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| <b>UNITED STATES BANKRUPTCY COURT</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                         | <b>PROOF OF CLAIM</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| Name of Debtor:<br><b>Opus West Corporation, Opus West Construction Corporation</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                         | Case Number:<br><b>09-34356; 09-34360</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <i>NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.</i>                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| Name of Creditor (the person or other entity to whom the debtor owes money or property):<br><b>Brelje &amp; Race Consulting Engineers</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                         | <input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim.<br><br>Court Claim Number: _____<br>(If known)<br><br>Filed on: _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| Name and address where notices should be sent:<br><b>Ranjani Ramakrishna, Law offices of Robles &amp; Castles<br/>540 Pacific Ave.,<br/>San Francisco, CA 94133</b><br><br>Telephone number:<br><b>(415) 743-9300</b>                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| Name and address where payment should be sent (if different from above):<br><b>Tom Jones,<br/>Brelje &amp; Race Consulting Engineers, 5570 Skyline Blvd.<br/>Santa Rosa, CA 95403</b><br><br>Telephone number:<br><b>(707) 576-3312</b>                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                         | <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.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| 1. Amount of Claim as of Date Case Filed: \$ <u>\$ 25 million (see attached)</u><br><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><br>If all or part of your claim is entitled to priority, complete item 5.<br><br><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.                                                                                                                                        |                                                                                                                                                                                                                                                                                         | 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.<br><br>Specify the priority of the claim.<br><br><input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).<br><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><br><input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. § 507 (a)(5).<br><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><br><input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. § 507 (a)(8).<br><br><input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. § 507 (a)(____).<br><br>Amount entitled to priority:<br>\$ _____ |
| 2. Basis for Claim: <u>Indemnity See attached.</u><br>(See instruction #2 on reverse side.)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 3. Last four digits of any number by which creditor identifies debtor: _____<br><br>3a. Debtor may have scheduled account as: _____<br>(See instruction #3a on reverse side.)                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 4. Secured Claim (See instruction #4 on reverse side.)<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><br>Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other<br>Describe:<br><br>Value of Property: \$ _____ Annual Interest Rate _____ %<br><br>Amount of arrearage and other charges as of time case filed included in secured claim,<br>if any: \$ _____ Basis for perfection: _____<br><br>Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____ |                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instruction 7 and definition of "redacted" on reverse side.)<br><br>DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.<br><br>If the documents are not available, please explain:                               |                                                                                                                                                                                                                                                                                         | *Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Date:<br><b>11/09/2009</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any. |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>Ranjani Ramakrishna, Robles &amp; Castles, 540 Pacific Ave., San Francisco, CA 94133. Attorneys for Claimant</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                         | <b>FOR COURT USE ONLY</b><br><br><b>OPUS WEST</b><br><br>00492                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |

**UNITED STATES BANKRUPTCY COURT Northern District of Texas****Notice of****Chapter 11 Bankruptcy Cases, Meeting of Creditors, & Deadlines**

Chapter 11 bankruptcy cases concerning the debtors listed below were filed on 7/6/09.

You may be a creditor of the debtors. This notice lists important deadlines. You may want to consult an attorney to protect your rights. All documents filed in these cases may be inspected at the bankruptcy clerk's office at the address listed below.

NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

**See Reverse Side for Important Explanations**

Debtors (names used by the debtors in the last 8 years, including married, maiden, trade, and address):

**Opus West Corporation**  
2555 E Camelback Road, Suite 800  
Phoenix, Arizona 85016  
Tax ID No.: 86-0811533  
Case No.: 09-34356

**O. W. Commercial, Inc.**  
2555 E Camelback Road, Suite 800  
Phoenix, Arizona 85016  
Tax ID No.: 20-2789134  
Case No.: 09-34363

**Opus West Partners, Inc.**  
2555 E Camelback Road, Suite 800  
Phoenix, Arizona 85016  
Tax ID No.: 81-0545537  
Case No.: 09-34373

