


UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS		PROOF OF CLAIM
<b>Name of Debtor: (Check Only One):</b> <input checked="" type="checkbox"/> Opus West Corporation <input type="checkbox"/> Opus West Construction Corporation <input type="checkbox"/> O.W. Commercial, Inc. <input type="checkbox"/> Opus West LP <input type="checkbox"/> Opus West Partners, Inc.	<b>Case Number:</b>  <div style="font-size: 1.2em; font-family: cursive;">09-34356</div>	
<small>NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. All other requests for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.</small>		
<b>Name of Creditor</b> (the person or other entity to whom the debtor owes money or property):  <div style="font-size: 1.2em; font-family: cursive;">James C. ("Jim") Fritcher</div> <div style="text-align: right; font-weight: bold;">RECEIVED NOV 05 2009 BMC GROUP</div>	<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim.  <b>Court Claim Number:</b> (If known)  <b>Filed on:</b> _____	
<b>Name and address where notices should be sent:</b>  <div style="font-size: 1.2em; font-family: cursive;">11847 E. Appaloosa Place Scottsdale, AZ. 85259</div> <b>Telephone number:</b> <div style="font-size: 1.2em; font-family: cursive;">602.463.9087</div> <b>Email Address:</b> <div style="font-size: 1.2em; font-family: cursive;">jim@fritcher.com</div>	<input checked="" type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <div style="font-size: 1.2em; font-family: cursive;">Ex-spouse Sara Fritcher Filed Separately</div> <input type="checkbox"/> Check this box if you are the debtor or trustee in this case.	
<b>Name and address where payment should be sent (if different from above):</b>  <b>Telephone number:</b> <div style="font-size: 1.2em; font-family: cursive;"># 603.621 47</div>	<b>5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a).</b> If any portion of your claim falls in one of the following categories, check the box and state the amount. <div style="font-size: 1.2em; font-family: cursive;">* But See Sara Fritcher claim</div> <input type="checkbox"/> Specify the priority of the claim. <input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B). <input checked="" type="checkbox"/> Wages, salaries, or commissions (up to \$10,950) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. §507 (a)(4). <input checked="" type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. §507 (a)(5). <div style="font-size: 1.2em; font-family: cursive;">See Attached</div> <input type="checkbox"/> Up to \$2,425 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. §507 (a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. §507 (a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. §507 (a)( ). <b>Amount entitled to priority:</b> <div style="text-align: center;">\$</div>	
<b>1. Amount of Claim as of Date Case Filed:</b> \$ <div style="font-size: 1.2em; font-family: cursive;">663,621</div> If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4. If all or part of your claim is entitled to priority, complete item 5. <input checked="" type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges. <div style="font-size: 1.2em; font-family: cursive;">SEE ATTACHED</div>	<b>2. Basis for Claim:</b> <div style="font-size: 1.2em; font-family: cursive;">Former Opus Employee</div> (See instruction #2 on reverse side.) <b>3. Last four digits of any number by which creditor identifies debtor:</b> <div style="font-size: 1.2em; font-family: cursive;">0254 (SSN)</div> <b>3a. Debtor may have scheduled account as:</b> _____ (See instruction §3a on reverse side). <b>4. Secured Claim</b> (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information. <b>Nature of property or right of setoff:</b> <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Equipment <input type="checkbox"/> Other <b>Value of Property:</b> \$ _____ <b>Annual Interest Rate</b> ____% <b>Amount of arrearage and other charges as of time case filed included in secured claim, if any:</b> \$ _____ <b>Basis for perfection:</b> _____ <b>Amount Unsecured:</b> \$ _____	
<b>6. Credits:</b> The amount of all payments on this claim has been credited for the purpose of making this proof of claim. <b>7. Documents:</b> Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements or running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instruction 7 and definition of "redacted" on reverse side.) <b>DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.</b> If the documents are not available, please explain: _____		
<b>Date:</b>  <div style="font-size: 1.2em; font-family: cursive;">11/3/09</div>	<b>Signature:</b> The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.  <div style="font-size: 1.5em; font-family: cursive;">James C. Fritcher</div>	
<b>Penalty for presenting fraudulent claim:</b> Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571. <b>Modified B10 (GCG) (12/08)</b>		<b>FOR COURT USE ONLY</b> <div style="text-align: center;">             OPUS WEST                00370           </div> <div style="font-size: 1.5em; font-family: cursive; text-align: right;">Fritcher 1/39</div>

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James Fritcher Claim Summary

11/3/09

Worksheet to summarize claim of James ("Jim") Fritcher against Opus West Corporation:			
	Claimed Item	Claimed Amount	Basis
1.	2008 Incentive	\$31,660.00	Unpaid balance after deduction per Fritcher divorce decree per Opus memo from John Greer to Vickie Sixta, Cathy Hart dated 6/5/09. (Additional \$12,780.00 is due Sara Fritcher, but is not included in this number.) (See "A-1" Attached)
2.	"Opus 80/20 Plan for Officers"	\$73,526.50	"Net Vested Balance" as of 6/30/09 per Opus statement (per A4.2)
3.	"Opus 80/20 Plan for Officers"	\$100,066.82	Additional Vested Portion vesting as of Fritcher separation on 7/31/09 due to "Opus 80/20 Plan for Officers" (the "Plan") rules due to length of service, age. Fritcher's length of service plus age exceeds 75 ("rule of 75"). Payable per terms of Plan. Unvested Portion as of 6/30/09 per Opus statement (per A4.2) (See also A-6, A-6.1, A-7)
4.	"Opus 80/20 Plan for Officers"	\$6,186.65	Additional interest due on item #3 when paid out in accordance with terms of the Plan for rule of 75 separation. (See A-7)
5.	"Opus West Corporation SAR Plan"	\$127,092.00	per "Jim Fritcher - Post 10/14/04 Statement" received from Opus West. See A4.1
6.	"Opus West Corporation SAR Plan"	\$225,089.50	Jim Fritcher Share, per "Jim Fritcher - Pre 10/14/04 Statement" received from Opus West. See A4.1
7.	Severance Pay	\$100,000.00	Severance. No severance was received despite Mr. Fritcher's over 26 years of service and leadership role. Additional compensation requested based on one week of base salary per year of service to the Opus Group. Consistent with company practice prior to 2009 (one week per year of service up to 52 weeks, plus outplacement, plus Cobra lump sum payment).
		\$663,621.47	
	Recap		
	Jim Fritcher	\$663,621.47	
	Sara Fritcher	\$237,869.50	
	Total Fritcher Claim	\$901,490.97	See "A-1" Attached, Sara filed separately

See A8, A3

Fritcher  
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Attachments to "Proof of Claim" of James C. "Jim" Fritcher against Opus West Corporation, Case 09-34356			
	Document Name	Dated	Pages
A.	James Fritcher Claim Summary	11/3/09	1
A-1.	Sara Fritcher Claim Summary (for reference only - see separate filing)	10/30/09	1
A-2.	Recap Fritcher Opus 80_20 Plan	11/3/09	1
A-3.	Fritcher letter to Claire C. Janssen, Chief Financial Officer, Opus West Corporation, Re: 2008 Opus Compensation Plan Statements	10/27/09	2
A-4.	Janssen letter to James C. Fritcher Re: 2008 Opus Compensation Plan Statements and accompanying statements 4.1-4.3 listed below	10/15/09	1
A-4.1	SAR Plans (final 2008 SAR statement, revised 2007 statement, including Fritcher statements for pre and post 10/14/04 (date of Fritcher divorce)	various	10
A-4.2	Opus 80/20 Plan for Officers and Non-Officers (Fritcher Statements)	various	4
A-4.3	2008 Incentive (Fritcher Statements)	6/5/09	2
A-5.	Email from Brenda Devlin, Director Employee Relations & Selection, Opus Corporation to Jim Fritcher of 8/15/08, FW: Opus Severance guidelines for job elim and leader notification guide; Attachment	8/15/08	3
A-6.	Memo from Cheryl Lavelle, Opus HR, to Jim Fritcher confirming effective service date as 3/11/83 based on Fritcher rehire date of 6/15/97	7/20/99	1
A6.1	Fritcher calculation of Service Time with Opus at over 26 years, age plus service exceeds 80 years.	10/26/09	1
A-7.	Memo from Cathy Hart, VP HR for the Opus Group, announcing changes to Opus Deferred Compensation Plans, and distributing plan dated "As amended and restated January 1, 2008" (but described as "new plan documents" in the memo).	3/11/09	1
A7.1	"Opus 80/20 Plan for Officers" dated "As amended and restated January 1, 2008" (but issued as "new plan documents" 3/11/09).	3/11/09	9
Total Pages in addition to claim form, this index:			37

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Sara Fritcher Claim Summary

10/30/09

Worksheet to summarize claim of Sara Fritcher (ex-spouse of James Fritcher) against Opus West Corporation:			
	Claimed Item	Claimed Amount	Basis
1.	2008 Incentive	\$12,780.00	Unpaid balance of 2008 Incentive bonus due Sara in accordance with terms of Fritcher divorce decree of 10/14/04 - per Opus memo from John Greer to Vickie Sixta, Cathy Hart dated 6/5/09.
2.	"Opus 80/20 Plan for Officers"	\$0.00	
3.	"Opus 80/20 Plan for Officers"	\$0.00	
4.	"Opus 80/20 Plan for Officers"	\$0.00	
5.	"Opus West Corporation SAR Plan"	\$0.00	"Jim Fritcher - Post 10/14/04 Statement"
6.	"Opus West Corporation SAR Plan"	\$225,089.50	Sara Fritcher Share, per "Jim Fritcher - Pre 10/14/04 Statement" prepared by Opus West. Sara's share per terms of Fritcher divorce decree of 10/14/04.
7.	Severance Pay	\$0.00	
		\$237,869.50	

Note: Sara Fritcher filed her claim separately

Fritcher  
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Worksheet to confirm account calculations for James Fritcher account in "80/20 Plan for Officers".

