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| <b>UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS</b>   |   | <b>PROOF OF CLAIM</b>  |
| <b>Name of Debtor: (Check Only One):</b><br><input type="checkbox"/> Opus West Corporation<br><input checked="" type="checkbox"/> Opus West Construction Corporation<br><input type="checkbox"/> O.W. Commercial, Inc.<br><input type="checkbox"/> Opus West LP<br><input type="checkbox"/> Opus West Partners, Inc.   |   | <b>Case Number:</b><br><br><div style="font-size: 24pt; font-family: cursive;">09-34360-11</div>   |
| 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.   |   |  |
| <b>Name of Creditor (the person or other entity to whom the debtor owes money or property):</b><br><br><div style="font-size: 18pt; font-family: cursive;">Classic Masonry + Concrete, Inc.<br/>19407 Park Row, Suite 104<br/>Houston, TX 77084</div>  |   | <input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim.<br><br><b>Court Claim Number:</b><br>(If known)<br><br><b>Filed on:</b>   |
| <b>Name and address where notices should be sent:</b> <span style="float: right;">RECEIVED</span><br><div style="font-size: 18pt; font-family: cursive;">PO Box 218942<br/>Houston, TX 77218</div>   |   | <input 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.<br><br><input type="checkbox"/> Check this box if you are the debtor or trustee in this case.  |
| <b>Telephone number:</b> <span style="float: right;">NOV 06 2009</span><br><b>Email Address:</b> <span style="float: right;">BMC GROUP</span><br><div style="font-size: 18pt; font-family: cursive;">281-351-8869<br/>RUTH@CLASSICMASONRY.COM</div>  |   |  |
| <b>Name and address where payment should be sent (if different from above):</b><br><br><b>Telephone number:</b>  |   |  |
| <b>1. Amount of Claim as of Date Case Filed:</b> \$ <u>7,750.00</u><br>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.<br>If all or part of your claim is entitled to priority, complete item 5.<br><input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.  |   | <b>5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.</b><br><br>Specify the priority of the claim.<br><input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).<br><input type="checkbox"/> Wages, salaries, or commissions (up to \$10,950) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. §507 (a)(4).<br><input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. §507 (a)(5).<br><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).<br><input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. §507 (a)(8).<br><input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. §507 (a)( ).<br><br><b>Amount entitled to priority:</b><br><br><div style="text-align: center;">\$</div> |
| <b>2. Basis for Claim:</b> <u>services performed &amp; goods sold</u><br>(See instruction #2 on reverse side.)   |   |  |
| <b>3. Last four digits of any number by which creditor identifies debtor:</b> <u>539</u><br><b>3a. Debtor may have scheduled account as:</b> _____<br>(See instruction §3a on reverse side).   |   |  |
| <b>4. Secured Claim (See instruction #4 on reverse side.)</b><br>Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.<br><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<br><b>Value of Property:</b> \$ _____ <b>Annual Interest Rate</b> ____%<br><b>Amount of arrearage and other charges as of time case filed included in secured claim, if any:</b> \$ _____<br><b>Basis for perfection:</b> _____ <b>Amount Unsecured:</b> \$ <u>7,750.00</u>   |   |  |
| <b>6. Credits:</b> The amount of all payments on this claim has been credited for the purpose of making this proof of claim.<br><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.)<br><b>DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.</b><br>If the documents are not available, please explain: _____ |   |  |
| <b>Date:</b><br><div style="font-size: 24pt; font-family: cursive;">9/17/09</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.<br><br><div style="font-size: 24pt; font-family: cursive;">Ruth Dela</div> <div style="font-size: 18pt; font-family: cursive;">President</div> | <b>FOR COURT USE ONLY</b><br><br><div style="text-align: center;">OPUS WEST</div> <br><div style="text-align: center;">00379</div>  |

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

Modified B10 (GCG) (12/08)

## INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, there may be exceptions to these general rules. The attorneys for the Debtors and their court-appointed claims agent (The BMC Group) are not authorized and are not providing you with any legal advice.

PLEASE SEND YOUR ORIGINAL, COMPLETED CLAIM FORM AS FOLLOWS: **IF BY MAIL:** OPUS WEST CORPORATION, et al C/O BMC GROUP, PO BOX 3020, CHANHASSEN, MN, 55317-3020. **IF BY HAND OR OVERNIGHT COURIER:** OPUS WEST CORPORATION, et al C/O BMC GROUP, 18750 LAKE DRIVE EAST, CHANHASSEN, MN, 55317. ANY PROOF OF CLAIM SUBMITTED BY FACSIMILE OR E-MAIL WILL NOT BE ACCEPTED.

