

UNITED STATES BANKRUPTCY COURT <u>NORTHERN</u> DISTRICT OF <u>TEXAS</u>		<b>PROOF OF CLAIM</b>
Name of Debtor <b>OPUS WEST CORPORATION</b>		Case Number <b>09-34356</b>
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): <b>SUNWEST ELECTRIC CO, INC.</b>		<div style="text-align: center;"> <b>FILED</b>  <b>SEP 18 2009</b>  <b>TAWANA C. MARSHALL, CLERK</b>  <b>U.S. BANKRUPTCY COURT</b>  <b>NORTHERN DISTRICT OF TEXAS</b> </div>
Name & address where notices should be sent <b>Atkinson, Andelson, Loya, Ruud &amp; Romo</b> <b>12800 Center Court Drive, Suite 300</b> <b>Cerritos, CA 90703</b>		
Telephone number: <b>(562) 653-3200</b>		
Account or other number by which creditor identifies debtor:		
		<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case. <input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.
Check here <input type="checkbox"/> replaces if this claim <input type="checkbox"/> amends a previously filed claim, dated _____		THIS SPACE IS FOR COURT USE ONLY
<b>1. Basis for Claim</b> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input type="checkbox"/> Goods sold  <input checked="" type="checkbox"/> Services performed  <input type="checkbox"/> Money loaned  <input type="checkbox"/> Personal injury/wrongful death  <input type="checkbox"/> Taxes  <input type="checkbox"/> Other _____         </div> <div style="width: 45%; text-align: center;"> <div style="font-size: 1.5em; font-weight: bold;">RECEIVED</div>  <div style="font-size: 1.2em; font-weight: bold;">SEP 25 2009</div>  <div style="font-size: 1.2em; font-weight: bold;">BMC GROUP</div> </div> </div> <div style="width: 45%;"> <input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a)  <input type="checkbox"/> Wages, salaries, and compensation (fill out below)            Last four digits of SS#: _____            Unpaid compensation for services performed from _____ to _____  <div style="display: flex; justify-content: space-between; font-size: 0.8em;"> <span>(date)</span> <span>(date)</span> </div> </div>		

# SUMMONS

## (CITACION JUDICIAL)

**NOTICE TO DEFENDANT:****(AVISO AL DEMANDADO):**

IRVINE CENTER PARTNERS III, L.L.C.; OPUS WEST CONSTRUCTION CORPORATION; BANK OF AMERICA, N.A.; and DOES 1 through 100, inclusive

**YOU ARE BEING SUED BY PLAINTIFF:****(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

SUNWEST ELECTRIC, INC.

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE  
CENTRAL JUSTICE CENTER

JUL 09 2009

ALAN CARLSON, Clerk of the Court

BY: S. HERRERA-WILSON, DEPUTY

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court. There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia. Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

ORANGE COUNTY SUPERIOR COURT  
Central Justice Center  
700 Civil Center Drive West  
Santa Ana, CA 92701

CASE NUMBER  
(Número del Caso):

30-2009

00125836

JUDGE PETER J. POLOS

DEPT. C27

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Matt J. Steiner, State Bar No. 101409

(562) 653-3200

(562) 653-3333 fax

Atkinson, Andelson, Loya, Ruud & Romo  
12800 Center Court Drive, Suite 200  
Cerritos, CA 90703

SONYA HERRERA-WILSON

DATE:

JUL 09 2009

Clerk, by

ALAN CARLSON (Secretario)

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

[SEAL]

1. ☐ as an individual defendant.

2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

4. ☐ by personal delivery on (date):

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar Number, and address):

FOR COURT USE ONLY

Matt J. Steiner, State Bar No. 101409  
 Atkinson, Andelson, Loya, Ruud & Romo  
 12800 Center Court Drive, Suite 300  
 Cerritos, CA 90703

TELEPHONE NO. (562) 653-3200

FAX NO. (562) 653-3333

ATTORNEY FOR (Name): SUNWEST ELECTRIC, INC.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

STREET ADDRESS: 700 Civic Center Drive West

MAILING ADDRESS

CITY AND ZIP CODE: Santa Ana, CA 92701

BRANCH NAME: Central Justice Center

CASE NAME: SUNWEST ELECTRIC, INC. v. IRVINE CENTER PARTNERS, III

L.L.C., et al.

**FILED**

SUPERIOR COURT OF CALIFORNIA  
 COUNTY OF ORANGE  
 CENTRAL JUSTICE CENTER

JUL 09 2009

ALAN CARLSON, Clerk of the Court

BY: S. HERRERA-WILSON, DEPUTY

**CIVIL CASE COVER SHEET**

- ☒ Unlimited (Amount demanded exceeds \$25,000) ☐ Limited (Amount demanded is \$25,000 or less)

**Complex Case Designation**

- ☐ Counter ☐ Joinder

Filed with first appearance by defendant  
 (Cal. Rules of Court, rule 3.402)

CASE NUMBER:

30-2009

JUDGE:

JUD 125836

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

**Auto Tort**

- ☐ Auto (22)  
☐ Uninsured motorist (48)  
☐ Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

☐ Asbestos (04)☐ Product liability (24)☐ Medical malpractice (45)☐ Other PI/PD/WD (23)**Non-PI/PD/WD (Other) Tort**☐ Business tort/unfair business practice (07)☐ Civil rights (08)☐ Defamation (13)☐ Fraud (16)☐ Intellectual property (19)☐ Professional negligence (25)☐ Other non-PI/PD/WD tort (35)**Employment**☐ Wrongful termination (36)☐ Other employment (15)**Contract**☒ Breach of contract/warranty (06)☐ Rule 3.740 collections (09)☐ Other collections (09)☐ Insurance coverage (18)☐ Other contract (37)**Real Property**☐ Eminent domain/Inverse condemnation (14)☐ Wrongful eviction (33)☐ Other real property (26)**Unlawful Detainer**☐ Commercial (31)☐ Residential (32)☐ Drugs (38)**Judicial Review**☐ Asset forfeiture (05)☐ Petition re: arbitration award (11)☐ Writ of mandate (02)☐ Other judicial review (39)**Provisionally Complex Civil Litigation**  
(Cal. Rules of Court, rules 3.400-3.403)☐ Antitrust/Trade regulation (03)☐ Construction defect (10)☐ Mass tort (40)☐ Securities litigation (28)☐ Environmental/Toxic tort (30)☐ Insurance coverage claims arising from the above listed provisionally complex case types (41)**Enforcement of Judgment**☐ Enforcement of judgment (20)**Miscellaneous Civil Complaint**☐ RICO (27)☐ Other complaint (not specified above) (42)**Miscellaneous Civil Petition**☐ Partnership and corporate governance (21)☐ Other petition (not specified above) (43)

JUDGE PETER J. POLOS

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a. ☐ Large number of separately represented parties d. ☐ Large number of witnesses  
 b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court  
 c. ☐ Substantial amount of documentary evidence f. ☐ Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☐ punitive

4. Number of causes of action (specify): Seven

5. This case ☐ is ☒ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: July 8, 2009

Matt J. Steiner

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

ATKINSON, ANDELSON, LOYA, RUUD & ROMO  
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7 Telephone: (562) 653-3200 • (714) 826-5480  
8 Facsimile: (562) 653-3333

9 Attorneys for Plaintiff  
10 SUNWEST ELECTRIC, INC.

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF ORANGE

30-2009

13 SUNWEST ELECTRIC, INC.,  
14 Plaintiff,  
15 vs.  
16 IRVINE CENTER PARTNERS III, L.L.C.;  
17 OPUS WEST CONSTRUCTION  
18 CORPORATION;  
19 BANK OF AMERICA, N.A.;  
20 and DOES 1 through 100, inclusive,  
21 Defendants.

CASE NO. 001258 JJ

COMPLAINT

(Breach of Contract;  
Quantum Meruit;  
Money Had and Received;  
Foreclose Mechanics Lien;  
Recovery on Mechanics Lien Release Bond;  
Enforce Bonded Stop Notice;  
Recovery on Stop Notice Release Bond)

JUDGE PETER J. POLOS  
DEPT. C27

Plaintiff alleges:

FIRST CAUSE OF ACTION

(Breach of Contract, against OPUS WEST and DOES)

1. Plaintiff SUNWEST ELECTRIC, INC. (hereinafter "SUNWEST") is, and at all times relevant hereto was, a corporation duly organized and existing under the laws of California, and duly licensed as a contractor by the State of California to do the work referred to herein.

2. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as DOE 1 through DOE 100, inclusive, and this pleading will be amended to allege their true

names and capacities when they are ascertained. Each of said defendants is liable to Plaintiff upon the claims hereinafter set forth.

