's risk or property insurance, if any, applicable to the Project or the Work is adequate to protect the interests of Subcontractor. It is Subcontractor's obligation to determine whether it should purchase and maintain supplementary property insurance to protect its interests in the Work.

- 2.2 Any insured loss is to be adjusted by Owner and Contractor and made payable to Contractor, as trustee, or to Owner and Contractor, as joint trustees for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage or loss payable clause.
- 2.3 Subcontractor hereby releases and agrees to defend and indemnify Contractor and Owner from all claims for loss or damage to or loss of use of Subcontractor's property in or about the Project Site and shall purchase such insurance in respect thereto as Subcontractor deems appropriate. Subcontractor shall require a similar release and indemnity by Sub-subcontractors.

END OF RIDER C