### THE GENERAL BAR DATE IN THESE CHAPTER 11 CASES IS November 9, 2009

#### Court, Name of Debtor, and Case Number:

These chapter 11 cases were commenced in the United States Bankruptcy Court for the Northern District of Texas on July 6, 2009. You should select the Debtor against which you are asserting your claim.

**A SEPARATE PROOF OF CLAIM FORM MUST BE FILED AGAINST EACH DEBTOR.**

#### Creditor's Name and Address:

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

#### 1. Amount of Claim as of Date Case Filed:

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

#### 2. Basis for Claim:

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

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

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

#### 3a. Debtor May Have Scheduled Account As:

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

#### 4. Secured Claim:

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

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

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

#### 6. Credits:

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

#### 7. Documents:

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

#### Date and Signature:

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

## DEFINITIONS

#### Debtor

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

#### Creditor

A creditor is a person, corporation, or other entity owed a debt by the debtor on the date of the bankruptcy filing.

#### Claim

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

#### Proof of Claim

A proof of claim is a form used by the creditor to indicate the amount of the debt owed by the debtor on the date of the bankruptcy filing. The creditor must file the form with the BMC Group as described in the instructions above and in the Bar Date Notice.

#### Secured Claim Under 11 U.S.C. §506(a)

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

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

#### Unsecured Claim

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

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

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

#### Redacted

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

#### Evidence of Perfection

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

## INFORMATION

#### Acknowledgment of Filing of Claim

To receive acknowledgment of your filing from the BMC Group, please provide a self-addressed stamped envelope and a copy of this proof of claim when you submit the original claim to the BMC Group.

#### Offers to Purchase a Claim

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



CASE NO. 09-34360-11

Purchase Order No. 10836.00-64

Date: 03/26/2009

Job No: 10836.00

**PURCHASE ORDER**

**Seller**

Name Ruth Delaunay  
 Supplier #  
 Organization Classic Masonry & Concrete, Inc  
 Address 19407 Park Row, Suite 104  
 Houston TX 77084  
 Phone 281.351.8869

**Ship To**

Name Rachelle Stuckey  
 Organization OPUS West Construction Corporation  
 Address 11025 Equity Drive  
 Houston, TX 77041  
 Phone

**Shipping/Delivery Terms**

FOB Destination  
 Shipping Method: Not Specified  
 Delivery Date:  
 Term:

**Bill To**

Organization Opus West Construction Corporation  
 Attn: Accounts Payable  
 Address 15455 N. Dallas Parkway  
 Addisor: TX 75001

| Qty | Units       | Description  | Unit \$    | Extended \$ | Total      | Account Code            |
|-----|-------------|--|------------|-------------|------------|-------------------------|
| 1   | LS Lump Sum | 8" lightweight cmu wall 6'-0" h with a 9"x2 cast stone cap on top. Walls to have flush joints in the exterior and concave joints in the interior. Walls will be grouted 32" o.c. (2500psi) Truss wire 6x9 hot dip will be installed at 16" o.c | \$7,750.00 | \$7,750.00  | \$7,750.00 | 10E36.01-B40-04E55.00-M |
| 1   |             | Exclusions: Testing, bonds dumpster, rebar & shop drawings as built drawings and installation of frames Waterproofing, damproofing & sealers, Expansion, control joint fillers and sealants Drug testing, badges and any overtime              | \$0.00     | \$0.00      | \$0.00     | 10E36.01-B40-04E55.00-M |

TOTAL \$7,750.00

**IMPORTANT:**

1. ALL APPLICABLE FEDERAL, STATE, AND LOCAL SALES AND EXCISE TAXES, TARIFFS, AND DUTIES, IF REQUIRED BY LAW, MUST BE SEPARATELY STATED ON THE INVOICE CORRESPONDING TO THIS ORDER.
2. ALL APPLICABLE SHIPPING AND HANDLING FEES MUST BE SEPARATELY STATED ON THE INVOICE CORRESPONDING TO THIS ORDER.