3. Plaintiff is informed and believes, and thereupon alleges, that defendants OPUS WEST CONSTRUCTION CORPORATION and DOES 1 through 20 (hereinafter referred to collectively as "OPUS WEST") are, and at all times relevant hereto were, doing business as corporations.

4. Plaintiff is informed and believes, and thereupon alleges, that defendants IRVINE CENTER PARTNERS III, L.L.C. and DOES 21 through 40 (hereinafter referred to collectively as "OWNERS") are, and at all times relevant hereto were, doing business as limited liability companies.

5. Plaintiff is informed and believes, and thereupon alleges, that defendants BANK OF AMERICA, N.A., and DOES 41 through 60 (hereinafter referred to collectively as "LENDERS") are, and at all times relevant hereto were, doing business as banks, corporations or other business entities.

6. Plaintiff is informed and believes, and thereupon alleges, that prior to December 23, 2008, OPUS WEST entered into a contract with OWNERS (hereinafter the "Prime Contract") to provide the labor, services, equipment and materials necessary to do the private work of improvement (hereinafter the "Project") known and described as Fisher & Phillips, 2050 Main Street, Suite 1000, Irvine, California 92614, which is located in the City of Irvine, County of Orange, State of California.

7. On or about December 23, 2008, plaintiff entered into a written agreement with OPUS WEST (the "subcontract") to provide the labor, services, equipment and materials necessary to do a portion of the project. The subcontract, a copy of which is attached hereto as Exhibit "1," is incorporated herein by this reference as though fully set forth.

8. Plaintiff is informed and believes, and thereupon alleges, that it duly performed all things and conditions on its part to be performed under the subcontract, change orders thereto, and extra work orders, except as such performance was rendered superfluous or prevented or excused by acts or omissions of OPUS WEST or the acts or omissions of those for whose acts

1 and omissions OPUS WEST is responsible, or by operation of law, or by impossibility or  
2 impracticality, or except as such performance was waived by acts or omissions of OPUS WEST;  
3 or except as to things with respect to which OPUS WEST, by acts or omissions, is estopped to  
4 rely upon as a failure by plaintiff to perform.

5 9. Plaintiff is informed and believes, and thereupon alleges, that OPUS WEST  
6 breached the subcontract, inter alia, by

- 7 a. Failing to pay the balance due under the subcontract;
- 8 b. Failing to make timely and complete progress payments;
- 9 c. Failing to timely pay for change orders;
- 10 d. Requiring plaintiff to provide labor, services, equipment and materials  
11 beyond the requirements of the subcontract without properly negotiating and issuing change  
12 orders therefor;
- 13 e. Requiring plaintiff to provide labor, services, equipment and materials  
14 other than those prescribed in the subcontract without compensation therefor;
- 15 f. Failing to perform according to oral agreements which were modifications  
16 of the subcontract with respect to which either OPUS WEST waived any requirement that such  
17 modifications be in writing or OPUS WEST is estopped from relying upon any such  
18 requirement; and
- 19 g. Failing to comply with the requirements of the implied covenant of good  
20 faith and fair dealing.

21 10. As a direct and proximate result of the aforementioned breaches by OPUS WEST,  
22 Plaintiff:

- 23 a. Has not been paid the balance due under the subcontract and has lost the  
24 use of that money;
- 25 b. Has lost the use of money which was not timely paid;
- 26 c. Has incurred expenses to provide labor, services, equipment and materials  
27 (plus overhead thereon and lost profits therefor), which were not required under the subcontract;  
28 and

d. Has incurred expenses to provide labor, services, equipment and materials (plus overhead thereon and lost profits therefor), which were only required by deviations in the nature and extent of the project from the way it had been presented in the plans, specifications and other materials given to Plaintiff to use to determine its bid;

all to Plaintiff's damage in an amount not yet fully ascertained (but approximately \$74,264.00), and when ascertained this pleading will be amended to state the correct amount, plus (a) prejudgment interest thereon at the legal rate, plus (b) its attorneys fees herein plus a "charge" on progress payments not timely made at 2% per month from the date the payment should have been made until the date it was made, pursuant to Civ. Code § 3260.1, Business and Professions Code § 7108.5 or Civil Code § 3262.5, plus (c) its attorneys fees herein plus a "charge" on the retention under the contract at 2% per month since the date of completion of the work of improvement, pursuant to Civil Code § 3260. Plaintiff has demanded payment therefor from OPUS WEST but OPUS WEST has failed and refused, and continues to fail and refuse, to pay.

11. In order to present this claim and prosecute this action, plaintiff has been compelled to employ attorneys; plaintiff is entitled to be reimbursed for its reasonable attorney fees.

## SECOND CAUSE OF ACTION

### (Quantum Meruit, Against Defendants OPUS WEST and DOES)

12. Plaintiff repleads and incorporates herein by this reference, as though fully set forth, paragraphs 1 through 3, inclusive, of this pleading.

13. Within the last four years, OPUS WEST became indebted to SUNWEST for labor, services, equipment and materials rendered at the special request of OPUS WEST, and for which OPUS WEST promised to pay SUNWEST the reasonable value thereof.

14. The balance thereof presently due and owing, payment of which has not yet been made by OPUS WEST, despite the demands of SUNWEST therefor, is an amount not yet fully ascertained (but approximately \$74,264.00), and when ascertained this pleading will be amended

to state the correct amount, plus prejudgment interest thereon at the lawful rate.

### THIRD CAUSE OF ACTION

#### (Money Had and Received, Against All Defendants)

15. Plaintiff repleads and incorporates herein by this reference, as though fully set forth, paragraphs 1 through 5, inclusive, of this pleading.

16. Within the last four years, defendants became indebted to Plaintiff for money had and received by defendants for the use and benefit of Plaintiff.

17. The balance thereof presently due and owing, payment of which has not yet been made by said defendants, despite the demands of Plaintiff therefor, is an amount not yet fully ascertained (but approximately \$74,264.00), and when ascertained this pleading will be amended to state the correct amount, plus prejudgment interest thereon at the lawful rate.

### FOURTH CAUSE OF ACTION

#### (Mechanics Lien Foreclosure, Against All Defendants)

18. Plaintiff repleads and incorporates herein by this reference, as though fully set forth, paragraphs 1 through 17, inclusive, of this pleading.

19. Plaintiff is informed and believes, and thereupon alleges, that defendants claim some right, title, lien or interest in or to the real property described in this pleading. Each such right, title, lien or interest claimed is junior and inferior to Plaintiff's claim of lien.

20. Plaintiff is informed and believes, and thereupon alleges, that at all times relevant hereto, Defendants were, and now are, the reputed owners of the real property commonly known and described as Fisher & Phillips, 2050 Main Street, Suite 1000, Irvine, California 92614, which is located in the City of Irvine, County of Orange, State of California.

21. The whole of said property and the entire estate of Defendants are required for the convenient use and occupation of the work of improvement described in this pleading.

22. Within 20 days after Plaintiff first furnished to the project the labor, services, equipment and materials for which this claim is made, Plaintiff caused to be given to the owner or reputed owner, to the original contractor or reputed contractor, and to the construction lender



or reputed construction lender, if any, a written preliminary notice as prescribed by Civ. Code 3097, a copy of which is attached hereto as exhibit "2," which notice is incorporated herein by this reference as though fully set forth.

23. In the performance of the subcontract, Plaintiff performed labor upon; bestowed skill or other necessary services on; furnished materials or leased materials to be used or consumed in; furnished appliances, teams or power contributing to; made site improvements upon the lot or tract for; or furnished provisions, provender or other supplies to or for the project.

24. On or about April 23, 2009, Plaintiff recorded in the Orange County Recorder's office a verified claim of lien, a copy of which is attached hereto as Exhibit "3" and incorporated herein by this reference as though fully set forth. At the time of recording said claim of lien, the amount shown as unpaid therein was due, owing and unpaid and was the lesser of (a) the reasonable value of the labor, services, equipment and materials which were provided by Plaintiff, (b) the contract price, including written modifications thereof, or (c) the damages resulting from a rescission, abandonment or breach of the contract. The cost of verifying and recording said claim of lien was \$6.00.

## FIFTH CAUSE OF ACTION

### (Recovery on Mechanics Lien Release Bond<sup>1</sup>, Against All Defendants)

25. Plaintiff repleads and incorporates herein by this reference, as though fully set forth, paragraphs 1 through 24, inclusive, of this pleading.