**Opus West Construction Corporation**  
2555 E Camelback Road, Suite 800  
Phoenix, Arizona 85016  
Tax ID No.: 41-0855917  
Case No.: 09-34360

**Opus West LP**  
2555 E Camelback Road, Suite 800  
Phoenix, Arizona 85016  
Tax ID No.: 81-0545535  
Case No.: 09-34334

**Attorneys for Opus West Corporation, Opus West Construction Corporation, and O. W. Commercial, Inc. (names and addresses):**

Clifton R. Jessup, Jr.  
Greenberg Traurig, LLP  
2200 Ross Avenue, Suite 5200  
Dallas, TX 75201  
Telephone: 214-665-3600  
Facsimile: 214-665-5938

**Attorneys for Opus West Partners, Inc., and Opus West LP:**  
(names and addresses):

Peter Franklin  
Doug Skierski  
Franklin Skierski Lovall Hayward, LLP  
10501 N. Central Expressway, Suite 106  
Dallas, TX 75231  
Telephone: 214-702-4061  
Facsimile: 214-723-5345

**Meeting of Creditors**

Date: August 12, 2009

Time: 2:00 P.M.

Location: Office of the U.S. Trustee, 1100 Commerce St., Room 976, Dallas, TX 75242

**Deadline to File a Proof of Claim**

Proof of claim must be *received* by the BMC Group, Debtors' Claims Agent, by the following deadline:

For all creditors (except a governmental unit): 11/9/09

For a governmental unit: \_\_\_\_\_

**Claims Should be Sent to:****IF BY MAIL:**

Opus West Corporation, et al  
c/o BMC Group  
P.O. 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

**Creditors with a Foreign Address:**

A Creditor to whom this notice is sent at a foreign address should read the information under "claims" on the reverse side.

**Deadline to File a Complaint to Determine Dischargeability of Certain Debts:****Creditors May Not Take Certain Actions:**

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtors and the debtors' property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtors can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

**Address of the Bankruptcy Clerk's Office:**

1100 Commerce Street, Room 1254  
Dallas, Texas 75242  
Telephone number: 214-753-2000

**For the Court:**

Clerk of the Bankruptcy Court:  
Tawana C. Marshall

Hours Open: Monday – Friday 8:30 AM – 4:30 PM

| <b>EXPLANATIONS</b>                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|---------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Filing of Chapter 11 Bankruptcy Case</b>             | Bankruptcy cases under Chapter 11 of the Bankruptcy Code (title 11, United States Code) have been filed in this court by the debtors listed on the front side, and orders for relief have been entered. Chapter 11 allows a debtor to reorganize or liquidate pursuant to a plan. A plan is not effective unless confirmed by the court. You may be sent a copy of the plan and a disclosure statement telling you about the plan, and you might have the opportunity to vote on the plan. You will be sent a notice of the date of confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. Unless a trustee is serving, the debtor will remain in possession of the debtor's property and may continue to operate any business.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>Legal Advice</b>                                     | The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in these cases.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>Creditors Generally May Not Take Certain Actions</b> | Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; and starting or continuing lawsuits or foreclosures. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>Meeting of Creditors</b>                             | A meeting of creditors is scheduled for the date, time and location listed on the front side. <i>The debtor's representative must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice. The court, after notice and a hearing, may order that the United States trustee not convene the meeting if the debtor has filed a plan for which the debtor solicited acceptances before filing the case.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>Claims</b>                                           | A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. You may look at the schedules that have been or will be filed at the bankruptcy clerk's office. If your claim is scheduled and is not listed as disputed, contingent, or unliquidated, it will be allowed in the amount scheduled unless you filed a Proof of Claim or you are sent further notice about the claim. Whether or not your claim is scheduled, you are permitted to file a Proof of Claim. If your claim is not listed at all or if your claim is listed as disputed, contingent, or unliquidated, then you must file a Proof of Claim or you might not be paid any money on your claim and may be unable to vote on the plan. A secured creditor retains rights in its collateral regardless of whether that creditor files a Proof of Claim. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial. <b>Filing Deadline for a Creditor with a Foreign Address:</b> The deadlines for filing claims set forth on the front of this notice apply to all creditors. If this notice has been mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline. |
| <b>Discharge of Debts</b>                               | Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of your debt. See Bankruptcy Code § 1141(d). A discharge means that you may never try to collect the debt from the debtor, except as provided in the plan. If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 1141(d)(6)(A), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and any required filing fee by that Deadline.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>Bankruptcy Clerk's Office</b>                        | Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>Creditor with a Foreign Address</b>                  | Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in these cases.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |

## 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.

## **ATTACHMENT To PROOF OF CLAIM**

### **1. AMOUNT OF CLAIM: \$25 Million**

This is a claim for indemnity.

STRS Real Estate Investments I, LLC ("STRS") submitted a claim for defects in construction at the apartment complex called Boulders at Fountaingrove located in Santa Rosa, CA ("Project"). Opus West Construction Corporation ("Opus West") was the general contractor for the Project. Brelje & Race and Opus West entered into agreements for professional services provided by Brelje for the same Project.

Brelje is informed and believes that STRS's claim for all construction defects at the Project is for **\$25 Million**. STRS has not yet informed Brelje of the exact amount it claims from Brelje for any purported deficiencies in the surveying and/or civil engineering services provided by Brelje at the Project. While Brelje **denies** any and all responsibility for any alleged damages resulting to STRS arising out of Brelje's work, to the extent that Brelje is held responsible for STRS's injuries or damages, Brelje asserts that it is entitled to full and complete indemnity from Opus West for such damages. In addition, under the agreements between Brelje and Opus West, Brelje is entitled to its costs of defense, including attorney's fees, experts' costs and Brelje's own time spent in defending this matter. Brelje's claim against Opus West includes such costs and fees. Also included is any interest accruing on Brelje's claim.

### **2. BASIS OF CLAIM**

In 2003, Brelje and Opus West entered into agreements for professional services provided by Brelje for the same Project.

The Civil Engineering Services Agreement between Brelje and Opus West dated January 31, 2003, contains the following provision at Article 3B:

Consultant will not be held liable for problems that may occur if CONSULTANT's recommendations are not implemented. Accordingly, CONTRACTOR waives any claim against and agrees to defend and hold CONSULTANT harmless from any claim or liability for injury or loss that results from failure to implement CONSULTANT's recommendation or CONSULTANT's recommendations in a manner that is not in strict accordance with them. CONTRACTOR also agrees to compensate for any time spent and expenses incurred by CONSULTANT in defense of any such claim, with such compensation to be based upon CONSULTANT's prevailing fee schedule and expense reimbursement policy.

The "Surveying Services Consulting Agreement" dated September 29, 2003 between Brelje and Opus also contains an identical provision at Article 3B.

On November 9, 2009, pursuant to Article 3B of the Surveying Services Agreement and the Civil Engineering Services Agreement, Brelje tendered the defense of this matter to Opus West. Brelje also requested that Opus West indemnify Brelje for all claims arising out of the construction work at the Project related to or arising out of Brelje's contracts with Opus. Brelje also demanded attorney's fees and all expenses incurred by Brelje and its attorneys in responding to plaintiff's claim.

#### **7. DOCUMENTS ATTACHED TO PROOF OF CLAIM**

A copy of STRS's notice of claim letter dated December 16, 2008 to Brelje is attached hereto as Exhibit A.

A copy of the Civil Engineering Services Agreement is attached hereto as Exhibit B.

A copy of the Surveying Services Consulting Agreement is attached hereto as Exhibit C.