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Incentive Compensation for 2008, Payable in 2009		20.00%	80.00%		
		$b = (a \times 20\%)$	$c = (a \times 80\%)$	$d$ (see note 1)	$e = (c-d)$
Payable for 2009 per Opus (TR) Statement	Gross	LT	ST	Due Sara	Due Jim
Paid on 3/13/09	\$111,100.00	\$22,220.00	\$88,880.00	\$35,000.00	\$53,880.00
Balance due 6/5/09	\$55,550.00	\$11,110.00	\$44,440.00	\$22,220.00	\$22,220.00
	\$55,550.00	\$11,110.00	\$44,440.00	\$12,780.00	\$31,660.00
	\$111,100.00	\$22,220.00	\$88,880.00	\$35,000.00	\$53,880.00

(Not paid as of 11/3/09)

LT Deferred Amount paid 3/13/09 (vested portion of previous deferrals)

\$34,698.92

Note 1: Per Divorce decree Sara Fritcher was to receive 50% of non-deferred incentive bonus paid, NTE \$35,000 in ea. year thru 2008, payable 2009, so her portion appears correct.

## Now calculate account balances in Fritcher Long Term Deferred Account:

(Note: Fritcher's Age (54) and years of service to Opus (more than 26) total more than 80 as of 7/31/09)

	Total Account	Vested	Unvested
Actual Balance as of 12/31/08	\$169,670.65	\$105,397.48	\$64,273.17
Less Paid 3/13/09	-\$34,698.92	-\$34,698.92	\$0.00
Subtotal	\$134,971.73	\$70,698.56	\$64,273.17
Plus 2008 Interest	\$13,573.65		\$13,573.65
Plus 2009 Interest (6 months)	\$22,220.00	\$2,827.94	
plus deferral for 2008	\$0.00	\$0.00	\$22,220.00
Total	\$170,765.38	\$73,526.50	\$100,066.82

per Opus Statement 6/7/09

Due jcf on 10/31/09 (per separation rules, rule of 75):

Vested (see Note 2) \$73,526.50

Newly Vested

entire account is vested as of 11/3/09 per Section 5.3 (b) of plan

And due in subsequent years:	Plus Interest @ 3%
10/31/10	\$20,013.36
10/31/11	\$20,013.36
10/30/12	\$20,013.36
10/30/13	\$20,013.36

\$179,780.17

\$6,186.85

Note 2: See the Opus Deferred Compensation Plan, Section 5.3 (b), additional vesting applies at separation if combination of service and age exceeds 75 years ("rule of 75").

11/3/09

Fritcher  
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*Emailed + mailed*  
*10/27/09*

James C. Fritcher  
11847 E. Appaloosa Place,  
Scottsdale, Arizona 85259  
Phone: 602-463-9087  
E-Mail: jim@fritcher.com

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*1/2*

October 27, 2009

Ms. Claire C. Janssen  
Chief Financial Officer  
Opus West Corporation  
2555 E. Camelback Road, Suite 580  
Phoenix, Arizona 85016  
E-mail: [Claire.janssen@opuswest.com](mailto:Claire.janssen@opuswest.com)

Re: 2008 Opus Compensation Plan Statements

Dear Claire,

Thank you for your letter of October 15, 2009 and the accompanying summaries describing 2008 activity in the Opus incentive compensation plans in which I was a participant. I appreciate your efforts to clarify this for us. I am continuing to review these documents, but had some questions that I thought you could help me with:

With respect to the summary labeled "Opus 80/20 plan for Officers and Non-Officers":

1. The last sentence of your cover memo indicates: "If your termination date was after 6/30/09, the value of your account will be reduced by 50% of the unvested portion."
  - a. What is the reason for this?
  - b. What is the effect of this on my account?
  - c. If it does affect my account, when was that determined?
    - i. My termination date was 7/31/09, however this date was mutually established much earlier. I was not aware it would have an effect on my receipt of any funds.
2. Vesting and the so called "Rule of 75":
  - a. Based on my 26 plus years of service to the Opus Group and my age at termination, the total of which is now over 80, I have been qualified for over 2 years for 100% vesting upon separation under the provisions of Section 5.3 (b).
  - b. The statement provided makes no reference to said vesting. I believe my statement and the corresponding backup charts need to correctly reflect this status.

*Fritcher*  
*6/39*

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James C. Fritcher  
11847 E. Appaloosa Place,  
Scottsdale, Arizona 85259  
Phone: 602-463-9087  
E-Mail: jim@fritcher.com

- c. Based on the above, the terms of the plan, and in particular Section 5.2, the entire amount of my vested portion is due within 90 days of my termination date, along with one fifth of the balance of the previously "unvested" funds which are now vested due to separation ("the Separation Funds"). The remaining four fifths of said Separation Funds are due in annual payments over the next four years per Section 5.2.
- d. Also per my reading of the plan, the obligations for payment under said plan run to the "Companies" defined therein, Opus Corporation and Opus, L.L.C..

With respect to the SAR calculation, I was disappointed to see the large adjustment in results for 2007, negatively affecting my account:

- 3. It appears the stated profits for 2007 were reduced by over 20 million dollars from the previously issued statements.
  - a. Why was this adjustment made?
  - b. Is there documentation you can provide of this error?

Finally, I don't see any discussion of severance. Employees terminated in 2008 and years prior were eligible for significant severance packages based on time in service of Opus. It was company policy. By subsequent direction from the Human Resources Department of Opus Corporation, severance packages were significantly reduced and ultimately eliminated for succeeding waves of layoffs due to apparent lack of company funds at the Opus West Corporation level. It is not clear if funds were available at Opus Core. I believe at least 26 weeks of severance for termination should have been provided based on prior Opus Core policy and my years of service.

Claire, I do appreciate your efforts in all of this, and do appreciate your consideration of and help with the above. I know both you and John have been put in a tough situation. Prior to 2009, I fully expected to finish my career at Opus. I continue to be hugely disappointed and saddened by the unwinding that has occurred. I'll look forward to your response.

Sincerely,

  
James C. Fritcher

Cc: Mr. John Greer, President, Opus West Corporation, via email  
Mr. Steve Polacek, CFO, Opus Corporation, via email

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**OPUS WEST CORPORATION**

2555 E. Camelback Road, Suite 580, Phoenix, AZ 85016  
Phone 602-468-7000 Fax 602-468-7045

October 15, 2009

James C. Fritcher  
11847 E Appaloosa Pl  
Scottsdale, AZ 85259

Re: 2008 Opus Compensation Plan Statements

Dear James:

The attached statement(s) summarize the activity for the 2008 Opus incentive compensation plan(s) in which you were a participant. Please review them thoroughly.

These statements are intended to inform you of the balance of your Compensation Accounts as of June 30, 2009. They are not intended to be a summary of the Plans, nor an amendment or modification thereof. You must consult the Plan Documents for an interpretation of your rights under the Plans.

The aggregate amounts on the statements have been submitted on schedules to the U.S. Bankruptcy Court. If you disagree with the numbers, you may file a proof of claim with the Court. You may also choose to file a proof of claim even if you agree with these numbers. Please note that the claim must be received no later than November 9, 2009.

If you have any questions on these statements, please call Vickie Sixta at 602-468-7095.

Sincerely,



Claire C. Janssen  
Chief Financial Officer

Attachments

Fritcher  
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**SAR Plans**

Attached are a final 2008 SAR statement and a revised 2007 SAR statement. While conducting their audits of the 2008 Opus financial statements, the auditors discovered that the 2007 audited financial statements contained certain misinterpretations and misapplications of accounting standards. Since the SAR awards are based on financial results and the plan document requires Opus to adjust awards for prior year errors, the 2007 awards were restated.

Fritcher  
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Current Year SAR Value	
Current Year Income - Pretax, Pre-SAR	(42,298,879) (E)
Current Year Tax Expense/Benefit	(116,000) (Z)
	(42,414,879) (W)
SAR Percentage (Total # of SARs / 1,000,000)	0.0000% (W)
Allocable Share of Income - Pretax, Pre-SAR	-
Plus: Current Year Interest Credit	- (H) * 6%
Less: Current Year Deemed Interest	- (F)
Current Year SAR Value	-

Deemed Debt Outstanding	
Balance - Beginning of Year	-
Plus: New Deemed Debt due to Additional SARs Issued (if applicable)	-
Plus: New Deemed Debt due to Capital Contribution (if applicable)	-
Less: Deemed Debt Reduction due to Retired SARs (if applicable)	-
Less: Deemed Debt Reduction due to Forfeitures (if applicable)	-
Current Year Deemed Debt Reduction	-
- Less: 75% dividend of income-after tax, pre-SAR	-
- Plus: Adjustment for Current Year Capital Gains Savings	-
- Plus: Current Year Deemed Interest	-
- Plus: Taxes	-
Total Current Year Deemed Debt Reduction	-
Total Deemed Debt Outstanding Balance - End of Year	-
-AND/OR-	-
Payoff Deemed Debt Outstanding Balance	-
Balance - Beginning of Year	-
Payoff Deemed Debt Outstanding Balance	-
Plus: Current Year Deemed Interest	-
Total Current Year Deemed Debt Reduction	-
Total Deemed Debt Outstanding Balance - End of Year	-

Current Year Payout Calculation	
Current Year Distribution (E) * (W) * 75% * (Z) * (W)	-
Less: Adjustment for Current Year Capital Gains Savings (Total Capital Gains Savings * (W))	-
Less: Payoff Debt Balance (if applicable)	-
Vested Percent (based on weighted average of SARs held)	-
Current Year Distribution	100.00% (R)
Plus: Distribution of Previously Vested Distribution	-
Total Distribution to be Paid	-