26. Plaintiff is informed and believes, and thereupon alleges, that Defendants have recorded a mechanic's lien release bond on which OPUS WEST, OWNERS and/or DOES 1 through 90, inclusive are the principals and DOES 91 through 100 are the sureties, which bond is

<sup>1</sup> As of the date of the filing of this complaint, SUNWEST is unaware of the recording of a mechanics lien release bond. It frequently occurs that if such a bond is recorded, it is recorded after the commencement of an action to foreclose the mechanics lien to which it relates. Ordinarily, this will require the plaintiff to move for leave to amend the complaint to state a cause of action on the release bond and against the sureties on it. To avoid the potential need to do this, as well as the delay and expense that it involves, SUNWEST pleads this cause of action against DOES 91 through 100 as sureties, and if a mechanics lien release bond is later recorded, a DOE amendment naming the surety will be all that is required, rather than an complete amended complaint. If no such release bond is ever recorded, this cause of action will be dismissed without prejudice prior to any trial of this action.

1 conditioned upon the payment of any sum which Plaintiff may recover herein, together with  
2 Plaintiff's costs of suit herein, and which bond released the aforementioned real property from  
3 Plaintiff's claim of lien and from any action to foreclose such lien.  
4

5 **SIXTH CAUSE OF ACTION**

6 **(Enforcement of Bonded Stop Notice, Against All Defendants)**

7 27. Plaintiff repleads and incorporates herein by this reference, as though fully set  
8 forth, paragraphs 1 through 26, inclusive, of this pleading.

9 28. The presently due and owing balance of the price for, and the reasonable value of  
10 the labor, services, equipment and materials provided by Plaintiff to and for the Project, payment  
11 of which has not been made, despite demands therefor by Plaintiff, is an amount not yet fully  
12 ascertained (but approximately \$74,264.00), and when it is ascertained Plaintiff will amend this  
13 complaint to state the correct amount, plus prejudgment interest thereon at the lawful rate.

14 29. On or about April 28, 2009, Plaintiff served a bonded stop notice upon LENDERS  
15 by mailing it by registered or certified mail to the office of LENDERS which is administering or  
16 holding the construction funds; a copy of that stop notice is attached hereto as Exhibit "4", and is  
17 incorporated herein by this reference as though fully set forth. Said stop notice was served before  
18 the expiration of the time within any claim of lien by Plaintiff was required to be recorded. At  
19 the time of serving said stop notice, the amount shown as unpaid therein was due, owing and  
20 unpaid. Plaintiff is informed and believes that the cost of the first annual premium on the bond  
21 was \$928.00.

22 30. Plaintiff is informed and believes, and thereupon alleges, that, upon receipt of the  
23 aforementioned stop notice, LENDERS withheld from the borrower (or other person to whom it  
24 or the Project's owners may be obligated to make payments or advances out of the construction  
25 fund) sufficient money to answer the claim of Plaintiff, and if there has not been sufficient  
26 money withheld to pay in full all of the valid stop notice claims on this Project, then Plaintiff is  
27 entitled to a pro-rata distribution of the total withheld pursuant to Civ. Code § 3167.  
28

# SEVENTH CAUSE OF ACTION

## (Recovery on Stop Notice Release Bond,<sup>2</sup> Against All Defendants)

31. Plaintiff repleads and incorporates herein by this reference, as though fully set forth, paragraphs 1 through 30, inclusive, of this pleading.

32. Plaintiff is informed and believes, and thereupon alleges, that LENDERS have accepted a stop notice release bond upon which OPUS WEST, OWNERS and/or DOES 1 through 90, inclusive are the principals and DOES 91 through 100 are the sureties, and have released the money that was being withheld pursuant to the aforementioned stop notice. As a result:

a. The duty of LENDERS to withhold money pursuant to the stop notice was discharged;

b. The stop notice release bond became the substitute for the money previously withheld pursuant to the stop notice, and DOES 91 through 100, inclusive, became the proper parties against whom the rights of the stop notice claimant must be asserted; and

c. The cause of action against LENDERS on the stop notice no longer exists; therefore, the LENDERS are not a proper parties to this lawsuit and no service of a five-day notice under Civ. Code § 3172 is required.

WHEREFORE, Plaintiff prays for judgment in favor of Plaintiff and against defendants, and each of them, jointly and severally, as follows:

1. For damages according to proof, plus prejudgment interest thereon at the lawful rate plus a "charge" on the retention under the contract at 2% per month since the date of completion of the work of improvement, pursuant to Civil Code § 3260, plus a "charge" on progress payments not timely made at 2% per month from the date the payment should have been

<sup>2</sup> As of the date of the filing of this complaint, SUNWEST is unaware of the existence of a stop notice release bond. It frequently occurs that if such a bond is obtained, it is obtained after the commencement of an action to enforce the stop notice to which it relates. Ordinarily, this will require the plaintiff to move for leave to amend the complaint to state a cause of action on the release bond and against the sureties on it. To avoid the potential need to do this, as well as the delay and expense that it involves, SUNWEST pleads this cause of action against DOES 91 through 100 as sureties, and if a stop notice release bond is later recorded, a DOE amendment naming the surety will be all that is required, rather than an complete amended complaint. If no such release bond is ever recorded, this cause of action will be dismissed without prejudice prior to any trial of this action.

made until the date it was made, pursuant to Civil Code § 3260.1, plus statutory attorneys fees;

2. That all sums found to be due to plaintiff be adjudged and decreed to be a lien against the real property referred to in this complaint, against any leasehold interest in said real property, and against the structures down to the surface of said real property, superior to the claim, title, lien or interest of any defendant; that said real property be sold according to law and the practice of this Court; that all proceeds of such sale be applied to the sum due Plaintiff and to the costs of both these proceedings and the sale of said real property; and, if any deficiency results from the sale, that judgment for the deficiency be entered against the parties personally liable therefor in like manner and with like effect as in an action for the foreclosure of a mortgage;

3. That all sums found to be due to Plaintiff be adjudged and decreed to be an equitable garnishment and lien on the funds that were in the possession of the party upon whom the stop notice was served at the time of service; that a trust be imposed on said funds for the benefit of Plaintiff; and, if it is determined that any part of said funds were improperly disbursed so that the remaining funds are inadequate to satisfy Plaintiff's claim in full, that a personal judgment for the deficiency be entered against the party who improperly disbursed the funds, together with Plaintiff's costs of suit herein;

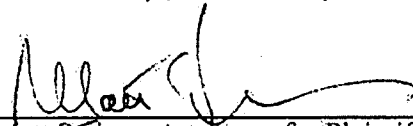
4. For costs of suit;

5. For reasonable attorney fees;

6. For recovery from the release bond surety or sureties of any sums which Plaintiff may otherwise recover herein; and

7. For such other and further relief as the Court deems equitable and proper.

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

  
Matt Steiner, Attorneys for Plaintiff  
SUNWEST ELECTRIC, INC.

# Exhibit 1



# OPUS

OPUS WEST-IRVINE

DEC 11 2008

SCANNED

RECEIVED

EXECUTED

DEC 9 1 2008

4422

Fisher & Phillips / 10653.21

Sunwest Electric Inc / Doug Munsey

Contact Phone # 714-630-8700

Contact Fax # 714-630-2715

Payment Terms: Standard

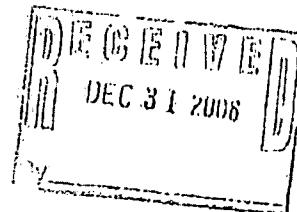
## SUBCONTRACT AGREEMENT (Labor and Materials)

This Subcontract Agreement ("Subcontract") is made as of this 13th day of November, 2008, by and between Opus West Construction Corporation ("Contractor"), with its office located at 2050 Main St., Suite 1000, Irvine, CA 92614, and Sunwest Electric Inc ("Subcontractor") with its office located at 3064 E Main Loma Ave, Anaheim, CA 92806.