A copy of the November 9, 2009 demand letter to Opus West Construction Corporation is attached hereto as Exhibit D

WE  
BRELJE & RACE  
DEC 17 2008

**SQUIRE, SANDERS & DEMPSEY L.L.P.**

One Maritime Plaza, Suite 300  
San Francisco, California 94111-3492

Office: +1.415.954.0200  
Fax: +1.415.393.9887

Direct: +1.415.954.0368  
DiGibson@ssd.com

December 16, 2008

**VIA U.S. MAIL AND FACSIMILE**

Thomas R. Jones  
**Brelje & Race Engineers**  
5570 Skylane Blvd.  
Santa Rosa, CA 95403  
Fax: (707) 576-0469

Dear Mr. Jones:

This letter concerns the apartment development in Santa Rosa known as The Boulders at Fountaingrove located at 3680 Kelsey Knolls ("the Property"). This office represents the current owner of the Property, STRS California Real Estate Investments I, LLC. In consultation with the general contractor, Opus West Construction, Brelje & Race Engineers has been identified as the party that rendered civil engineering consulting services during construction. Investigation has revealed substantial problems at the Property. With respect to the civil engineering consulting services, these problems include the following:

- (1) rain leader system and foundation drains were not installed per plans; and
- (2) failure to provide sufficient oversight during construction to identify defective and incomplete work.

According to our current information, it appears that necessary repairs will involve at a minimum:

- (1) rain leader systems will need to be repaired or reinstalled; and
- (2) foundation drain systems will need to be repaired or reinstalled.

In an attempt to avoid the delay and legal costs that can be associated with multi-party construction disputes, we would like to discuss resolution of this matter via negotiation and/or mediation, before suit is filed. We also hope to involve other parties that may have contributed to the problems at the Property. If you are interested in participating in such a process along with other involved parties, please have your attorney and/or liability insurance carrier respond to this letter before December 23, 2008.

If we do not hear from you, STRS will have no option but to proceed with litigation.

SANFRANCISCO/286876.1  
034714.00223

CINCINNATI • CLEVELAND • COLUMBUS • HOUSTON • LOS ANGELES • MIAMI • NEW YORK • PALO ALTO • PHOENIX • SAN FRANCISCO • TALLAHASSEE • TAMPA • TYSONS CORNER  
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PRAGUE • WARSAW • BEIJING • HONG KONG • SHANGHAI • TOKYO • ASSOCIATED OFFICES: BUCHAREST • BUENOS AIRES • DUBLIN • KYIV • MILAN • SANTIAGO

www.ssd.com

Ex. A

Thomas R. Jones  
December 16, 2008  
Page 2

SQUIRE, SANDERS & DEMPSEY L.L.P.

Also, this shall serve as notice that due to the need to, among other things, begin repairs to avoid further water damage, STRS is currently undertaking certain repairs. Should you wish to observe the condition of the property or the ongoing repairs, please contact me at (415) 954-0368, or Erinn Contreras at (415) 393-9858.

Sincerely,

SQUIRE, SANDERS & DEMPSEY L.L.P.



Diane L. Gibson

cc: Erinn M. Contreras



**TERMS OF AGREEMENT BETWEEN CONTRACTOR AND CONSULTANT  
FOR CIVIL ENGINEERING SERVICES, DATED JANUARY \_\_, 2003**

The following are Terms of Agreement Between Opus West Construction Corporation (CONTRACTOR) and Brelje & Race Engineers (CONSULTANT), for providing Professional Consulting Services.

**ARTICLE 1. TERMS OF PAYMENT**

**A. Invoicing**

CONSULTANT may submit invoices to CONTRACTOR for progress payments on a periodic basis. Such invoices shall represent the value of the completed Scope-of-Services.

**B. Progress Payments**

Payments to CONSULTANT shall be made on or about the 30<sup>th</sup> day of each month for invoices received by the 25<sup>th</sup> day of the previous month for work performed and projected through the end of that previous month. Invoices received after that date will be processed as if received the next month and payment will be delayed. Insurance certificates must be received before CONSULTANT starts on the site and before payment will be issued.

Consultant invoices to be submitted per the attached Exhibit "B".