SAR Balance Recap	
Current SARs	
Gross SAR Balance (vested and unvested) - Beginning of Year	904,198
Less: Retired SARs Moved to Separate Account	-
Plus: Current Year SAR Value	-
Less: Forfeitures (if applicable)	-
Retired SARs	904,198
Previous Year Balance (vested and unvested)	- (D)
Retired SARs Moved to Separate Account in Current Year	- (G)
Interest on Retired SARs	- ((D)+(G)) * 6%
Total SARs	-
Vested Cumulative Balance (excluding any payments)	904,198 1/1/2009
Less: Gross Payments Balance (cumulative)	(454,019)
Less: Current Year Distribution	- 3/15/2009
Vested Net Balance - End of Year	450,179
Unvested Balance	- 1/1/2009
Net Balance - End of Year	450,179 3/15/2009

$((E) * (W) * 75\%) * ((Z) * (W))$   
 $- \text{Total Capital Gains Savings} * (W)$   
 $- ((H) * 6\%)$   
 $- 37.95\%$   
 $((F) * \text{Combined Tax Rate for State of Residence}) + (((D)+(G)) * 6\% * \text{Tax Rate})$

AZ

Previously Vested Distribution Calculation (if applicable)	
Total Gross Amount of Previous Year(s) Distributions	-
Vested Percent (weighted average of SARs held)	100.00% 1/1/2009
Less: Previous Paid Vested Distributions	-
Plus: Interest Credit on Balance of Unpaid Distributions	- (K)
Distribution of Previously Vested Distribution	- ((K) * 55% * 6%)
	- 3/15/2009

A4.1  
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A 41.  
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**Jim Fritcher**  
**Opus West Corporation**  
**Benefit Summary**  
**10/14/04 - 6/30/05**

		Total	Jim Fritcher Share 50%	Sara Fritcher Share 50%
<b><u>SAR PLAN</u></b>				
	<u># of SARs</u>			
Gross SAR Balance	4,500	\$904,198.00	\$452,099.00	\$452,099.00
Cumulative Payments		<u>(228,929.00)</u>	<u>(114,464.00)</u>	<u>(114,465.00)</u>
Net SAR Balance - 100% vested		675,269.00	337,635.00	337,634.00
SAR Payments - 1/1/05 Repurchase	<u>(1,500)</u>	<u>(225,090.00) (A)</u>	<u>(112,545.00)</u>	<u>(112,545.00)</u>
Balance	<u>3,000</u>	<u>\$450,179.00</u>	<u>\$225,090.00</u>	<u>\$225,089.00</u>
<b><u>VESTED BALANCE OF 20% DEFERRED (LONG-TERM) PORTION OF OFFICER INCENTIVE COMPENSATION PLAN</u></b>				
1999 Deferral - 80% vested		\$19,738.76	\$9,869.38	\$9,869.38
2000 Deferral - 60% vested		13,757.44	6,878.72	6,878.72
2001 Deferral - 40% vested		7,480.81	3,740.40	3,740.41
2002 Deferral - 20% vested		5,595.56	2,797.78	2,797.78
2003 Deferral - 0% vested		<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
Total Vested as of 10/14/04		46,572.57	23,286.28	23,286.29
1999 Deferral	100% vested on 1/1/05; paid 3/15/05	(19,738.76)	(19,738.76)	0.00
	Adjustment to wire on 7/20/05	<u>0.00</u>	<u>9,869.38</u>	<u>(9,869.38)</u>
Balance		<u>\$26,833.81</u>	<u>\$13,416.90</u>	<u>\$13,416.91</u>

payable 3/2005  
payable 3/2006  
payable 3/2007  
payable 3/2008

(A) \$675,269 net SAR balance / 4,500 SARs \* 1,500 SARs

Fritcher  
12/39

Current Year SAR Value	
Current Year Income - Pretax, Pre-SAR	(42,288,879) (E)
Current Year Tax Expense/Benefit	(116,000) (Z)
	(42,414,879) (W)
SAR Percentage (Total # of SARs / 1,000,000)	0.3000% (W)
Allocable Share of Income - Pretax, Pre-SAR	(127,245)
Plus: Current Year Interest Credit	-
Less: Current Year Deemed Interest	(Z) (H) * 6%
Current Year SAR Value	(127,252) (F)

Deemed Debt Outstanding	
Balance - Beginning of Year	-
Plus: New Deemed Debt due to Additional SARs Issued (if applicable)	-
Plus: New Deemed Debt due to Capital Contribution (if applicable)	42,108
Less: Deemed Debt Reduction due to Retired SARs (if applicable)	-
Less: Deemed Debt Reduction due to Forfeitures (if applicable)	-
	42,108 (H)
Current Year Deemed Debt Reduction	
- Less: 75% dividend of income-after tax, pre-SAR	-
- Plus: Adjustment for Current Year Capital Gains Savings	-
- Plus: Current Year Deemed Interest	-
- Plus: Taxes	-
Total Current Year Deemed Debt Reduction	-
Total Deemed Debt Outstanding Balance - End of Year	42,108
-AND/OR-	
Payoff Deemed Debt Outstanding Balance	-
Balance - Beginning of Year	-
Payoff Deemed Debt Outstanding Balance	-
	(Q)
Plus: Current Year Deemed Interest	-
Total Current Year Deemed Debt Reduction	7 (H) * 6%
Total Deemed Debt Outstanding Balance - End of Year	7

Current Year Payout Calculation	
Current Year Distribution ((E) * (W) * 75%) + (Z) * (W)	-
Less: Adjustment for Current Year Capital Gains Savings {Total Capital Gains Savings * (W)}	-
Less: Payoff Debt Balance (if applicable)	-
Vested Percent (based on weighted average of SARs held)	-
Current Year Distribution	100.00% (R) 1/1/2009
Plus: Distribution of Previously Vested Distribution	-
Total Distribution to be Paid	- (L) 3/15/2009

SAR Balance Recap	
Current SARs	
Gross SAR Balance (vested and unvested) - Beginning of Year	905,521
Less: Retired SARs Moved to Separate Account	-
Plus: Current Year SAR Value	(127,252)
Less: Forfeitures (if applicable)	-
	778,269
Retired SARs	
Previous Year Balance (vested and unvested)	- (D)
Retired SARs Moved to Separate Account in Current Year	- (G)
Interest on Retired SARs	- ((D)+(G)) * 6%
Total SARs	-
Vested Cumulative Balance (excluding any payments)	778,269 1/1/2009
Less: Gross Payments Balance (cumulative)	(651,177)
Less: Current Year Distribution	-
Vested Net Balance - End of Year	127,092 3/15/2009
Unvested Balance	- 1/1/2009
Net Balance - End of Year	127,092 3/15/2009

$((E) * (W) * 75\%) + (Z) * (W)$   
 $-$  Total Capital Gains Savings \* (W)  
 $-$  (H) \* 6%  
 $-$  37.95%  
 $((F) * \text{Combined Tax Rate for State of Residence}) + ((D)+(G)) * 6\% * \text{Tax Rate}$

AZ

Previously Vested Distribution Calculation (if applicable)	
Total Gross Amount of Previous Year(s) Distributions	-
Vested Percent (weighted average of SARs held)	100.00% 1/1/2009
Less: Previous Paid Vested Distributions	- (K)
Plus: Interest Credit on Balance of Unpaid Distributions	-
Distribution of Previously Vested Distribution	- (K) * 55% * 6% 3/15/2009

A 4.1  
5/10

Fritcher  
12/39

Jim Fritcher - Post 10/14/04 Statement  
Opus West Corporation  
SAR Plan  
12/31/2008

Summary of SARs & Vested/Unvested Balances as of:												
1/1/2009					(excluding Current Year and Previous Year Payments)							
# SARs	Date Issued	% Total SARs	# Years Held	% Vested	Previous Year Total SAR Value	Value of SARs Retired in Current Year	Total Interest on Retired SAR Balance	Current Year Total SAR Value	Allocated Current Year SAR Value	Total SAR Value	Vested Portion	Unvested Portion
3,000	1/1/1997	100.00%	12.00	100.00%	905,521	-	-	(127,252)	(127,252)	778,269	778,269	-
3,000		100.00%			905,521			Total	(127,252)	778,269	778,269	-

Unpaid Distributions - Summary		As of:
Unpaid Distributions - Beginning Balance	-	12/31/2007
Plus: Unpaid Distribution Resulting from Current Year Distribution	-	(R) - (L)
Less: Current Year Payment	-	
- Additional vested increments of unpaid distributions from previous years	-	3/15/2009
<b>Balance - End of Year</b>	-	

A 4.1  
6/10

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14/39

Jim Fritcher - Pre 10/14/04 Statement  
Opus West Corporation  
SAR Plan  
12/31/2007

Current Year SAR Value	
Current Year Income - Pretax, Pre-SAR	73,053,976 (E)
Current Year Tax Expense/Benefit	(334,000) (Z)
SAR Percentage (Total # of SARs / 1,000,000)	72,719,976 (W)
Allocable Share of Income - Pretax, Pre-SAR	0.0000%
Plus: Current Year Interest Credit	-
Less: Current Year Deemed Interest	-
Current Year SAR Value	- (H) * 8%
	- (F)

Deemed Debt Outstanding	
Balance - Beginning of Year	-
Plus: New Deemed Debt due to Additional SARs Issued (if applicable)	-
Plus: New Deemed Debt due to Capital Contribution (if applicable)	-
Less: Deemed Debt Reduction due to Retired SARs (if applicable)	-
Less: Deemed Debt Reduction due to Forfeitures (if applicable)	-
Current Year Deemed Debt Reduction	-
Less: 75% dividend of income-after tax, pre-SAR	-
Plus: Adjustment for Current Year Capital Gains Savings	-
Plus: Current Year Deemed Interest	-
Plus: Taxes	-
Total Current Year Deemed Debt Reduction	-
Total Deemed Debt Outstanding Balance - End of Year	-
AND/OR-	-
Payoff Deemed Debt Outstanding Balance	-
Balance - Beginning of Year	-
Payoff Deemed Debt Outstanding Balance	-
Plus: Current Year Deemed Interest	-
Total Current Year Deemed Debt Reduction	-
Total Deemed Debt Outstanding Balance - End of Year	-