Contractor and Subcontractor agree as follows:

- Subcontract Documents.** The term "Subcontract Documents" is defined in Paragraph 1 of the attached Rider "A".
- Project.** Contractor is providing design and construction-related services to Owner (defined below) in connection with the project generally described as Fisher & Phillips ("Project"), located at 2050 Main Street, Suite 1000, Irvine, CA 92614 ("Project Site"), and consisting of the total work provided by Contractor under contract documents between Owner and Contractor.
- Owner.** The Owner of the Project is Irvine Center Partners III, LLC c/o Opus West Corporation ("Owner").
- Architect/Engineer.** The architect and engineers ("Architect/Engineer") of record for the Project are:  

Architect:	Gensler Architecture
Electrical Engineer:	GLUMAC INTERNATIONAL
Mechanical Engineer:	GLUMAC INTERNATIONAL
Plumbing Engineer:	GLUMAC INTERNATIONAL
Structural Engineer:	Brandow & Johnston Associates
- 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.
- 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 03/02/2009. 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".
- Subcontract Sum.** Contractor shall pay Subcontractor the sum of \$ 205,349.00 ("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".
- 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:

Mark Minieri

CONTRACTOR

OPUS West Construction Corporation

By:

Jeffery J. Davidson

(Print Name)

Vice President of Construction

(Title)

(Date)

12/23/08

SUBCONTRACTOR

Sunwest Electric Inc

By:

Doug Munsey

(Print Name)

CFO

(Title)

(Date)

12-9-08

ORIGINAL

**RIDER A**

This Rider A is attached to and made a part of the Subcontract between Opus West Construction Corporation and Sunwest Electric Inc dated 11/13/2008. 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 Electrical and Fire Alarm 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
Drawing Index, Vicinity Map, Location Map & Project Information	A00.00	10/15/2008
Overall Site Plan (For Reference Only)	A002	10/15/2008
Enlarged Plan (For Reference Only)	A112	10/15/2008
Interior Elevations (For Reference Only)	A802	10/15/2008
Accessory Legend (For Reference Only)	A840	10/15/2008
Signage (For Reference Only)	A841	10/15/2008
Accessible Notes (For Reference Only)	A011	10/15/2008
Accessible Notes (For Reference Only)	A012	10/15/2008
Tier 1 Level Floor Plan (For Reference Only)	A201	10/15/2008
Striping Details (For Reference Only)	A901	10/15/2008
Signage Graphic Schedule & Details (For Reference Only)	A902	10/15/2008
Detectable Warnings At Hazardous Vehicular Areas	A903	10/15/2008
Graphics Symbols and Materials Legend	A00.01	10/15/2008
Abbreviations and General Notes	A00.10	10/15/2008
Door Schedule	A00.30	10/15/2008
Finish Schedule & Equipment Schedule	A00.31	10/15/2008
Typical ADA Information	A00.40	10/15/2008
Fourth Floor Egress Plan	A00.50	10/15/2008
Tenth Floor Construction Plan	A02.10	10/15/2008
Tenth Floor Power & Communications Plan	A03.10	10/15/2008
Tenth Floor Reflected Ceiling Plan	A04.10	10/15/2008
Tenth Floor Finish Plan	A05.10	10/15/2008
Tenth Floor Furniture Plan	A08.10	10/15/2008
Interior Elevations	A11.00	10/15/2008
Interior Elevations	A11.01	10/15/2008
Interior Elevations	A11.02	10/15/2008
Enlarged Plan, Elevation & Details	A11.03	10/15/2008
Enlarged Plan, Elevation & Details	A11.04	10/15/2008
Typical Partition Details	A12.00	10/15/2008
Typical Ceiling Details	A12.01	10/15/2008
Typical Millwork Details	A12.02	10/15/2008

Miscellaneous Details	A12.03	10/15/2008
Miscellaneous Details	A12.04	10/15/2008
General Notes & Details	S.1	10/15/2008
Tenth Floor Framing Plan	S.2	10/15/2008
Mechanical Lead Sheet	M01.10	
Mechanical Schedules and Title 24	M02.10	
Mechanical Floor Plans	M03.10	10/22/2008
Mechanical Piping Plan	M04.10	
Mechanical Details	M05.10	10/22/2008
Electrical Lead Sheet	E01.10	
Power Plan	E02.10	10/22/2008
Lighting Plan	E03.10	
Title 24 & Fixture Schedule	E04.10	
Panel Schedules & 1 Line Diagram	E05.10	
Plumbing Lead Sheet	P01.10	
Plumbing Plan	P02.10	

#### Field Bulletins

Date	Number	Name
N/A		

#### Supplemental Design Documents

Description	Date
Project Manual for Construction of Fisher & Phillips, prepared by Gensler, dated 10/15/08	10/15/2008
Construction Schedule dated November 17, 2008	11/13/2008

#### Other Documents

Description	Number	Date	Last Revision Date
New Supplemental General Conditions - modified for Southern CA 07-17-03.doc		7/21/2008	7/21/2008
Opus West Construction and Opus West Management Contractor Rules and Regulations		5/15/2008	5/15/2008
Special General Conditions of Subcontract-West, June 2005 Edition Rev 9/20/07 for OCI Ph III T1		6/1/2005	6/1/2005
General Conditions of Subcontract-June 2005		6/1/2005	6/1/2005

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.

*Handwritten signature/initials*



#### Modifications and Clarifications

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

1. Subcontractor to provide a complete electrical system. This work shall include, but not be limited to, the following: all equipment, conduit, wire cable, lamps, lenses, panels, ballast's, raceways, wiring devices, telephone/data system Conduit only, switch gear, disconnects, life safety systems, emergency lighting as indicated on drawings, unless specifically excluded in exclusions.
2. Subcontractor shall make all connections of electrical systems to main building services in electrical room.
3. Subcontractor shall update and maintain all panel schedules.
4. Subcontractor shall include all light fixtures per plan.
5. Subcontractor shall include all emergency lighting connections.
6. Subcontractor shall supply and install all wiremold at secretary stations.
7. Subcontractor shall maintain all fire and sound rating.
8. Subcontractor shall furnish and maintain temporary power.
9. Subcontractor shall furnish and maintain temporary lighting.
10. Subcontractor shall supply all conduit, junction boxes, and wall mounted outlets for telephone and data.
11. Subcontractor shall supply and install emon demon sub meter to monitor 24hr Liebert Unit.

This Subcontract excludes the following:

1. Building Permit
2. Corridor Work

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

Description	Planned Start	Planned End	Planned Duration
Start date for this Work is approximately	11/21/2008	03/02/2009	
Schedule Notes:			

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
10653.21	Fisher & Phillips	Electrical System and Fire Alarm Conduit	\$181,600.00
10653.21	Fisher & Phillips	Fire Alarm System and Engineering	\$23,949.00
Total			\$ 205,549.00

##### Subcontract Sum Breakdown

Name	Account Code	Amount
Electrical Systems - Subcontract	10653.21-K10-16000.00-S	\$181,600.00
Fire Alarm System - Subcontract	10653.21-K20-16320.00-S	\$23,949.00
Total		\$205,549.00

#### **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 until 03/02/2009:

##### 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

N/A

The alternate prices shall be in effect until 03/02/2009:

Alternates Notes

END OF RIDER A

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*M*

## RIDER B

This Rider B is attached to and made a part of the Subcontract between Opus West Construction Corporation and Sunwest Electric Inc dated 11/13/2008. 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. 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 4. 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; (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; and (iv) shall be triggered by the assertion of a Claim against any Indemnitee without the requirement that it first be determined that Subcontractor or any Subcontractor Party was negligent or otherwise at fault or that the Claim has any merit. 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 laws, 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.

### Section 5. Waiver.

Subcontractor hereby waives the benefits of, and Subcontractor's rights under, California Business and Professions Code Section 7108.5 to the fullest extent the same may be waived by Subcontractor under applicable Laws.

### Section 6. SWPPP.

Subcontractor shall comply with (i) all applicable water quality Laws, including those enforced by the California State Water Resources Control Board (the "SWRCB") and the Regional Water Quality Control Board (Region 9); (ii) the National Pollutant Discharge Elimination System and the Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity (SWRCB Order No. 99-08-DWQ) and all amendments and modifications thereto; (iii) any Storm Water Pollution Prevention Plan applicable to the Project (as modified from time to time, the "SWPPP") and all associated Best Management Practices; and (iv) City and/or County ordinances, guidelines, and manuals applicable to stormwater discharges from construction sites. If Subcontractor observes any violation of any Laws, it shall immediately correct such violation. Any Work performed by Subcontractor that is not in compliance with applicable Laws shall be redone in compliance with applicable Laws at Subcontractor's sole expense. The SWPPP is a part of the Subcontract Documents.

### Section 7. California License Law.

CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS' STATE LICENSE BOARD WHICH HAS JURISDICTION

Fisher & Phillips / 10653.21  
Electrical and Fire Alarm

TO INVESTIGATE COMPLAINTS AGAINST CONTRACTORS IF A COMPLAINT REGARDING A PATENT ACT OR OMISSION IS FILED WITHIN FOUR YEARS OF THE DATE OF THE ALLEGED VIOLATION. A COMPLAINT REGARDING A LATENT ACT OR OMISSION PERTAINING TO STRUCTURAL DEFECTS MUST BE FILED WITHIN 10 YEARS OF THE DATE OF THE ALLEGED VIOLATION. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR, CONTRACTORS' STATE LICENSE BOARD, P.O. BOX 36000, SACRAMENTO, CALIFORNIA 95826.

Contractor's California License No.

509591

Subcontractor's California License No.

511697

END OF RIDER B

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## RIDER C

This Rider C is attached to and made a part of the Subcontract between Opus West Construction Corporation, and Sunwest Electric Inc dated 11/13/2008. 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.