Classic Masonry & Concrete, Inc

By Ruth Delaunay  
 Authorized signature  
Ruth Delaunay  
 Print Name  
President  
 Title

Opus West Construction Corporation

By [Signature]  
 Authorized signature  
James Kehoe  
 Print Name  
Director of Construction  
 Title

**PURCHASE ORDER****TERMS AND CONDITIONS**

This Purchase Order ("Order") for materials and merchandise ("Goods") and/or services ("Services") specified on the reverse side is subject to the following terms and conditions:

1. **ACCEPTANCE:** This Order must be promptly accepted by Seller in writing; HOWEVER, if Seller does not execute this Order, but timely delivers Goods and/or performs Services described in this Order, such delivery and/or performance will constitute acceptance of this Order on the terms and conditions set forth in this Order. PURCHASER HEREBY GIVES NOTICE OF OBJECTION TO ANY TERMS AND CONDITIONS SET FORTH IN ANY OTHER WRITING WHICH ARE INCONSISTENT WITH THE TERMS AND CONDITIONS SET FORTH IN THIS ORDER. Any additional or inconsistent terms AND CONDITIONS contained in any written document (for example, DELIVERY ACCEPTANCES, invoices, packing slips and bills of lading) signed by Purchaser subsequent to this Order are invalid and of no force and effect unless such document is expressly labeled as an amendment to this Order.

2. **PERFORMANCE/DELIVERIES:** Time is of the essence in Purchaser's and Seller's performance of their obligations under this Order. Seller must deliver the specified quantity of Goods to Purchaser and perform Services at the times specified in this Order or in schedules furnished to Seller by Purchaser. Purchaser will not be required to pay for Goods delivered to Purchaser in excess of quantities specified in this Order, and Purchaser may return such excess Goods to Seller at Seller's expense. If Seller's deliveries do not meet the required schedule, Purchaser may direct expedited routing at Seller's expense. If Goods are delivered in advance of schedule, Purchaser may (a) return the Goods to Seller at Seller's expense, (b) withhold payment until the date that the Goods are actually scheduled for delivery or (c) place the Goods in storage for Seller's account and at Seller's expense until the delivery date specified in this Order. Any deviation from a specified route which results in additional transportation charges, delays or claims, will be at Seller's expense. All risk of loss and damage to Goods is borne by Seller until the Goods are delivered to, and inspected and accepted by, Purchaser.

3. **INSPECTION AND REJECTION:** Purchaser may inspect and reject nonconforming or defective Goods and Services within a reasonable time after delivery of Goods to Purchaser or performance of Services by Seller. Payment for Goods and Services prior to inspection will not constitute Purchaser's acceptance of the Goods and Services. Purchaser's acceptance of the Goods and Services will not void or limit Seller's warranties. If Purchaser rejects Goods delivered and/or Services performed, Purchaser may (a) return the rejected Goods to Seller, at Seller's expense, for reimbursement, credit, replacement or correction as Purchaser may direct or (b) correct and/or replace the Goods and/or Services at Seller's expense. Purchaser may inspect the Goods at Seller's place of manufacture or distribution and Seller will cooperate with such inspection. Final inspection and acceptance or rejection of the Goods and/or Services, however, will be at the place of destination. Purchaser may keep a sample of rejected Goods for evidence of the quality of the Goods.

4. **CHANGES:** Upon written notice to Seller, Purchaser may, at any time, make changes within the general scope of the Goods or Services, including drawings and specifications, quantities, methods of shipment, packaging, delivery/performance schedules and places of delivery. Any increase or decrease in price or time for delivery/performance resulting from such changes will be equitably adjusted by Seller and Purchaser in a written amendment to this Order, provided, however that any claim for an increase in price or time for delivery/performance resulting from such changes shall be deemed waived unless made prior to the time Seller proceeds with the change. If Seller and Purchaser do not promptly agree on an equitable adjustment, Purchaser may (a) immediately cancel this Order and pay Seller as provided in Section 17 or (b) pursue any available legal remedy to resolve the dispute, and pending such resolution, Seller will, if requested by Purchaser, diligently perform its obligations under the Order as changed.

5. **WARRANTY:** In addition to any other warranties implied by law or expressly given by Seller, Seller expressly warrants the Goods and Services as follows:

**(a) Goods.** Seller has good and merchantable title to the Goods and the Goods will (i) be free of all liens and encumbrances, (ii) conform to the specifications, drawings, samples or other descriptions furnished or specified by Purchaser, (iii) be of good material and workmanship, free from defects, and of good and merchantable quality, (iv) be fit for the purposes for which the Goods are designed or intended to be used and (v) not infringe or violate any United States or foreign letter patent, or any right in or to any patented invention or idea, or a trademark or copyright. With respect to any Goods that do not conform to the foregoing warranties, Purchaser may elect to treat such Goods as rejected Goods under Section 3 above.

**(b) Services.** Seller will perform the Services with the degree of care and skill exercised by qualified individuals or entities performing similar services, and the Services will be (i) in conformance with the specifications, drawings or other descriptions furnished by Purchaser, (ii) of good workmanship and (iii) free from defects.