Current Year Payout Calculation	
Current Year Distribution : (E) * (W) * 75% + (Z) * (W)	-
Less: Adjustment for Current Year Capital Gains Savings (Total Capital Gains Savings * (W))	-
Less: Payoff Debt Balance (if applicable)	-
Vested Percent (based on weighted average of SARs held)	-
Current Year Distribution	100.00%
Plus: Distribution of Previously Vested Distribution	-
Total Distribution to be Paid	-

SAR Balance Recap	
Current SARs	
Gross SAR Balance (vested and unvested) - Beginning of Year	904,198
Less: Retired SARs Moved to Separate Account	-
Plus: Current Year SAR Value	-
Less: Forfeitures (if applicable)	-
Retired SARs	904,198
Previous Year Balance (vested and unvested)	- (D)
Retired SARs Moved to Separate Account in Current Year	- (G)
Interest on Retired SARs	- ((D)+(G)) * 6%
Total SARs	-
Vested Cumulative Balance (excluding any payments)	904,198 1/1/2008
Less: Gross Payments Balance (cumulative)	(454,018)
Less: Current Year Distribution	- 3/15/2008
Vested Net Balance - End of Year	450,179
Unvested Balance	- 1/1/2008
Net Balance - End of Year	450,179 3/15/2008

$((E) * (W) * 75\% + ((Z) * (W))$   
 $\text{Total Capital Gains Savings} * (W)$   
 $((H) * 8\%$   
 $37.95\%$   
 $((F) * \text{Combined Tax Rate for State of Residence}) + ((D)+(G)) * 6\% * \text{Tax Rate}$

AZ

Previously Vested Distribution Calculation (if applicable)	
Total Gross Amount of Previous Year(s) Distributions	-
Vested Percent (weighted average of SARs held)	100.00% 1/1/2008
Less: Previous Paid Vested Distributions	- (K)
Plus: Interest Credit on Balance of Unpaid Distributions	- (K) * 55% * 8%
Distribution of Previously Vested Distribution	- 3/15/2008

Fritcher 12/31/07

A 4.1  
7/10

A 4.1  
8/10

Unpaid Distributions - Summary	As of:
Unpaid Distributions - Beginning Balance	12/31/2006
Plus: Unpaid Distribution Resulting from Current Year Distribution	(R) • (L)
Less: Current Year Payment	-
- Additional vested increments of unpaid distributions from previous years	-
Balance - End of Year	3/15/2008

Fritzer  
11/39



Current Year SAR Value	
Current Year Income - Pretax, Pre-SAR	73,053,976 (E)
Current Year Tax Expense/Benefit	(334,000) (Z)
SAR Percentage (Total # of SARs / 1,000,000)	72,719,976 (W)
Allocable Share of Income - Pretax, Pre-SAR	0.3000% (W)
Plus: Current Year Interest Credit	218,160
Less: Current Year Deemed Interest	-
Current Year SAR Value	218,160 (F)

Deemed Debt Outstanding	
Balance - Beginning of Year	-
Plus: New Deemed Debt due to Additional SARs Issued (if applicable)	-
Plus: New Deemed Debt due to Capital Contribution (if applicable)	-
Less: Deemed Debt Reduction due to Retired SARs (if applicable)	-
Less: Deemed Debt Reduction due to Forfeitures (if applicable)	-
Current Year Deemed Debt Reduction	-
- Less: 75% dividend of income-after tax, pre-SAR	-
- Plus: Adjustment for Current Year Capital Gains Savings	-
- Plus: Current Year Deemed Interest	-
- Plus: Taxes	-
Total Current Year Deemed Debt Reduction	-
Total Deemed Debt Outstanding Balance - End of Year	-
-AND/OR-	-
Payoff Deemed Debt Outstanding Balance	-
Balance - Beginning of Year	-
Payoff Deemed Debt Outstanding Balance	-
Plus: Current Year Deemed Interest	-
Total Current Year Deemed Debt Reduction	-
Total Deemed Debt Outstanding Balance - End of Year	-

Current Year Payout Calculation	
Current Year Distribution (E) * (W) * 75% + (Z) * (W)	218,353
Less: Adjustment for Current Year Capital Gains Savings (Total Capital Gains Savings * (W))	(20,142)
Less: Payoff Debt Balance (if applicable)	-
Vested Percent (based on weighted average of SARs held)	198,211 (R)
Current Year Distribution	100.00% (R)
Plus: Distribution of Previously Vested Distribution	198,211 (L)
Total Distribution to be Paid	198,211 (L)

SAR Balance Recap	
Current SARs	
Gross SAR Balance (vested and unvested) - Beginning of Year	687,361
Less: Retired SARs Moved to Separate Account	-
Plus: Current Year SAR Value	218,160
Less: Forfeitures (if applicable)	-
Retired SARs	905,521
Previous Year Balance (vested and unvested)	-
Retired SARs Moved to Separate Account in Current Year	-
Interest on Retired SARs	-
Total SARs	-
Vested Cumulative Balance (excluding any payments)	905,521 1/1/2008
Less: Gross Payments Balance (cumulative)	(452,966)
Less: Current Year Distribution	(198,211) 3/15/2008
Vested Net Balance - End of Year	254,344
Unvested Balance	-
Net Balance - End of Year	254,344 3/15/2008

$((E) * (W) * 75\% + (Z) * (W))$   
 $- \text{Total Capital Gains Savings} * (W)$   
 $- (H) * 8\%$   
 $- 37.95\%$   
 $((F) * \text{Combined Tax Rate for State of Residence}) + ((D)+(G)) * 6\% * \text{Tax Rate}$

AZ

Previously Vested Distribution Calculation (if applicable)	
Total Gross Amount of Previous Year(s) Distributions	-
Vested Percent (weighted average of SARs held)	100.00% 1/1/2008
Less: Previous Paid Vested Distributions	-
Plus: Interest Credit on Balance of Unpaid Distributions	-
Distribution of Previously Vested Distribution	-

A 4.1  
9/10

Fritcher  
17/39

Jim Fritcher - Post 10/14/04 Statement  
Opus West Corporation  
SAR Plan  
12/31/2007

Summary of SARs & Vested/Unvested Balances as of: 1/1/2008 (excluding Current Year and Previous Year Payments)									
# SARs	Date Issued	% Total SARs	# Years Held	% Vested	Previous Year Total SAR Value	Value of SARs Retired in Current Year	Total Interest on Retired SAR Balance	Current Year Total SAR Value	Allocated Current Year SAR Value
3,000	1/1/1997	100.00%	11.00	100.00%	687,361	-	-	218,160	218,160
3,000		100.00%			687,361				
Total									905,521
									905,521
									905,521
									905,521
									905,521

Unpaid Distributions - Summary		As of:
Unpaid Distributions - Beginning Balance	-	12/31/2006
Plus: Unpaid Distribution Resulting from Current Year Distribution	-	(R) - (L)
Less: Current Year Payment	-	
- Additional vested increments of unpaid distributions from previous years	-	3/15/2008
Balance - End of Year	-	

Fritcher  
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A 4.1  
10/10

Opus 80/20 Plan for Officers and Non-Officers

The Opus 80/20 Incentive Plan has been discontinued as of 12/31/08. The attached statement reflects the value of your account as of 6/30/09 and is included in the aggregate amount submitted on the schedules to the U.S. Bankruptcy Court. If your termination date was after 6/30/09, the value of your account will be reduced by 50% of the unvested portion.

Notes 10/24/09

4.) What does 50%  
reduction mean?  
\* <sup>note</sup> not correct?

1.) Note should be added to  
the effect that per article  
5.3b of plan dated  
11/1/08 and issued  
3/11/09, ~~the~~ further  
it's 100% Vested  
("Rule of 75")

2.) Note that "Opus 80/20  
Plan for Officers" is  
issued by Opus  
Corporation and  
Opus, L.L.C. and  
makes no  
distinction between  
operating  
companies

3.) "Opus 80/20 Plan for  
Officers" allows (Friedel  
19/39)  
the rules apply  
to any successor  
companies (e.g.

A4.2  
2/4

**2008 Deferred Compensation Statement**

**Officer 80/20 Plan  
As of June 30, 2009**

Participant Name: Fritcher, James C.  
Company Name: Opus Core, LLC (Opus West)

Account Balance as of 12/31/2008	169,670.65
2008 Vested Interest (if applicable)	13,573.65
2008 Deferral (if applicable)	22,220.00
Total Account Balance	205,464.30
3/15/2009 Vested Payment	(34,698.92)
Vested Total Paid at Termination	-
Total Vested Paid Out	(34,698.92)
Vested Balance	70,698.56
2009 Interest (if applicable)	2,827.94
<b>Net Vested Balance</b>	<u>73,526.50</u>
Unvested Balance	100,066.82
Unvested Total @ 50% (if termed by 6/30/09)	-
1st Installment Paid at Termination (if applicable)	-
<b>Net Unvested Balance *</b>	<u>100,066.82</u> ✓

<b><u>Net Account Balance at 6/30/09</u></b>	
Vested	73,526.50
Unvested *	<u>100,066.82</u>
<b>Total Balance</b>	<u><u>173,593.32</u></u>

\*If termination date is after 6/30/2009, unvested balance should be reduced by 50% to arrive at actual current unvested balance.