**C. Failure to Make Payment Provisions**

If CONTRACTOR fails to make payment due to CONSULTANT for services and expenses within thirty (30) days after receipt of CONSULTANT'S invoice, the amount due CONSULTANT will be increased at the rate of Bank One Prime plus four percent (4%) from said thirtieth (30<sup>th</sup>) day, and in addition, CONSULTANT may, after giving seven (7) days notice to CONTRACTOR, suspend services under this Agreement

**D. Fee Schedule Rate Adjustments**

The unit costs or hourly rates mentioned in the Agreement are to be valid six (6) months from the date of execution of the Agreement. CONSULTANT reserves the prerogative to review unit costs and adjust CONSULTANT'S compensation rate, taking into consideration changes in price indexes and pay scales applicable to the period when services are, in fact, being rendered.

**E. Compensation Adjustment**

If there are protracted delays for reasons beyond CONSULTANT'S control, within the customary period of time after six (6) months, CONSULTANT'S compensation shall be adjusted, taking into consideration changes in prices indexes and pay scales applicable to the period when services are, in fact, being rendered.

**F. Payment Upon Project Suspension**

In the event of all or any portion of work prepared or partially prepared by CONSULTANT is suspended, canceled or abandoned, CONTRACTOR shall pay CONSULTANT for completed work on the basis of percentage of work complete, plus compensation for any extra work at rates set forth on the attached Hourly Rate Schedule.

**ARTICLE 2. OBLIGATIONS OF CONSULTANT**

**A. Performance**

The Standard of Care applicable to CONSULTANT'S service will be the degree of skill and care normally exercised by professionals of the consulting industry as observed by professional consultants performing similar services under like conditions.

**B. Insurance**

CONSULTANT will maintain throughout this Agreement the following insurance coverage if reasonably available at commercially affordable rates, and shall promptly notify in writing CONTRACTOR 30 days prior to any policy cancellation or termination:

1. General Liability Insurance

With limits of not less than \$2,000,000, combines single limit per occurrence.

2. Comprehensive Business Automobile Insurance

In an amount not less than \$1,000,000, combines single limit per occurrence.

3. Professional Liability Insurance -

With a limit not less than \$500,000 per occurrence, with an annual aggregate of no less than \$1,000,000.

4. See Attachment "B" for additional insurance requirements.

**C. Liability**

CONSULTANT agrees that its services will be performed, within the limits prescribed by CONTRACTOR, with the degree of skill and care normally exercised by professionals of the Consulting Industry as observed by professional consultants performing similar services under like conditions.

CONTRACTOR agrees to limit CONSULTANTS and its agents, employees, representatives and subconsultants liability to OWNER and all contractors and subcontractors on the Project arising from negligent acts, errors or omissions, such that the total aggregate liability to all those named shall not exceed \$1,000,000 or CONSULTANT'S total fee for services, whichever is greater.

**D. Safety**

CONSULTANT is responsible for the safety on-site of its own employees and subconsultants. Neither the professional activities of CONSULTANT'S employees nor of its subconsultants shall be construed to imply CONSULTANT has responsibility for any activities on-site performed by personnel other than CONSULTANT'S employees or subconsultants.

**ARTICLE 3. OWNERS OBLIGATION**

**A. Information and Review**

CONTRACTOR shall provide all criteria and full information as to CONTRACTOR'S requirements for the Project; designate a person to act with authority on CONTRACTOR'S behalf in respect to all aspects of the project, and respond promptly to CONSULTANT'S submissions; and give prompt written

Ex. B

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notice to CONSULTANT whenever CONTRACTOR observes or otherwise becomes aware of any condition which may affect CONSULTANT'S performance of services.

**B. Failure to Implement Recommendations**

CONSULTANT will not be held liable for problems that may occur if CONSULTANT'S recommendations are not implemented. Accordingly, CONTRACTOR waives any claim against and agrees to defend and hold CONSULTANT harmless from any claim or liability for injury or loss that results from failure to implement CONSULTANT'S recommendation or from CONSULTANT recommendations in a manner that is not in strict accordance with them. CONTRACTOR also agrees to compensate CONSULTANT for any time spent and expenses incurred by CONSULTANT in defense of any such claim, with such compensation to be based upon CONSULTANT'S prevailing fee schedule and expense reimbursement policy.