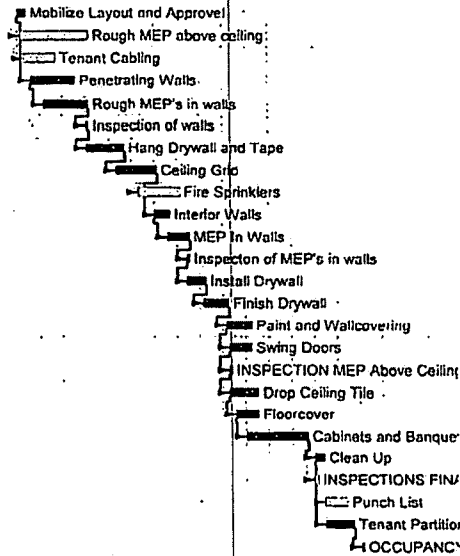
To the extent of coverage afforded by builder's risk or any other property or equipment floater insurance applicable to the Work or the Project or equipment used in the performance of the Work or Project, regardless of whether such insurance is owned by or for the benefit of Subcontractor, Contractor 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

Act ID	Description	Orig Dur	Early Start	Early Finish	Total Float	%	Resource	Budgeted Cost	2008	2009
									NOV	DEC
1100	Mobilize Layout and Approval	3	17NOV08	19NOV08	0	0		0		
1110	Rough MEP above ceiling	15	18NOV08	08DEC08	58d	0		0		
1120	Tenant Cabling	8	19NOV08	28NOV08	64d	0		0		
1130	Penetrating Walls	10	21NOV08	04DEC08	0	0		0		
1140	Rough MEP's in walls	10	25NOV08	08DEC08	0	0		0		
1150	Inspection of walls	1	08DEC08	08DEC08	0	0		0		
1160	Hang Drywall and Tape	10	08DEC08	19DEC08	0	0		0		
1170	Ceiling Grid	8	17DEC08	29DEC08	0	0		0		
1180	Fire Sprinklers	7	24DEC08	05JAN09	40d	0		0		
1190	Interior Walls	4	29DEC08	02JAN09	0	0		0		
1200	MEP In Walls	5	02JAN09	08JAN09	0	0		0		
1210	Inspection of MEP's in walls	1	08JAN09	08JAN09	0	0		0		
1220	Install Drywall	4	08JAN09	13JAN09	0	0		0		
1230	Finish Drywall	6	13JAN09	20JAN09	0	0		0		
1240	Paint and Wallcovering	6	20JAN09	27JAN09	0	0		0		
1250	Swing Doors	5	21JAN09	27JAN09	0	0		0		
1260	INSPECTION MEP Above Ceiling	1	21JAN09	21JAN09	0	0		0		
1270	Drop Ceiling Tile	7	21JAN09	29JAN09	0	0		0		
1280	Floorcover	5	23JAN09	28JAN09	0	0		0		
1290	Cabinets and Banquettes	15	28JAN09	13FEB09	0	0		0		
1300	Clean Up	3	16FEB09	18FEB09	0	0		0		
1310	INSPECTIONS FINAL	1	16FEB09	16FEB09	10d	0		0		
1320	Punch List	5	19FEB09	25FEB09	3d	0		0		
1330	Tenant Partitions	7	19FEB09	27FEB09	0	0		0		
1340	OCCUPANCY	1	02MAR09	02MAR09	0	0		0		



Start date 27AUG08  
 Finish date 02MAR09  
 Data date 27AUG08  
 Run date 18NOV08  
 Page number 1A

**Fisher & Phillips**  
**2050 Main Street**  
**Suite 1000**  
**Irvine, CA 92614**

Date 18AUG08  
 Revision  
 Checked  
 Approved

Early bar  
 Progress bar  
 Critical bar  
 Summary bar  
 Start milestone point  
 Finish milestone point

---

**OPUS WEST CONSTRUCTION AND OPUS WEST MANAGEMENT  
CONTRACTOR RULES AND REGULATIONS**

---

The purpose of these rules and regulations is not to place undue hardship on the subcontractors. They are designed to protect tenants of an occupied building.

The rules pertaining to the eating of food, sunflower seeds, smoking and chewing tobacco will be strictly enforced. We are not a clean-up service for your employees and we will not allow food or drinks to be on the construction site.

Your field foreman will be given a copy of these rules and regulations at the start of each job and he will be responsible to insure that they are followed.

1. At NO time will any alcohol or drugs be allowed on the premises.
2. There will be absolutely NO eating or drinking or sunflower seeds inside the buildings. Each subcontractor on a daily basis will clean up their area where they have lunch or breaks outside the building. Subcontractors violating this rule will be charged for the clean up.
3. There will be absolutely NO smoking or eating breaks in front of the building. Eating at designated areas only.
4. Proper attire is required; this includes work boots, shirts, long pants, hard hats, safety glasses, etc.
5. Parking at an occupied building will be limited to a designated area by the superintendent, and Opus West Management, no in front of the building.
6. There will be NO radios on the construction site. For safety reasons, NO headphones will be allowed.
7. There will be absolutely NO smoking inside the building. Anyone using chewing tobacco, abusive language, or spitting anywhere on the property will be asked to leave the project.
8. The passenger elevators are not to be used by construction personnel.
9. Offenses that will result in an immediate request for discharge include, but are not limited to the following:
  - a. Violating any federal, state or local statutes or safety codes while working at the property.
  - b. Possession of weapons or firearms while on the property.
  - c. Physically abusing or harming any individual who works at or visits the property.
  - d. Duplicating any keys used in the building.

M R



- e. Providing building access at anytime to anyone not authorized by Opus West Construction or Opus West Management.
  - f. No storage of flammable substances will be allowed or stored in the building unless approved in writing by Opus West Construction and Opus West Management in accordance with the approved building codes and regulations.
- 
10. Subcontractors at no time will be allowed to use the public restrooms inside the building. Outside toilets will be provided for subcontractor use. A subcontractor will be removed and then billed for clean-up of the restroom if one of his employees is found using the restrooms.
  11. Opus will install protection for existing doors, carpet, etc. during the course of the project. Subcontractors removing or damaging the protection will replace or repair it or they will be charged for the repair. Subcontractors are required to protect any finished or completed areas prior to any work.
  12. The building janitorial supplies (vacuums, brooms, etc.) are not to be used for construction cleaning and the day porter is not to be used in place of a clean-up crew.
  13. In regards to work that creates excessive dust or odor, i.e. demo, painting, sanding, sweeping, the contractor is responsible for covering return air intakes on C.A.V. boxes, F.P. boxes, V.A.V. boxes and mechanical room boots, with PPL approved filter media (1" fiberglass filter UL classified class 2 for flame retardance).
  14. No liquids or any kind are to be poured down the sinks in the restroom or onto the landscape areas.
  15. All smoke detectors will be bagged and UN-bagged daily construction areas.
  16. All loading docks must be kept clean and clear at all times.
  17. As a part of construction clean up, the electrical rooms, fan rooms, and storage rooms will be swept clean and any materials remaining from contractors will be removed. Entranced to all secured mechanical and electrical areas must have prior approval from Opus West Management.
  18. Opus West Construction will submit a list of subcontractors' schedules prior to the start of construction to Opus West management.
  19. For removal of demolition, furnishings, etc. prior permission must be obtained from Opus West Management and must be completed after the normal business hours of 7:00 am to 6:00 pm.
  20. When in tenant space after regular working hours and/or weekends, the General Contractor must be present at all times. Inform Security if General Contractor is not present, as workers are not to be let in.
  21. All blinds must be protected from dust and debris.
  22. Vacuum public corridors in affected areas following each workday.
  23. Subcontractor and subcontractor's personnel shall treat all tenants with utmost courtesy and respect. Any problems or special requests from tenants are to be immediately reported and/or referred to Opus West Management. Subcontractor understands all activities performed under the scope of this contract are to be coordinated solely by Opus West Construction and Opus West Management.