Not a correct statement - See Plan rules of Separation, in particular Article/Section 5.3.(b.) w/ respect to Fritcher (Service (26) + Apr (54))

Fritcher  
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A4.2 3/4

**OPUS WEST CONSTRUCTION CORPORATION**  
**Long-Term Incentive Compensation**  
**Jim Fritcher**

Year Paid	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
<b>2003 Deferral</b>		23,615.50	23,615.50								
Interest @ 8%			1,889.24								
Subtotal			25,504.74								
2005 payment			0.00								
Balance			25,504.74	25,504.74							
Interest @ 8%				2,040.38							
Subtotal				27,545.12							
2006 payment				0.00							
Balance				27,545.12	27,545.12						
Interest @ 8%					2,203.61						
Subtotal					29,748.73						
2007 payment					0.00						
Balance					29,748.73	29,748.73					
Interest @ 8%						2,379.90					
Subtotal						32,128.63					
2008 payment						0.00					
Balance						32,128.63	32,128.63				
Interest @ 8%							2,570.29				
Subtotal							34,698.92				
2009 payment							(34,698.92)				
Balance							0.00				
<b>2004 Deferral</b>			20,760.00	20,760.00							
Interest @ 8%				1,660.80							
Subtotal				22,420.80							
2006 payment				0.00							
Balance				22,420.80	22,420.80						
Interest @ 8%					1,793.67						
Subtotal					24,214.47						
2007 payment					0.00						
Balance					24,214.47	24,214.47					
Interest @ 8%						1,937.16					
Subtotal						26,151.63					
2008 payment						0.00					
Balance						26,151.63	26,151.63				
Interest @ 8%							2,092.13				
Subtotal							28,243.76				
2009 payment							0.00				
Balance							28,243.76	28,243.76			
Interest @ 8%								2,259.50			
Subtotal								30,503.26			
2010 payment								(30,503.26)			
Balance								0.00			
<b>2005 Deferral</b>				30,646.88	30,646.88						
Interest @ 8%					2,451.75						
Subtotal					33,098.63						
2007 payment					0.00						
Balance					33,098.63	33,098.63					
Interest @ 8%						2,647.89					
Subtotal						35,746.52					
2008 payment						0.00					
Balance						35,746.52	35,746.52				
Interest @ 8%							2,859.72				
Subtotal							38,606.24				
2009 payment							0.00				
Balance							38,606.24	38,606.24			
Interest @ 8%								3,088.50			
Subtotal								41,694.74			
2010 payment								0.00			
Balance								41,694.74	41,694.74		
Interest @ 8%									3,335.58		
Subtotal									45,030.32		
2011 payment									(45,030.32)		
Balance									0.00		

Continued on next page

Fritcher  
2/39

A 4.2 4/4

**OPUS WEST CONSTRUCTION CORPORATION**  
**Long-Term Incentive Compensation**  
**Jim Fritcher**

Year Paid	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
<b>2006 Deferral</b>					36,868.75	36,868.75					
Interest @ 8%						2,949.50					
Subtotal						39,818.25					
2008 payment						0.00					
Balance						39,818.25	39,818.25				
Interest @ 8%							3,185.46				
Subtotal							43,003.71				
2009 payment							0.00				
Balance							43,003.71	43,003.71			
Interest @ 8%								3,440.30			
Subtotal								46,444.01			
2010 payment								0.00			
Balance								46,444.01	46,444.01		
Interest @ 8%									3,715.52		
Subtotal									50,159.53		
2011 payment									0.00		
Balance									50,159.53	50,159.53	
Interest @ 8%										4,012.76	
Subtotal										54,172.29	
2012 payment										(54,172.29)	
Balance										0.00	
<b>2007 Deferral</b>						35,825.63	35,825.63				
Interest @ 8%							2,866.05				
Subtotal							38,691.68				
2009 payment							0.00				
Balance							38,691.68	38,691.68			
Interest @ 8%								3,095.33			
Subtotal								41,787.01			
2010 payment								0.00			
Balance								41,787.01	41,787.01		
Interest @ 8%									3,342.96		
Subtotal									45,129.97		
2011 payment									0.00		
Balance									45,129.97	45,129.97	
Interest @ 8%										3,610.40	
Subtotal										48,740.37	
2012 payment										0.00	
Balance										48,740.37	48,740.37
Interest @ 8%											3,899.23
Subtotal											52,639.60
2013 payment											(52,639.60)
Balance											0.00
Balance forward	81,346.71	100,068.15	112,332.47	117,004.68	131,846.16	157,094.13	169,670.66	148,545.39	129,925.76	95,289.50	48,740.37
L.T. Additions	24,376.20	23,615.50	20,760.00	30,646.88	36,868.75	35,825.63					
Total Interest	6,507.75	8,005.45	8,986.59	9,360.37	10,547.70	12,567.53	13,573.65	11,883.63	10,394.06	7,623.16	3,899.23
Total Payment	(12,162.51)	(19,356.63)	(25,074.38)	(25,165.77)	(22,168.48)	(35,816.63)	(34,698.92)	(30,503.26)	(45,030.32)	(54,172.29)	(52,639.60)
L.T. Balance	100,068.15	112,332.47	117,004.68	131,846.16	157,094.13	169,670.66	148,545.39	129,925.76	95,289.50	48,740.37	0.00
Vested Balance	38,486.43	43,823.43	46,518.75	50,347.49	60,685.60	63,656.16	70,698.57	77,937.01	67,205.61	38,992.31	(0.01)
Medicare Taxable	17,570.90	21,614.71	24,263.82	25,273.03	28,478.77	33,932.34	36,648.87	32,085.81	28,063.98	20,582.53	10,527.93

Vested 70,698.57  
Paid at termination 0.00  
2009 interest 2,827.94  
Vested balance 73,526.51

Unvested 77,846.82  
2008 deferrals 22,220.00  
Unvested balance 100,066.82

50% 0.00  
1st installment 0.00  
Unvested balance 100,066.82

*Fritcher*  
2/2/39

1/2

**2008 Incentive**

Attached is the final calculation of your 2008 incentive incorporating final company results for 2008. Since the company recorded a loss for 2008, the return on equity component (if applicable) is zero. In most cases, employees received approximately 50% of the 2008 incentive on March 13, 2009.

Fritcher  
2/3/09

A4-3  
2/2

MEMORANDUM

TO: Vickie Sixta  
Cathy Hart

FROM: John Greer

RE: Jim Fritcher

DATE: June 5, 2009

Following is the incentive compensation applicable for 2008:

		<u>Earned</u>
25% - Opus West Corporation Return on Equity	$0\% / 20\% = 0\% \times \$34,375$	\$ -
50% - Opus West Construction Corporation Results	$\$24,881,480 / \$21,342,155 = 116.6\% \times \$68,750$	80,162.50
25% - Individual Performance	$\$34,375 \times 90\%$	30,937.50
<b>TOTAL EARNED</b>		111,100.00
Cash Portion @ 50%		<u>50%</u>
<b>TOTAL PAID ON 3/13/09 BEFORE LONG TERM DEDUCTION</b>		<u>\$ 55,550.00</u>
Balance Due <u>before Long Term Deduction</u>		a <u>\$ 55,550.00</u>
Total Long Term Portion		22,220.00
Balance Due <u>after Long Term Deduction</u>		a - b 44,440.00
Payable to Sara Fritcher		(12,780.00) ✓
Payable to Jim Fritcher		<u>\$ 31,660.00</u> ✓

	<u>1st qtr</u>	<u>2nd qtr</u>	<u>3rd qtr</u>	<u>4th qtr</u>	<u>Total</u>
Total 2008 Long Term				11,110.00	= \$ 22,220.00
				11,110.00 b	
				22,220.00	

cc: Jim Fritcher

Fritcher  
24/39



**From:** Devlin, Brenda  
**Sent:** Friday, August 15, 2008 10:29 AM  
**To:** Fritcher, Jim  
**Subject:** FW: Opus Severance guidelines for job elim and leader notification guide

A-5

1/3

**Attachments:** guidelines approved March 2008.doc; Leader Guide Opus W Phx 082808.doc  
Here you go.  
B

**Brenda Devlin, MBA, SPHR**  
Director - Employee Relations & Selection  
Opus Corporation  
10350 Bren Road West  
Minnetonka, MN 55343  
Ph: 952-351-6065  
Fax: 952-945-2065  
[brenda.devlin@opuscorp.com](mailto:brenda.devlin@opuscorp.com)

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**From:** Erickson, Lisa  
**Sent:** Friday, August 15, 2008 12:21 PM  
**To:** Devlin, Brenda  
**Subject:** FW: Opus Severance guidelines for job elim and leader notification guide

Hi – attached are the approved guidelines. I am also including the updated Leaders guide with the notification date changed to August 28. I will forward this to Jamie Godwin as well.

Lisa Erickson, SPHR  
Temporary HR Project Manager  
Opus Corporation  
10350 Bren Road West  
Minnetonka, MN 55343  
Phone: 952-351-6121  
Email: [Lisa.Erickson@opuscorp.com](mailto:Lisa.Erickson@opuscorp.com)

---

**From:** Erickson, Lisa  
**Sent:** Monday, August 04, 2008 5:20 PM  
**To:** Devlin, Brenda; Godwin, Jamie  
**Subject:** RE: Guidance

Hi Jamie – absolutely, I'd be happy to meet with you – I am here at corporate all day tomorrow or until around 3:30 on Wednesday. I am on the first floor near Brenda Devlin's office. You can reach me at ext. 6121 and I'd be happy to walk you through the attached Leaders Notification guide. In fact I am working on the separation documents right now and will be sending them to Janet shortly.

Lisa Erickson, SPHR  
Temporary HR Project Manager  
Opus Corporation  
10350 Bren Road West  
Minnetonka, MN 55343  
Phone: 952-351-6121  
Email: [Lisa.Erickson@opuscorp.com](mailto:Lisa.Erickson@opuscorp.com)

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**From:** Devlin, Brenda  
**Sent:** Monday, August 04, 2008 5:15 PM  
**To:** Godwin, Jamie; Erickson, Lisa

Fritcher  
25/39

**Subject:** Re: Guidance

Hi Lisa

Could you work with Jamie to help him out in my absence?

Thanks,  
B

A-5

2/3

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**From:** Godwin, Jamie

**To:** Devlin, Brenda

**Cc:** Godwin, Jamie

**Sent:** Mon Aug 04 12:43:53 2008

**Subject:** Guidance

Brenda,

We are facing the same issue as many other offices in the company and I will be making a series of layoffs beginning at the end of this month. I would like to get some advice on how to handle these from a logistics and "what to say" standpoint. I will be in Minneapolis on Tuesday and Wednesday for meetings. If you have a few minutes I would like to discuss, or we could schedule something for later. Please let me know.