These warranties run to Purchaser and its successors and assignees. Seller will indemnify Purchaser, its successors and assignees, against all loss, injury, damage and liability, including all attorney's fees, incurred by Purchaser as a result of Seller's breach of any of the foregoing warranties.

6. **PACKAGING AND SHIPPING INSTRUCTIONS:** All Goods will be packed and handled in accordance with good commercial practice to prevent damage to the Goods. Seller will be liable for damage to Goods caused by improper handling, packing or

**PURCHASE ORDER**

packaging. All shipments must be accompanied by packing slips showing packaging slip number, contents and weight.

7. **TRANSPORTATION CHARGES:** No transportation charges will be allowed on Goods sold F.O.B. destination. Transportation charges on Goods sold F.O.B. shipping point will be incurred in accordance with Purchaser's shipping instructions on the face of this Order, and these charges will be separately stated on the invoice corresponding to this Order.

8. **TAXES:** The prices specified in this Order for all Goods and Services include all applicable state and local sales and excise taxes and, if required by law, such taxes must be separately stated on the invoice corresponding to this Order.

9. **BILLING/PAYMENT:** Seller will place Purchaser's Order number on all invoices, bills of lading, memoranda and packages and send original bills of lading, shipping memoranda and invoices to Purchaser at Purchaser's letterhead address on the reverse side of this Order. Seller's invoice must refer to packing slip number and Seller must render a separate invoice for each Order and specify any cash discounts. Seller's invoice will not be processed for payment if Purchaser's Order number is not stated on the face of the invoice. Unless otherwise noted on the face of this Order, payment of invoices will be due to Seller on the 30th day of the month for invoices received by Purchaser on the 25th day of the previous month, provided the Goods and Services have been received and accepted by Purchaser.

10. **INDEPENDENT CONTRACTOR STATUS:** Seller is an independent contractor and Purchaser will not exercise any control or direction over the means and manner of (a) the production or acquisition of the Goods or (b) the performance of the Services by Seller. This Order does not create, between Purchaser and Seller, the relationship of partners, joint venturers, employer and employee, or agent and principal.

11. **PURCHASER'S PROPERTY:** Unless otherwise provided in this Order, all tools, equipment, plans, blueprints or other personal property furnished to Seller by Purchaser or specifically paid for by Purchaser ("Purchaser's Property") will be and remain the personal property of Purchaser, and Seller may only use Purchaser's Property to perform its obligations under this Order. Seller assumes all liability for loss or damage to Purchaser's Property while in Seller's use or possession. Seller will maintain Purchaser's Property at its own expense and deliver it to Purchaser, upon Purchaser's request, in the same condition as originally received by Seller, reasonable wear and tear excepted.

12. **ON-SITE RESPONSIBILITY:** If Seller, its employees, agents, subcontractors or material suppliers enter onto the property of Purchaser or a third party ("Site") to deliver the Goods or perform the Services, Seller will (a) be responsible for all of its activities at the Site, including the safety of its employees, (b) abide by reasonable rules, regulations and directives of Purchaser and the Site owner, (c) coordinate with Purchaser the timing and means of delivery and (d) use reasonable efforts to ensure its conduct will not disturb any activities taking place at the Site or any persons present on the Site. Seller will, upon Purchaser's demand, reimburse Purchaser for the cost of restoring and repairing any damage Seller causes to Purchaser's personal property or the Site.

13. **MECHANICS' AND CONSTRUCTION LIENS:** To the fullest extent permitted by law, Seller waives and releases any and all rights of mechanics' liens, construction liens or other lien rights Seller may have in connection with Goods delivered and Services performed under this Order. Upon Purchaser's request, Seller will, as a condition precedent to Purchaser's obligation to pay Seller, promptly furnish or cause to be furnished to Purchaser, a written waiver or waivers of such liens from Seller and any subcontractor or material supplier hired by Seller, in recordable form acceptable to Purchaser.

14. **COMPLIANCE WITH LAWS AND REGULATIONS:** In performing its obligations under this Order, Seller will comply with all applicable federal, state and local laws, rules, regulations, orders and ordinances (collectively, the "Laws") that are applicable to the Goods and Services. By accepting this Order, Seller certifies to Purchaser that the Goods were or will be produced and/or obtained in compliance with all requirements of Laws. Seller will indemnify Purchaser from any liability resulting from either Seller or the Goods and Services failing to comply with the requirements of this section.