7/14 R

24. All workers must be properly, permanently and visibly identified at all times.
25. If subcontractors use vacant space for material storage, the same subcontractors will be responsible for removal of ALL materials from site, leaving area in a broom clean condition, at completion of each tenant improvement unless other arrangements are made with Opus.
- ~~26. Any subcontractor requiring entrance to the building during off-hours will be required to make arrangements with the construction superintendent. At no time will a subcontractor be allowed to gain access through Property Management or the building engineer. The construction superintendent will be required to complete the after-hours access forms and submit to Opus West Management for this access.~~
27. In an occupied building, all work generating noise or odor that will be disruptive to other tenants will be performed before 7:00 am and/or after 6:00 pm. This would include steel stud bottom track, ceiling wires, carpet track strip, etc. where a tenant above or below will be disturbed.
28. Opus West Management must be notified prior to any painting being done. Carpeted hallways and open areas must be covered.
29. There will be absolutely no materials left in the common areas such as lobbies, exit corridors, restrooms or elevators for any period of time. All materials brought into the building will be immediately taken to the staging area at the construction site.
30. Construction personnel are to use the loading dock entry for entering or leaving the building. No one is to use the lobby entries for entering or to bring in tools or materials.
31. There will be no stocking or removal of materials through the lobby during building business hours between 7:00 am and 6:00 pm. All deliveries must be scheduled giving a three (3) day notice with the construction superintendent who will then notify Opus West Management of the delivery. Only the freight elevator and stairs will be used for deliveries.
32. Subcontractor will be responsible for security of any material stored on site. Opus West will not accept unattended deliveries. Subcontractor shall provide lifting or hoisting equipment as necessary.
33. Any power cords placed in the common areas will be taped to the floor.
34. The Fire Sprinkler and Fire alarm contractors are responsible for making sure that the Opus West Management and alarm companies are notified prior to starting work each day. This will be done directly through the superintendent. Opus West Management must be notified prior to any sprinkler or fire alarm work.
35. All construction debris will be placed in a construction dumpster, not the building dumpsters. Tractors will be charged for using the building dumpsters and for cleaning around construction dumpster. Location of the construction dumpster must be approved by Opus West Management.
36. Any work requiring the entrance to an occupied building will be scheduled through the superintendent and approved by Opus West Management only, giving a three (3) day notice. Do not contact the tenant directly.

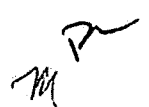
PM

37. Clean up tools and equipment (drywall taping tools, paint brushes, and rollers, etc.) will be done in an area designated by the superintendent and Opus West Management. All subcontractors are required to clean job site on a daily basis.
38. All subcontractors in a non-designated area will be immediately removed from the job site.
39. Contractor shall insure that all personnel have a thorough comprehension of these work rules and policies.
40. Opus West Construction will provide the following to the subcontractor and Opus West Management:
- a. Detailed drawings and specifications of the work to be done.
  - b. Copies of all permits from the City Building Department.
  - c. A Certificate of Insurance along with contact names and telephone numbers.
  - d. A copy of the city final inspection and Certificate of Occupancy.
  - e. A lien waiver release for the building and warranties for work.

Sunwest Electric, Inc.  
Company

  
Accepted and Approved  
Doug Lyvers, CFO

12-9-08  
Date



# Exhibit 2

## CALIFORNIA PRELIMINARY 20-DAY NOTICE

**TO: CONSTRUCTION LENDER (Or Reputed If Any)**

Name: LaSalle National Association,  
Successors or Assigned  
Street: 135 S. LaSalle St. Ste. 1225  
City, State, Zip: Chicago, IL 60603

TO: ☒ OWNER (Or Reputed Owner) ☐ PUBLIC AGENCY

(On Private Works) (On Public Works)

Name: Irvine Center Partners III LLC  
c/o Opus West Corporation  
Street: 2050 Main Street, Suite 800  
City, State, Zip: Irvine, CA 92614

**TO: ORIGINAL CONTRACTOR (Or Reputed Contractor)**

Name: Opus West Corporation  
Street: 2050 Main St. Ste. 800  
City, State, Zip: Irvine, CA 92614

**TO: OTHER (If any):**

Name: \_\_\_\_\_  
Street: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_

**NAME AND ADDRESS OF CLAIMANT GIVING THIS NOTICE:**

Name: SUNWEST ELECTRIC, INC.  
Street: 3064 E. Miraloma Ave.  
City, State, Zip: Anaheim, Ca 92806

**NAME OF PERSON OR FIRM THAT CONTRACTED TO PURCHASE THE LABOR, SERVICE, EQUIPMENT, MATERIALS:**

Name: Opus West Corporation  
2050 Main St. Ste. 800  
Irvine, CA 92614

**DESCRIPTION OF JOB SITE SUFFICIENT FOR IDENTIFICATION:**

Fisher & Phillips Job 4422  
2050 Main St., Ste. 1000  
Irvine, CA 92614

General description of the labor, service, equipment,  
or materials furnished, or to be furnished, and an  
estimate of the total price: \$175,000.00

### NOTICE TO PROPERTY OWNER

If bills are not paid in full for the labor, services, equipment, or materials furnished or to be furnished, a mechanic's lien leading to the loss, through court foreclosure proceedings, of all or part of your property being so improved may be placed against the property even though you have paid your contractor in full. You may wish to protect yourself against this consequence by (1) requiring your contractor to furnish a signed release by the person or firm giving you this notice before making payment to your contractor. (2) any other method or device that is appropriate under the circumstances. Other than residential homeowners of dwellings containing fewer than five units, private project owners must notify the original contractor and any lien claimant who has provided the owner with a preliminary 20-day lien notice in accordance with Section 3097 of the Civil Code that a notice of completion or notice of cessation has been recorded within 10 days of its recordation. Notice shall be by registered mail, certified mail, or first-class mail, evidenced by a certificate of mailing. Failure to notify will extend the deadlines to record a lien.

If this notice is given by a subcontractor who is required under a collective bargaining agreement to pay fringe benefits, the names and addresses of the laborers and express trust funds follow: (strike if inapplicable).

**PROOF OF SERVICE AFFIDAVIT:** The undersigned served copies of this Preliminary Notice by first class registered or certified mail, postage prepaid, on the persons and at the addresses shown on:

Date:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated:

11/18/2008

Signature: x

Michelle Jones

**20-DAY PRELIMINARY NOTICE INFORMATION/INSURANCE BROKER INFORMATION (Fax to Ins. Co.)**  
as of November 17, 2008

**PROJECT:** Name: Fisher & Phillips  
Address: 2050 Main Street, Suite 1000  
Irvine, CA 92614  
Ref. Opus Job No.: 10653.21

job 4422

**OWNER:** Name: Irvine Center Partners III-LLC c/o Opus West Corporation  
Address: 2050 Main Street, Suite 800  
Irvine, CA 92614  
Phone: 949-622-1950

**Additional Insured:** Irvine Center Partners III, LLC  
Opus West Construction Corporation  
Irvine Holdings, LLC  
La Salle Bank NA  
Irvine Concourse Association  
17901 Von Karman Associates, LLC  
2130 Main St Parking  
Knobbe Martin Olson & Bear, LLP  
2040 Main, LLC

175,000

Folder	
Insurance	
S/C	
US	
BICA	
Prelim	

**CONTRACTOR:** Name: OPUS WEST CONSTRUCTION CORPORATION  
Address: 2050 Main Street, Suite 800  
Irvine, CA 92614  
Phone: (949) 622-1950 / FAX: (949) 622-1148  
Contacts: *Project Manager:* Mark Minieri 949-862-1920  
*Administrative Assistant:* Linda Chase 949-622-2190

**FOR PRELIMINARY USE ONLY**

**LENDER:** Name: LaSalle National Association, Successors or Assigned  
Address: 135 S. LaSalle Street Suite 1225 Chicago, IL 60603  
Phone: (312) 992-2698  
Contact: Dominic Blea

**FOR PRELIMINARY USE ONLY****LEGAL DESCRIPTION:**

Office Tower

PARCEL 2, IN THE CITY OF IRVINE, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON THAT CERTAIN APPLICATION FOR LOT LINE ADJUSTMENT 40031-LL, RECORDED SEPTEMBER 14, 1999 AS INSTRUMENT NO. 19990660556, OFFICIAL RECORDS OF SAID ORANGE COUNTY, CALIFORNIA.

**FOR INSURANCE BROKER USE ONLY****REQUIRED LIMITS OF LIABILITY:**

General Aggregate:	\$ 5,000,000.00
Products/Completed Operations Aggregate:	2,000,000.00
Personal & Advertising Injury:	1,000,000.00
Each Occurrence:	1,000,000.00
Fire Damage:	50,000.00
Medical Expenses:	5,000.00
Automobile:	1,000,000.00
Worker's Compensation Coverage:	\$100,000/\$500,000/\$100,000

Contractor and Owner (see above) shall be named as additional insured (Additional Insured Endorsement form) on each of said insurance policies except for the worker's compensation policy.