Thanks,  
Jamie

**James Godwin**  
Senior Director of Construction – Arizona  
jamie.godwin@opuswest.com

**Opus West Construction, Corp.**  
2555 E. Camelback Rd, Suite 800  
Phoenix, AZ 85016

**Phone:** 602.468.7012  
**Fax:** 602.468.7010

**www.opuswest.com**

Fritcher  
26/39

Severance Guidelines	
Job Title/Level	Opus Severance Guidelines for Job Eliminations due to lack of work or restructuring (the job titles/levels listed is not an all-inclusive list of all Opus positions. These are just some examples)
<b>Level 6</b> CEO/Presidents	<ul style="list-style-type: none"> <li>Min: 1 week/completed year of service or 26 weeks (whichever is greater)</li> <li>Max: 52 weeks</li> <li>COBRA lump sum**</li> <li>Outplacement Services (\$17,500-unlimited services)</li> <li>Incentives/Deferred Comp payments</li> </ul>
<b>Level 5</b> SVPs/VPs/CFOs	<ul style="list-style-type: none"> <li>Min: 1 week/year of service or 24 weeks (whichever is greater)</li> <li>Max: 52 weeks</li> <li>COBRA lump sum**</li> <li>Outplacement (\$10,000-12-month program)</li> <li>Incentives/Deferred Comp payments</li> </ul>
<b>Level 4</b> Directors Senior Project Mgrs Field Sups	<ul style="list-style-type: none"> <li>Min: 1 week/completed year of service or 12 weeks (whichever is greater)</li> <li>Max: 26 weeks</li> <li>COBRA lump sum**</li> <li>Outplacement (\$5,500-six-month program)</li> <li>Incentives (if eligible and based on applicable incentive program guidelines)</li> </ul>
<b>Level 3</b> Project Managers Property Managers Managers Sr. Specialists	<ul style="list-style-type: none"> <li>Min: 1 week/completed year of service or 8 weeks (whichever is greater)</li> <li>Max: 26 weeks</li> <li>COBRA lump sum</li> <li>Outplacement (\$5,500-six-month program)</li> <li>Incentives (if eligible and based on applicable incentive program guidelines)</li> </ul>
<b>Level 2</b> Architects/Engineers Supervisors Construction Sups Accountants Associate PMs System analysts	<ul style="list-style-type: none"> <li>Min: 1 week/completed year of service or 4 weeks (whichever is greater)</li> <li>Max: 26 weeks</li> <li>COBRA lump sum**</li> <li>Outplacement (\$3,750-4-month program)</li> </ul>
<b>Level 1</b> Entry-level exempt staff Non-exempt admin/ clerical staff	<ul style="list-style-type: none"> <li>Min: 1 week/completed year of service or 2 weeks (whichever is greater)</li> <li>Max: 26 weeks</li> <li>COBRA lump sum**</li> <li>Outplacement (\$2,750-exempt - 2-month program) (\$1,250-non-exempt - 2-day program)</li> <li>These severance guidelines do not include Hourly construction field (union and non-union) field employees. These guidelines are only for certain field (i.e., assistant superintendents on up) as well as certain non-field employees.</li> </ul>

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2/1/39

\*Note: Severance may be available for part-time, benefits eligible employees and would be paid based on their FTE status.

\*\*These guidelines are not intended to be a contract or an offer of a contract. Opus reserves the right to change or withdraw these guidelines at any time with or without notice.

\*\*\*The COBRA lump sum is only available if the impacted employee is active on Opus' medical benefit plan at time of termination. The lump sum amount is only based on employee's current medical benefit election COBRA rate. Does not include lump sum for dental, life insurance, etc. Employee would still need to sign up for and pay for COBRA, this lump sum is only intended to assist with COBRA medical benefit cost, it does not automatically extend coverage. If impacted employee does not elect COBRA, he/she does not have to return the COBRA lump sum payment.

**MEMORANDUM**

DATE: July 20, 1999  
TO: Jim Fritcher  
FROM: Cheryl Lavelle CL  
Human Resources  
RE: Opus Group of Companies Service Date

---

Due to a recent change in Opus policy regarding service dates for longevity awards, I am now able to include the time you worked for Opus in 1978 through 1988 & 1989 through 1993 in the calculation of your service date. Therefore, your service date has been changed to 3/11/83!

You should have received a total of 14 coins during your previous employment. You have not received any from Opus West Corporation since your rehire date of 6/15/97. Therefore, enclosed are your 15<sup>th</sup> & 16<sup>th</sup> year service award coins. Your 15-year ring has been ordered and should be arriving in the very near future.

Congratulations!

---

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A-6.1

6/26/09

James Fritcher:

Actual time "in service" @ Opus Group  
(See 7/20/99 memo from HR)

6/12/78

3/11/83 (adjusted service date for record)

keeping = total ~ 4 years 8 mo, 29 days

so 7/31/09

- 3/11/83

26 years, 4 mo, 20 Days

Age = 54 years + on 7/31/09

76 years, 4 mo 20 days

so rule of 75 is exceeded

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THE OPUS GROUP

CHITECTS

NTRACTORS

DEVELOPERS

OPUS CORPORATION  
A member of The Opus Group

10350 Bren Road West

Minnetonka, MN 55343

Phone: 952-656-4444

Fax: 952-656-4529

www.opuscorp.com

**To:** James C. Fritcher  
**From:** Cathy Hart  
**CC:** Christine Manno  
Annette Veschio  
**Date:** March 11, 2009  
**Re:** Opus Deferred Compensation Plans

As a current participant in the Opus 80/20 Plan for Officers and Opus West Corporation SAR plan, you are receiving a copy of your new plan documents. Please make note the following:

1) The Opus 80/20 Plan for Officers has been discontinued as of 12/31/08. Existing balances will be paid in subsequent years, per the terms of the plan.

2) The plan documents have been reviewed and updated, incorporating the necessary language required for compliance with 409A of the Internal Revenue Code. Section 409A was recently implemented and regulates the tax treatment of nonqualified deferred compensation plans like our 80/20 plan. While the major components of the programs remain unchanged, a few updates were required and are summarized below.

- Plan document format – Standardized to include all necessary provisions required for compliance under 409A, such as: Administration, Amendment and Termination, and Miscellaneous articles.
- Plan compliant time and form of payment – Clarifies the timing of payments for Retirement, Death, Disability, and Separation from Service for all other reasons found in Article V:
  - Distribution of Accounts (Officer 80/20)
  - Payment of SARs (SAR Plan)

I am pleased to inform you that you will soon be able to view your 80/20 account balance online, as we have partnered with Schwab to provide you this service. Information on how to access your deferred balances will be sent to you as soon as this service has been fully implemented.

Enclosed are Beneficiary Designation forms for these plans. Please sign and return your completed forms **no later than March 27, 2009** in the enclosed self-addressed envelope. If you have questions, feel free to contact Annette Veschio at ext. 4421 or Christine Manno at ext. 4516 for assistance.

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**OPUS 80/20 PLAN FOR OFFICERS**

(As Amended and Restated Effective January 1, 2008)

**ARTICLE I**

**GENERAL**

**Sec. 1.1 Name of Plan.** The name of this plan is "Opus 80/20 Plan for Officers" (referred to hereinafter as the "Plan").

**Sec. 1.2 Purpose.** The Plan has been established to provide additional future compensation to certain highly compensated employees through deferral of certain Incentive Compensation.

**Sec. 1.3 Effective Date.** The "Effective Date" of the Plan, the date as of which the Plan was established, is January 1, 1997. The Plan was amended and restated effective January 1, 2008 to make certain changes to comply with the requirements of section 409A of the Internal Revenue Code (the "Code") and the regulations thereunder.

**Sec. 1.4 Companies.** The "Companies" are Opus Corporation, a Minnesota corporation, and Opus, L.L.C., a Minnesota limited liability company. Each is sometimes referred to as the "Company".

**Sec. 1.5 Construction and Applicable Law.** The Plan is intended to be an unfunded plan maintained primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees, within the meaning of Section 201(2), 301(a)(3) and 401(a)(1) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). The Plan is also intended to be maintained in compliance with the requirements of Code section 409A and the regulations thereunder applicable to "nonqualified deferred compensation plans." The Plan shall be administered and construed consistent with said intent. This Plan also shall be governed and construed in accordance with the laws of the State of Minnesota as applied to contracts executed and to be wholly performed within said state to the extent that such laws are not preempted by the laws of the United States of America.

**Sec. 1.6 Savings Clause Relating to Compliance with Code Section 409A.** To the extent any provision of this Plan does not satisfy the requirements of Code section 409A or any regulations or other guidance issued by the Treasury Department or the Internal Revenue Service under Code section 409A, such provision will be applied in a manner consistent with such requirements, regulations or guidance, notwithstanding any provision of the Plan to the contrary, and to the extent not prohibited by Code section 409A, the provisions of the Plan and the rights of participants and Beneficiaries hereunder shall be deemed to have been modified accordingly.

**ARTICLE II**

**DEFINITIONS**

**Sec. 2.1 Account.** An "Account" shall be established for each eligible Participant reflecting the deferred Incentive Compensation owed to the Participant or the Participant's Beneficiary under the

*AD*  
*A7-1*  
*PP 1-11*  
*NOTE -*  
*This was not*  
*issued to*  
*officers until*  
*3/11/09!*

*Fritcher*  
*3/13/09*

terms of this Plan. The Companies will maintain sub-accounts for a Participant to reflect each Annual Award for each Plan Year and interest on that amount.

**Sec. 2.2 Annual Award.** "Annual Award" means the portion of Incentive Compensation deferred under the Plan for a given Plan Year beginning prior to January 1, 2009. No amounts will be deferred as an Annual Award for Plan Years beginning on or after January 1, 2009

**Sec. 2.3 Annual Award Date.** "Annual Award Date" for any Plan Year is December 31 of that Plan Year.

**Sec. 2.4 Beneficiary.** "Beneficiary" means the person or persons designated as such pursuant to the provisions of Sec. 5.4.