15. **INDEMNITY:** To the fullest extent permitted by law, Seller will indemnify and defend Purchaser and Purchaser's members, partners, shareholders, directors, officers, employees and agents against all claims, damages, losses and expenses, including costs of defense and attorney's fees, arising out of Seller's delivery of Goods and/or performance of Services under this Order, but only to the extent caused by Seller's breach of this Order or by the negligence or willful misconduct of Seller or Seller's officers, employees, agents, contractors, subcontractors or suppliers.

16. **INSURANCE:** Seller has, and will maintain at all times during the performance of its obligations under this Order, the following insurance ("Seller's Insurance"):

(a) commercial general liability insurance (including products and completed operations and contractual liability coverage) in an amount not less than \$1,000,000 each occurrence and \$1,000,000 general aggregate, for bodily injury or death, property damage and contractual liability, written on a 1986 or newer ISO occurrence form;

(b) business automobile liability insurance covering all owned, non-owned and hired vehicles in the amount of \$1,000,000 combined single limit of liability each accident; and

(c) workers' compensation insurance as required by law.

Seller's Insurance will be primary to and non-contributing with any liability insurance carried by Purchaser.

17. **CANCELLATION:** Purchaser may, upon written notice delivered to Seller, cancel this Order with or without cause. Upon delivery of the cancellation notice, Seller will immediately discontinue production and shipment of undelivered Goods and stop

**PURCHASE ORDER**

performance of any Services. If Buyer cancels this Order without cause, Seller's sole claim shall be for the costs it reasonably incurred for Goods and Services properly furnished through the date of cancellation and for actual, unrecoverable out-of-pocket expenses incurred by Seller due to work-in-process (with due allowance for the salvage value of all Goods after Buyer has had full opportunity to recommend disposition and audit Seller's costs). Seller is not entitled to lost profits on Goods not delivered or Services not performed.

**18. ASSIGNMENT:** Seller's assignment of this Order or rights hereunder, without Purchaser's prior written consent, is null and void.

**19. REMEDIES:** If Seller fails to timely comply with its obligations under, or otherwise breaches, this Order, Purchaser may exercise any and all rights and remedies provided by law, equity or this Order, including without limitation the right to (a) cancel this Order, (b) set off amounts due Seller under this Order against any amounts otherwise owed to Purchaser by Seller and/or (c) purchase items similar to the Goods or secure performance of services similar to the Services, at Seller's cost and expense. All remedies of Purchaser under this Order may be exercised individually or cumulatively. No delay or failure by Purchaser in enforcing any of Purchaser's rights or remedies will constitute a waiver of any such rights or remedies or of any existing or subsequent breach by Seller.

**20. COSTS OF ENFORCEMENT:** If any action or proceeding is brought to enforce any of the provisions of this Order (including without limitation, arbitration, mediation, court actions and appellate proceedings, at law or in equity), the unsuccessful party in such proceeding will pay all of the prevailing party's costs and expenses incurred in connection with the proceeding, including reasonable attorneys' fees.

**21. SURVIVAL:** The warranties, remedies and indemnities of Seller will survive delivery of Goods and performance of Services and will not be deemed waived by Purchaser's acceptance of the Goods and Services or payment therefore.

**22. NOTICES:** Notices required or permitted under this Order must be addressed to the addresses for Seller and Purchaser (letterhead address) specified on the front side of this Order, or such other address as the parties may designate in writing, and will be deemed delivered and effective on the earlier of (a) the date actually received and (b) if sent by (i) mail, three days after the party sending the notice deposits the notice with the United States Post Office or (ii) overnight delivery, one business day after the day the party sending the notice timely deposits the notice with a nationally recognized, overnight (next day) courier.

**23. COMPLETE AGREEMENT:** This Order constitutes the complete and exclusive agreement of Seller and Purchaser with respect to the Goods and Services and may not be contradicted or supplemented by any prior or contemporaneous oral or written communications. No evidence of prior course of dealing or usage of trade not expressly set forth in this Order may be used to explain, modify, or contradict this Order in any way.

**24. SEVERABILITY:** The provisions of this Order will be deemed severable, and the invalidity or unenforceability of any provision will not affect the validity and enforceability of the other provisions hereof. If any provision of this Order is unenforceable for any reason whatsoever, such provision will be appropriately limited and given effect to the extent that it may be enforceable.

**25. GOVERNING LAW/VENUE:** This Order will be governed by and interpreted in all respects under the laws of the state where the Goods are delivered or the Services are performed, but disregarding such state's choice of law provisions. Any action commenced in connection with this Order will be venued in the state and county where the Goods are delivered or the Services are performed.