# Exhibit 3

RECORDING REQUESTED BY:

AND WHEN RECORDED MAIL TO:

SUNWEST ELECTRIC, INC.  
(Name)

3064 E. MIRALOMA AVENUE  
(Street Address)

ANAHEIM, CA 92806  
(City, State, and Zip)

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

2009000199604 11:06am 04/23/09

111 200 M09 1

0.00-0.00-0.00-0.00-0.00-0.00-0.00-0.00

SPACE ABOVE THIS LINE FOR RECORDERS USE

## CALIFORNIA MECHANIC'S LIEN **CONFIRMED COPY**

The undersigned SUNWEST ELECTRIC, INC., claimant,  
(Complete Name Of Person Or Entity Claiming Mechanic's Lien)  
claims a Mechanic's Lien upon the following described real property: \_\_\_\_\_

FISHER & PHILLIPS  
(Street Address And/Or Legal Description, If Available, Where The Work Was Furnished)  
2050 MAIN ST, SUITE 1000 IRVINE, CA 92614

The sum of \$ 74,264.00, together with interest thereon at the  
(Amount Due On Claim)  
highest legal rate per annum from \_\_\_\_\_ is due claimant (after  
(Date When Amount Of Unpaid Claim Becomes Due)  
deducting all just credits and offsets) for the following work, equipment, and material  
furnished by claimant: \_\_\_\_\_

ELECTRICAL PER CONTRACT

(General Description Of Work And/Or Materials Provided By Claimant)

Claimant furnished the work and materials at the request of, or under contract with  
OPUS WEST CONSTRUCTION CORPORATION  
(Name(s) Or Entities Of Who Contracted Or Ordered The Work Or Materials From Claimant)

The owners and reputed owners of the property is/are: IRVINE CENTER PART-  
NERS III, LLC c/o OPUS WEST CONST CORP 2050 MAIN ST #800 IRVINE, CA  
(Name Of Owner Of Real Property - This Information Can Be Obtained From The County Recorder's Office Or The Building Department)

SEE REVERSE SIDE FOR  
MECHANIC'S LIEN  
ADDITIONAL INSTRUCTIONS

Firm Name: Sunwest Electric, Inc  
(See Instructions On Reverse Side For Proper Signing)

By: (x) Doug Lyvers, CFO  
(Signature Of Claimant Or Authorized Agent And Title)

### VERIFICATION

I, the undersigned, say: I am the claimant or agent of the foregoing Mechanic's Lien claimant;  
I have read said claim of mechanic's Lien and know the contents thereof; the same is true of  
my own knowledge. I am authorized to execute this Claim of Lien.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on Apr 22, 2009, at ANAHEIM, California.

(x) Doug Lyvers, CFO  
(Signature Of The Individual Who Verifies That The Contents Of The Claim Of The Mechanic's Lien Are True)





# Exhibit 4

4422

# STOP NOTICE

## LEGAL NOTICE TO WITHHOLD CONSTRUCTION FUNDS

(Public or Private Work) - (Per California Civil Code Section 3103)

To: Bank of America, N.A.

(Name of owner, public body or construction fund holder)

MC AZ1-200-22-17 201 E Washington St 22nd Floor

(Address. If directed to a bank or savings and loan assn., use address of branch holding fund)

Phoenix, AZ 85004-2343

(City, State and Zip)

Project: Fisher and Phillips

(Name)

2050 Main Street, Suite 1000

(Address)

Irvine, CA 92614

(City, State and Zip)

TAKE NOTICE THAT Sunwest Electric, Inc.

(Name of the person or firm claiming the stop notice. Licensed contractors MUST use the name under which contractor's license is issued)

whose address is 3064 E. Hiraloma Avenue Anaheim, CA 92806

(Address of person or firm claiming stop notice)

has performed labor and furnished materials for a work of improvement described as follows: \_\_\_\_\_

Fisher and Phillips 2050 Main Street, suite 1000 Irvine, CA 92614

(Name and location of the project where work or materials were furnished)

The labor and materials furnished by claimant are of the following general kind: \_\_\_\_\_

Electrical Per Contract Opus Job 10653.21

(General description of labor, services, equipment or materials agreed to be furnished)

The labor and materials furnished to or for the following party: \_\_\_\_\_

Opus West Construction Corporation

(Name of party who ordered the work or materials)

Total value of the whole amount of labor and materials agreed to be furnished is:.....\$ 213,764.00

The value of the labor and materials furnished to date is:.....\$ 213,764.00

Claimant has been paid the sum of:.....\$ 139,500.00

And there is due, owing and unpaid the sum of:.....\$ 74,264.00

You are required to set aside sufficient funds to satisfy this claim with interest, court costs and reasonable costs of litigation, as provided by law. You are also notified that claimant claims an equitable lien against any construction funds for this project which are in your hands.

Firm Name Sunwest Electric, Inc.

(Name of Stop Notice Claimant)

By

Doug Lyvers, CFO  
(Owner or agent of stop notice claimant must sign here and verify below)

### VERIFICATION

I, the undersigned, say: I am the CFO, of Sunwest Electric, Inc. the claimant named in the foregoing Stop Notice; I have read said Stop Notice and know the contents thereof; the same is true of my own knowledge.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 22

(Date this document was signed)

2009

(Year)

at Anaheim

(City)

California

(State of which stop notice signed)

Doug Lyvers, CFO  
(Personal signature of the individual who is swearing that the contents of the Stop Notice are true)

### REQUEST FOR NOTICE OF ELECTION

(Private Works Only) - (Per California Civil Code Section 3159, 3161 or 3162)

If an election is made not to withhold funds pursuant to this stop notice by reason of a payment bond having been recorded in accordance with Sections 3235 or 3162, please send notice of such election and a copy of the bond within 30 days of such election in the enclosed preaddressed stamped envelope. This information must be provided by you under Civil Code Sections 3159, 3161 or 3162.

Signed

Doug Lyvers, CFO  
(Claimant must enclose self-addressed stamped envelope)

SEE REVERSE SIDE FOR ADDITIONAL INFORMATION



BOND NO. 6609330

\$ 928.00 premium is for  
a term of ONE year(s)

**BOND UNDER CIVIL CODE 3083 ACCOMPANYING  
STOP-NOTICE UNDER CIVIL CODE 3159 — PRIVATE WORK**

KNOW ALL MEN BY THESE PRESENTS,

That we, SUNWEST ELECTRIC, INC.

as Principal, and the SAFECO INSURANCE COMPANY OF AMERICA

a Corporation organized and existing under the laws of the State of WASHINGTON

and duly licensed to transact surety business in the State of California, as Surety, are held and  
firmly bound unto OPUS WEST CONSTRUCTION CORPORATION as

Obligee, in the sum of NINETY TWO THOUSAND EIGHT HUNDRED THIRTY DOLLARS AND NO/100

Dollars (\$ 92,830.00 ), for the payment whereof, well and truly to be made, we hereby bind  
ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly  
by these presents.

WHEREAS, the above named Principal has furnished materials, equipment or services or  
performed labor in connection with that work of improvement described as FISHER AND PHILLIPS

and located at 2050 MAIN STREET, SUITE 1000, IRVINE, CA 92614

and

WHEREAS, the said Principal has filed or is about to file or is filing concurrently with this  
bond a stop-notice pursuant to Civil Code 3159 covering said materials, equipment, services or  
labor and has requested, or is by stop-notice now about to request, the Obligee, who is holding  
building funds, to withhold said funds, and in connection with said section, said Principal is required  
to file a bond as defined in Civil Code 3083 in the sum stated above, being one and one quarter  
times the amount claimed in said stop-notice.

NOW, THEREFORE, the condition of the obligation is such that if no payment bond is  
recorded pursuant to Civil Code 3159 and the defendant recovers judgement in an action brought  
on said stop-notice (verified claim), or on the lien filed by the above-named Principal, the above-  
named principal will pay all costs and all damages named and set forth in Civil Code 3083, not  
exceeding the sum specified in this bond, then this obligation shall be null and void, otherwise it  
shall remain in full force and effect.

SIGNED AND SEALED this 23 day of APRIL, 2009  
YEAR

SAFECO INSURANCE COMPANY OF AMERICA

YUNG T. MULLICK

Attorney-in-Fact

ID-1103 (CA) (REV. 1/01)

SUNWEST ELECTRIC, INC.

DOUG LYERS

Principal

## ACKNOWLEDGMENT

State of California

County of Orange

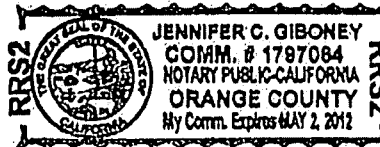
On APRIL 23, 2009 before me, JENNIFER C. GIBONEY, Notary Public  
(Insert name and title of the officer)

personally appeared YUNG T. MULLICK  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~  
subscribed to the within instrument and acknowledged to me that he/~~she~~/~~they~~ executed the same in  
his/~~her~~/~~their~~ authorized capacity(~~ies~~), and that by his/~~her~~/~~their~~ signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (Seal)





POWER  
OF ATTORNEY

Safeco Insurance Company of America  
General Insurance Company of America  
1001 4th Avenue  
Suite 1700  
Seattle, WA 98164

No. 10874

KNOW ALL BY THESE PRESENTS:

That SAFECO INSURANCE COMPANY OF AMERICA and GENERAL INSURANCE COMPANY OF AMERICA, each a Washington corporation, does each hereby appoint

\*\*\*\*\*JENNIFER C. GIBONEY; JAMES W. MOILANEN; YUNG T. MULICK; P. AUSTIN NEFF; CHRISTINE T. HOANG;  
Mission Viejo, California\*\*\*\*\*

Its true and lawful attorney(s)-in-fact, with full authority to execute on its behalf fidelity and surety bonds or undertakings and other documents of a similar character issued in the course of its business, and to bind the respective company thereby.