**Sec. 2.5 Disability.** "Disabled" means that the Participant is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than 12 months.

**Sec. 2.6 Incentive Compensation.** Effective for Plan Years beginning prior to January 1, 2009, "Incentive Compensation" means the discretionary or nondiscretionary payments which the Participant is awarded or to which the Participant is entitled under the terms of an incentive or bonus plan or program sponsored by a Company (or a subsidiary or affiliate of a Company) for a services performed in a Plan Year. Incentive Compensation does not include safety awards.

**Sec. 2.7 Participant.** A "Participant" is an individual described as such in Article III.

**Sec. 2.8 Plan Year.** A "Plan Year" is the 12-consecutive-month period commencing on each January 1 and ending on the following December 31.

**Sec. 2.9 Qualified Employee.** "Qualified Employee" for a Plan Year means any officer employee of the Companies (or a subsidiary or affiliate of the Companies) who is designated by the Chief Executive Officer of his/her employer or by the President of a Company as eligible to participate in this Plan for the Plan Year. Different employees may be designated as Qualified Employees each Plan Year and designation as a Qualified Employee for a particular year does not guarantee that the individual will be a Qualified Employee in subsequent Plan Years.

**Sec. 2.10 Retirement.** A "Retirement" is a termination of employment from a Company, subsidiary or affiliate on or after the Participant has attained the age of 60 years.

**Sec. 2.11 Successor Employer.** A "Successor Employer" is any entity that succeeds to the business of a Company through merger, consolidation, acquisition of all or substantially all of its assets, or any other means and which elects before or within a reasonable time after such succession, by appropriate action evidenced in writing, to continue the Plan.

**Sec. 2.12 Separation from Service.** For purposes of this Plan, a Participant's "Separation from Service" occurs upon death, retirement or other termination of employment that qualifies as a "separation from service" under Code section 409A and the applicable regulations thereunder as in effect from time to time. A Participant's termination of employment will be a Separation from Service if the Participant and the Company reasonably anticipate that the Participant will perform no future services for

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the Company (or any subsidiary or affiliate of the Company), or that the level of services the Participant will perform will permanently decrease to twenty percent (20%) or less of the average level of services over the immediately preceding thirty-six (36) month period (or the full period of services if the individual has been providing services for less than thirty-six (36) months).

In the event of a leave of absence, a Separation from Service will be deemed to have occurred on the date that is six (6) months following the start of such leave, provided that, if the individual has a statutory or contractual right to return to active employment that extends beyond the end of such six (6) month period, the Separation from Service will be deemed to have occurred upon the expiration of such statutory or contractual right.

**Sec. 2.13 Threshold Amount.** The "Threshold Amount" for the Plan Years beginning January 1, 2004 through January 1, 2008 is \$50,000. Prior to January 1, 2004, the Threshold Amount was \$10,000.

### ARTICLE III

#### PARTICIPATION

**Sec. 3.1 Eligibility for Participation.** An employee of a Company (or a subsidiary or affiliate of a Company) shall become a Participant in the Plan on the earliest date (on or after the Effective Date) on which he or she is a Qualified Employee.

**Sec. 3.2 Duration of Participation.** A Participant shall continue to be a Participant until the earliest of:

- (a) The date the Participant's Separation from Service occurs.
- (b) The date on which the Participant ceases to meet the requirements for being a Qualified Employee pursuant to Sec. 2.9.
- (c) The date on which the Participant fails to meet the requirements of any regulations or rulings which may be issued by the Department of Labor that define the phrase "select group of management or highly compensated employees" under ERISA.

No deferrals under Sec. 4.1 shall be made from any Incentive Compensation that is payable after the earliest of the dates above. An individual shall continue to be a Participant for purposes of the provisions of the Plan other than Sec. 4.1 until the date his or her entire Account has been distributed.

**Sec. 3.3 No Guarantee of Employment.** Participation in the Plan does not constitute a guarantee or contract of employment with the Companies (or any subsidiaries or affiliates of a Company). Such participation shall in no way interfere with any rights the Companies (or any subsidiaries or affiliates of a Company) would have in the absence of such participation to determine the duration of the Participant's employment with the Companies (or any subsidiaries or affiliates of a Company).

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## ARTICLE IV

### DEFERRED COMPENSATION AND ACCOUNTS

**Sec. 4.1 Deferral of Incentive Compensation.** For each Plan Year, if the total Incentive Compensation payable to a Participant for services in that Plan Year (whenever paid) is less than or equal to the Threshold Amount for that Plan Year, the complete Incentive Compensation will be paid to the Participant in cash on or before the March 15 following the end of the applicable Plan Year. If the total Incentive Compensation payable to a Participant for services in that Plan Year is greater than the Threshold Amount for that Plan Year:

- (a) An amount will be withheld from each payment of Incentive Compensation (beginning with the payment where the Participant's total Incentive Compensation for the Plan Year exceeds the Threshold Amount for that Plan Year), and credited to the Participant's Account, equal to the lesser of the following:
  - (i) An amount equal to (x) twenty percent (20%) of the total Incentive Compensation earned by the Participant for the Plan Year as of the date of the payment (determined by counting the current payment) minus (y) all amounts previously credited to the Participant's Account for the Plan Year under this Sec. 4.1.
  - (ii) One-hundred percent (100%) of the payment.
- (b) Following the application of (a) above, any remaining amounts of a payment of Incentive Compensation will be paid to the Participant in cash on or before the March 15 following the end of the applicable Plan Year.

No deferrals shall be made under this Plan for any compensation payable for services performed on or after January 1, 2009.

**Sec. 4.2 Allocation to Accounts.** The deferred compensation credited to an Account under the Plan by a Company on behalf of a Participant for a Plan Year shall be allocated to the Account of the Participant as of the Annual Award Date for that Plan Year. The amounts credited to an Account under Sec. 4.3 during the Plan Year of the Participant's Separation from Service are allocated to the Account as of the last day of the calendar quarter immediately preceding the Separation from Service (March 31, June 30, September 30 or December 31).

**Sec. 4.3 Valuation of Accounts.** Each Account is valued on the Annual Award Date, with the value of the Account adjusted to reflect the effect of additional credits under Sec. 4.1 and any credit for interest with respect to that Account, less any distributions under the Plan with respect to said Account, since the last date the value of the Account was determined. Each Account is also valued as of the last day of the calendar quarter immediately preceding a Participant's Separation from Service. Prior to payment under Article V, interest shall be credited to each Annual Award on December 31 of each Plan Year following the Plan Year the Annual Award was allocated to the Participant's Account. In addition, prior to a distribution under Sec. 5.2 or 5.4, interest will also be credited to Annual Awards from the January 1 immediately prior to the Separation from Service to the end of the calendar quarter immediately preceding the Separation from Service (March 31, June 30, September 30 or December 31). As noted in Exhibit A, for Annual Awards received for Plan Years beginning prior to January 1, 2008,

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the annual rate of interest is eight percent (8%). For Annual Awards for the Plan Year beginning January 1, 2008, the annual rate of interest is six percent (6%).

Amounts that become vested upon Separation from Service due to job elimination or Company layoff as described in Sec. 5.3 shall be credited with interest on December 31 of each Plan Year until fully distributed. For the Plan Year beginning January 1, 2009, the annual rate of interest is three percent (3%). The annual rate of interest for Plan Years after 2009 for these undistributed balances will be determined, in writing, by the Companies' Human Resources Committee prior to the start of the Plan Year and listed on Exhibit B to this Plan. If action is not taken prior to the start of the Plan Year, the annual rate of interest in effect for the previous Plan Year will remain in effect.

**Sec. 4.4 Unsecured Obligations.** A Participant's credits in his or her Account shall be an unsecured obligation of the respective Company (or subsidiary or affiliate) to pay the Participant (or the Participant's Beneficiary, in the event of the Participant's death) the actual amount of the credits at the time designated in Article V. Each Participant or Beneficiary is only a general creditor of the Company (or subsidiary or affiliate) with respect to his or her Account. Accounts are maintained for recordkeeping purposes only. Notwithstanding the foregoing, obligations of the Companies (or their subsidiaries) to pay benefits under this Plan may be satisfied by distributions from a grantor trust created by the Companies in their sole discretion for such purpose. If the Companies obtain an insurance contract in connection with their obligations under this Plan, each Participant shall cooperate with the Company and shall execute any documents reasonably required by the Company to obtain such coverage.

## ARTICLE V

### DISTRIBUTION OF ACCOUNTS

**Sec. 5.1 Scheduled Distributions.** Except as otherwise provided in this Article V, an Annual Award (as adjusted for interest under Sec. 4.3) will be paid to the Participant in cash on or before the March 15th of the year following the Annual Award Date upon which the Annual Award becomes fully (100%) vested (as determined under Sec. 5.3). Payment may not be made prior to the time the Annual Award becomes 100% vested, except as provided in Sec. 5.2.

**Sec. 5.2 Distribution on Separation from Service.** If the Participant has a Separation from Service (other than due to death) prior to the due date for the payment of any deferred Annual Award under Sec. 5.1, the vested portion of the Participant's Account (as determined under Sec. 5.3), excluding any amounts that become 50% vested solely due to Separation from Service due to job elimination or Company layoff, if any, will be paid to the Participant in cash within 90 days following the Separation from Service. Any amounts that become 50% vested upon Separation from Service solely due to job elimination or Company layoff will be paid to the Participant in five (5) annual cash installments. The first annual installment will equal one-fifth ( $1/5^{\text{th}}$ ) of the Participant's Account balances which became 50% vested solely due to Separation from Service due to job elimination or Company layoff and be paid in cash within 90 days following the Separation from Service. Each such installment thereafter should equal a fraction of the undistributed balance, plus interest as outlined in Sec. 4.3, equal to 1 over the number of installments remaining to be paid (that is,  $1/4$ ,  $1/3$ ,  $1/2$ , etc.). The second through fifth installments will be paid on the anniversary of the first payment.

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**Sec. 5.3 Vesting of Participant Accounts.** A Participant will become 100% vested in his/her Account upon the following events:

- (a) death prior to Separation from Service,
- (b) Separation from Service from a Company, subsidiary or affiliate when the sum of the Participant's service with the Company (and its subsidiaries or affiliates, while they were subsidiaries or affiliates), measured from the Participant's most recent date of hire, and the Participant's attained age equals or exceeds 75,
- (c) Disability, or
- (d) Retirement.

Prior to an event described above, a Participant will have a vested interest in an Annual Award equal to a percentage, with such percentage determined under the following table:

<u>Elapsed Time from Annual Award Date</u>	<u>Vested Percentage</u>
Less than 1 year	0%
1 year, but less than 2	20%
2 years, but less than 3	40%
3 years, but less than 4	60%
4 years, but less than 5	80%
5 or more years	100%

Upon a Separation from Service due to job elimination or Company layoff, as determined by the applicable Company in its sole discretion, a Participant will also become vested in an additional amount equal to 50% of the previously unvested portion of each unpaid Annual Award. For example, if a Participant experiences a Separation from Service due to job elimination when the Participant is 60% vested in an Annual Award, the Participant will become vested in an additional 20% of that Annual Award, as 20% is one half of 40% (the previously unvested portion of the Annual Award). As such, the Participant will be vested in 80% of that Annual Award.

**Sec. 5.4 Distribution on Death.** Upon the death of a Participant, the vested balance of the Participant's Account, plus interest as calculated under Sec. 4.3, will be paid to the Participant's Beneficiary. Such payment shall be made in a single sum cash payment to the Participant's Beneficiary within 90 days following the Participant's death, or if later, by the December 31 of the year in which the Participant's death occurred.

**Sec. 5.5 Beneficiary Designation.** Each Participant shall have the right, at any time, to designate any person or persons as Beneficiary or Beneficiaries to whom payments under this Plan shall be made in the event of the Participant's death while employed or prior to complete distribution of the amounts credited to the Participant's Account. Each Participant shall have the right to change his or her Beneficiary designation at any time. Each Beneficiary designation shall become effective only when filed in writing with Opus Corporation during the Participant's life on a form prescribed by Opus Corporation. If a Participant fails to designate a Beneficiary as provided above, or if all designated Beneficiaries predecease the Participant, then the Participant's Beneficiary shall be the Participant's surviving legal spouse, or if none, the Participant's estate.

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**Sec. 5.6 Withholding and Taxes.** The benefits payable under this Plan shall be subject to the deduction of any federal, state, or local income taxes or other taxes which are required to be withheld from such payments by applicable laws and regulations. Any Social Security (FICA) taxes which must be withheld prior to the distribution of benefits to the Participant shall be withheld from the Incentive Compensation paid to the Participant, or from the Participant's other compensation, as determined by the applicable payor, or if the applicable payor determines that no such withholding is possible, may be deducted from the amounts credited to the Participant's Account under this Plan. The Companies provide no assurances or guarantees regarding the tax treatment of amounts deferred under this Plan. Each Participant is solely responsible for any applicable income, excise or other taxes, interest or penalties (including any tax under Code Section 409A or 4999).

**Sec. 5.7 Modification of Distributions.** Notwithstanding anything to the contrary in the foregoing sections of this Article V, if the Companies determine, based on advice of legal counsel or a final determination by the Internal Revenue Service or a court of competent jurisdiction, that a Participant or Beneficiary may be required to recognize a Plan benefit immediately or retroactively for income tax purposes pursuant to Code Section 409A and the regulations thereunder, the Companies may in their sole discretion take either of the following actions:

- (a) If permitted by Code Section 409A and the applicable regulations thereunder, distribute the affected benefit to the extent of the taxable income recognized in a single lump sum as soon as administratively feasible. Upon such distribution, the Participant or Beneficiary shall cease to have any entitlement hereunder to such benefit or to future investment earnings that would have otherwise been allocated to such benefit.
- (b) To the extent permitted by Code Section 409A, take written action modifying the terms of the Plan (retroactively, if necessary) in a manner that will eliminate the failure to comply with the requirements of Code Section 409A and the regulations thereunder while at the same time carrying out the original intent of the Plan to the extent possible.

## ARTICLE VI

### ADMINISTRATION

**Sec. 6.1 Administration.** The Companies shall administer the Plan, shall establish, adopt, or revise such rules and regulations as the Companies may deem necessary or advisable for the administration of the Plan, and shall have discretionary authority to interpret the provisions of the Plan. The interpretations of the Companies shall be conclusive.

**Sec. 6.2 Claims Procedure.** If a Participant or Beneficiary does not feel as if he/she has received full payment of the benefit due to such person under the Plan, or if a Participant or Beneficiary feels that an error has been made with respect to his/her Account, the Participant or Beneficiary may make a claim for Plan benefits within the time and in the manner described herein. Such claim shall be made within 60 days after the claim arises by filing a written request with the Company. The claim shall be determined by the Company within 90 days after the receipt of the written claim (unless the Company extends the period for up to an additional 90 days).

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- (a) Notice of the Company's decision shall be communicated to the claimant in writing. If the claim is denied, the notice shall include the specific reasons for the denial (including reference to pertinent Plan provisions), a description of any additional material or information necessary for the Company to reconsider the claim, the reasons for any of such additional material or information, and an explanation of the review procedure.
- (b) The claimant or a duly authorized representative may, within 60 days after receiving such written notice, request the Company to review its decision. The Company may afford the claimant a hearing and shall afford the claimant or the claimant's representative the opportunity to review all pertinent documents and submit issues and comments orally or in writing. The Company shall render a review decision in writing within 60 days after receipt of request for review (unless the Company extends the review period for up to an additional 60 days). The review proceeding shall be conducted in accordance with the rules and regulations adopted from time to time by the Company.

## ARTICLE VII

### AMENDMENT AND TERMINATION

**Sec. 7.1 Amendment.** The Plan may be amended in whole or in part at any time for any reason by action of the Board of Directors of the Company (or with respect to the annual rate of interest under Exhibits A and B, by the Companies' Human Resources Committee). No amendment shall eliminate the right of the Participant to receive the balance of his or her vested Account determined on the date the amendment is adopted (except to the extent the Company reasonably determines is necessary to comply with legal requirements). An amendment may modify or eliminate the deferrals under Sec. 4.1 and/or the interest earnings under Sec. 4.3 to be allocated to the Participant's Account thereafter to the extent permitted by Code section 409A and the regulations thereunder.

**Sec. 7.2 Termination of Plan.** The Company, by action of its Board of Directors, may terminate the Plan at any time. After such termination, no individual shall become a Participant, and no further amounts shall be credited pursuant to Sec. 4.1 to Accounts of Participants. Upon any termination of this Plan, the Plan shall continue in effect for the purpose of distributing benefits that had accrued prior to the termination pursuant to the provisions hereof as if the termination had not occurred. However, the Company retains the discretion to cause an earlier distribution of Plan benefits to Participants following a termination in accordance with Treas. Reg. section 1.409A-3(j)(4)(ix) or any successor regulation.

## ARTICLE VIII

### MISCELLANEOUS

**Sec. 8.1 Benefits May Not Be Assigned or Alienated.** Neither a Participant nor any Beneficiary shall have the right to sell, assign, transfer, encumber or otherwise convey any right to receive any payment hereunder. No part of the amounts payable hereunder shall be subject to seizure or sequestration for the payment of any debts or judgments owed by a Participant or any other person (other than the Companies). However, the Companies may offset the obligations to the Participant or the Participant's Beneficiary hereunder by any amounts the Participant owes to the Company (or an

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affiliate), provided that such amounts owed by the Participant are not related in any way to the benefits payable under this Plan and were not incurred in anticipation of the benefits to which the Participant may become entitled hereunder. In addition, to the extent required by ERISA, the Plan will comply with any "qualified domestic relations order" which satisfies the applicable requirements of ERISA and Code section 409A and the regulations thereunder and which assigns part or all of the Participant's benefit under this Plan to the Participant's former spouse or dependents.

**Sec. 8.2 Incompetency.** Every person receiving or claiming benefits under this Plan shall be conclusively presumed to be mentally competent until the date on which the Company receives a written notice in a form and manner acceptable to the Company that such person is incompetent and that a guardian, conservator or other person legally vested with the care of his or her estate has been appointed. In such event, the Company may direct payments of benefits to such guardian, conservator or other person legally vested with the care of the person's estate and any such payments so made shall be a complete discharge of the Company to the extent so made.

**Sec. 8.3 Notices.** Notices required by this Plan to be given to the Company or a Participant shall be in writing and shall be considered to have been duly given or served if personally delivered, or sent by first class, certified or registered mail. In addition, the Company may provide notices to Participants and/or Beneficiaries electronically in such manner as the Company determines is reasonably assured to be delivered to the Participant or Beneficiary.

**Sec. 8.4 Severability.** The invalidity or partial invalidity of any portion of this Plan shall not invalidate the remainder thereof, and said remainder shall remain in full force and effect.

**Sec. 8.5 Headings.** Headings at the beginning of articles and sections hereof are for convenience of reference, shall not be considered a part of the text of the Plan, and shall not influence its construction.

**Sec. 8.6 Capitalized Definitions.** Capitalized terms used in the Plan shall have their meaning as defined in the Plan unless the context clearly indicates to the contrary.

**Sec. 8.7 Gender.** Any references to the masculine gender include the feminine and vice versa.

**Sec. 8.8 Use of Compounds of Word "Here".** Use of the words "hereof", "herein", "hereunder", or similar compounds of the word "here" shall mean and refer to the entire Plan unless the context clearly indicates to the contrary.

**Sec. 8.9 Construed as a Whole.** The provisions of the Plan shall be construed as a whole in such manner as to carry out the provisions hereof and shall not be construed separately without relation to the context.

J. Fritcher  
39/39