IN WITNESS WHEREOF, SAFECO INSURANCE COMPANY OF AMERICA and GENERAL INSURANCE COMPANY OF AMERICA have each executed and attested these presents

this 21st day of March, 2009

*Dexter R. Legg*

Dexter R. Legg, Secretary

*TAMIKOLAJEWSKI*

Timothy A. Mikolajewski, Vice President

CERTIFICATE

Extract from the By-Laws of SAFECO INSURANCE COMPANY OF AMERICA  
and of GENERAL INSURANCE COMPANY OF AMERICA:

"Article V, Section 13. - FIDELITY AND SURETY BONDS ... the President, any Vice President, the Secretary, and any Assistant Vice President appointed for that purpose by the officer in charge of surety operations, shall each have authority to appoint individuals as attorneys-in-fact or under other appropriate titles with authority to execute on behalf of the company fidelity and surety bonds and other documents of similar character issued by the company in the course of its business... On any instrument making or evidencing such appointment, the signatures may be affixed by facsimile. On any instrument conferring such authority or on any bond or undertaking of the company, the seal, or a facsimile thereof, may be impressed or affixed or in any other manner reproduced; provided, however, that the seal shall not be necessary to the validity of any such instrument or undertaking."

Extract from a Resolution of the Board of Directors of SAFECO INSURANCE COMPANY OF AMERICA  
and of GENERAL INSURANCE COMPANY OF AMERICA adopted July 28, 1970.

"On any certificate executed by the Secretary or an assistant secretary of the Company setting out

- (i) The provisions of Article V, Section 13 of the By-Laws, and
  - (ii) A copy of the power-of-attorney appointment, executed pursuant thereto, and
  - (iii) Certifying that said power-of-attorney appointment is in full force and effect,
- the signature of the certifying officer may be by facsimile, and the seal of the Company may be a facsimile thereof."

I, Dexter R. Legg, Secretary of SAFECO INSURANCE COMPANY OF AMERICA and of GENERAL INSURANCE COMPANY OF AMERICA, do hereby certify that the foregoing extracts of the By-Laws and of a Resolution of the Board of Directors of these corporations, and of a Power of Attorney issued pursuant thereto, are true and correct, and that both the By-Laws, the Resolution and the Power of Attorney are still in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the facsimile seal of said corporation

this 23 day of April, 2009



*Dexter R. Legg*

Dexter R. Legg, Secretary

## ACKNOWLEDGMENT

State of California

County of Orange

On April 24, 2009 before me, Valerie Castro, Notary Public  
(Insert name and title of the officer)

personally appeared Doug Lyvers, CFO  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within Instrument and acknowledged to me that he/she/they executed the same in  
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the Instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

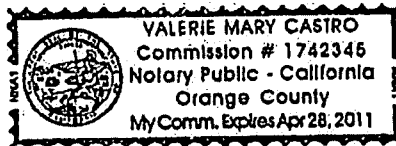
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
paragraph is true and correct.

WITNESS my hand and official seal.

Signature



(Seal)



U.S. Postal Service<sup>TM</sup>  
**CERTIFIED MAIL<sup>TM</sup> RECEIPT**  
 (Domestic Mail Only; No Insurance Coverage Provided)  
 For delivery information visit our website at [www.usps.com](http://www.usps.com)

**OFFICIAL USE**

Postage \$ 4.22 4422  
 Certified Fee 0.00  
 Return Receipt Fee (Endorsement Required) 0.00  
 Restricted Delivery Fee (Endorsement) 0.00  
 Total Post. 4.22

Sent To  
 Street, Apt. or PO Box  
 City, State, Zip

Opus West Construction Corporation  
 2050 Main St  
 Suite 800  
 Irvine, CA. 92614

PS Form 3800, August 2006 See Reverse for Instructions

**SENDER: COMPLETE THIS SECTION**

- Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Opus West Construction Corporation  
 2050 Main St  
 Suite 800  
 Irvine, CA. 92614

2. Article Number:  
 (Transfer from service label)

7008 1140 0002 7050 7341

PS Form 3811, February 2004

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  
 X [Signature] ☐ Agent ☐ Address

B. Received by (Printed Name) LEVERETT C. Date of Delivery

D. Is delivery address different from Item 1? ☐ Yes  
 If YES, enter delivery address below: ☐ No

3. Service Type  
☒ Certified Mail ☐ Express Mail  
☐ Registered ☒ Return Receipt for Merchandise  
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery (Extra Fee) ☐ Yes

Domestic Return Receipt

102505-02-M-11

U.S. Postal Service<sup>TM</sup>  
**CERTIFIED MAIL<sup>®</sup> RECEIPT**  
 (Domestic Mail Only; No Insurance Coverage Provided)  
 For delivery information visit our website at [www.usps.com](http://www.usps.com)

**OFFICIAL USE**

Postage \$ \_\_\_\_\_  
 Certified Fee \_\_\_\_\_  
 Return Receipt Fee (Endorsement Required) \_\_\_\_\_  
 Restricted Delivery Fee (Endorsement Required) \_\_\_\_\_  
 Total \_\_\_\_\_

Bank of America, N.A.  
 Mail Code: AZ1-200-22-17  
 201 East Washington St., 22<sup>nd</sup> Flr.  
 Phoenix, AZ. 85004-2343

Postmark Here

4488

7008 1140 0002 7050 7433

U.S. Form 3840, August 2000 See Reverse for Instructions

**SENDER: COMPLETE THIS SECTION**

- Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Bank of America, N.A.  
 Mail Code: AZ1-200-22-17  
 201 East Washington St., 22<sup>nd</sup> Flr.  
 Phoenix, AZ. 85004-2343

2. Article Number  
 (Transfer from service label)

7008 1140 0002 7050 7433

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-11

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

X *[Signature]*

- ☐ Agent  
☐ Address

B. Received by (Printed Name)

*[Printed Name]*

C. Date of Delivery

*[Date]*

D. Is delivery address different from Item 1?

If YES, enter delivery address below:

- ☐ Yes  
☐ No

3. Service Type

- ☐ Certified Mail ☐ Express Mail  
☐ Registered ☒ Return Receipt for Merchandise  
☐ Insured Mail ☐ O.O.D.

4. Restricted Delivery? (Extra Fee)

- ☐ Yes



7008 1140 0002 7050 7419

<b>U.S. Postal Service</b> <b>CERTIFIED MAIL™ RECEIPT</b> (Domestic Mail Only; No Insurance Coverage Provided) For delivery information visit our website at <a href="http://www.usps.com">www.usps.com</a>	
<b>OFFICIAL USE</b>	
Postage \$	4422
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Paid: <b>Irvine Center Partners III, LLC</b> <b>c/o Opus West Const Corp</b> <b>2050 Main St.</b> <b>Suite 800</b> <b>Irvine, CA.</b>	
Sent To Street, Apt or PO Box City, State	
PS Form 3800, August 2000 See Reverse for Instructions	

**SENDER: COMPLETE THIS SECTION**

- Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

**1. Article Addressed to:**

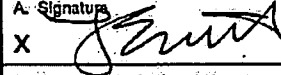
**Irvine Center Partners III, LLC**  
**c/o Opus West Const Corp**  
**2050 Main St.**  
**Suite 800**  
**Irvine, CA.**

**2. Article Number (transfer from s**

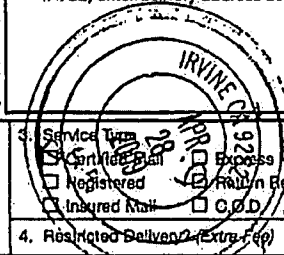
7008 1140 0002 7050 7419

PS Form 3811, February 2004

**COMPLETE THIS SECTION ON DELIVERY**

- A. Signature  ☐ Agent ☐ Address
- X
- B. Received by (Printed Name) Carroll C. Date of Delivery
- D. Is delivery address different from item 1? ☐ Yes ☐ No  
 If YES, enter delivery address below:

3. Service Type ☒ Certified Mail ☐ Express Mail ☐ Registered ☐ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D.
4. Restricted Delivery (Extra Fee) ☐ Yes



Domestic Return Receipt

102595-02-1A-11