**C. Prompt Payment**

CONTRACTOR shall promptly pay for all services as duly executed via this Agreement

**D. Furnished Data**

CONTRACTOR shall furnish to CONSULTANT geotechnical information and recommendations; environmental assessments and impact statements; property legal descriptions and recent title report identifying any encumbrances; and zoning and deed restrictions via appropriate licensed professionals as required; all of which CONSULTANT may rely upon in performing services hereunder.

**E. Access Approval**

Obtain approval for access to and make all provisions for CONSULTANT to enter upon public and private property as required for CONSULTANT to provide the services authorized via this Agreement.

**F. Special Additional Services Provision**

Provide any additional services via qualified personnel which may be required for the successful completion of this Project, which is not within CONSULTANT'S Scope-of-Services, including but not limited to, legal, accounting, independent, cost estimating and insurance consulting services.

**ARTICLE 4. MISCELLANEOUS PROVISIONS**

**A. Controlling Law**

This Agreement is to be governed by the law of the place of the project.

**B. Dispute Resolution**

CONTRACTOR and CONSULTANT agree that they shall attempt to settle any claim or controversy arising out of this Agreement through consultation and negotiation in the spirit of mutual friendship and cooperation. If any such attempt should fail, then the dispute shall first be submitted to a mutually acceptable neutral advisor for initial fact finding and mediation. Neither party shall unreasonably withhold acceptance of such an advisor, and selection of such advisor shall be made within 45 days after written

notice by one of the parties for such fact finding and mediation. The cost of such fact finding and mediation, and of any other subsequent alternative dispute resolution agreed upon by the parties, shall be shared equally by CONTRACTOR and CONSULTANT. Any dispute which the parties cannot so resolve between themselves in good faith within six months of the date of the initial demand by either party for such fact finding shall be finally determined by a court within the State of California.

**C. Ownership of Instruments of Service**

All reports, plans, specification, field data and notes and other documents, including all documents on electronic media, prepared by CONSULTANT are instruments of service and shall remain the property of CONSULTANTS.

**D. Delays in Work**

CONSULTANT is not responsible for delays caused by factors beyond CONSULTANT'S reasonable control. Including but not limited to delays because of strikes, lockouts, work slowdowns or stoppages, accidents, acts of God, failure of any governmental or other regulatory agency to act in a timely manner, failure of CONTRACTOR to furnish timely information or approve or disapprove of CONSULTANT'S services or work product promptly, or delays caused by faulty performance by CONTRACTOR or by contractors of any level. When such delays beyond CONSULTANT'S reasonable control occur, CONTRACTOR agrees CONSULTANT is not responsible for damages, nor shall CONSULTANT be deemed to be in default of this Agreement.

**E. Termination**

OWNER may terminate the Agreement at any time upon giving CONSULTANT five (5) working days prior written notice. CONSULTANT may terminate this Agreement upon giving CONTRACTOR thirty (30) calendar days prior written notice for any of the following reasons:

1. Breach by CONTRACTOR of an material term of this Agreement including but not limited to Payment Terms.
2. Transfer of ownership of the project by CONTRACTOR to any other persons or entities not a party to this Agreement without the prior written consent of CONSULTANT.
3. Material changes in the conditions under which this Agreement was entered into, coupled with the failure of the parties hereto to reach accord on the fees and changes for any Additional Services required because of such changes.
4. Loss or Incapacitation of key personnel of the CONSULTANT.

CONTRACTOR shall within five (5) working days of termination pay CONSULTANT for all services rendered and all costs incurred up to the date of termination, in accordance with the compensation provisions of this contract.

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## Scope of Services and Compensation

### 1. General Description

Provide professional civil engineering consulting services for Design and Construction of The Lakes at Fountain Grove Project. The Lakes is a multi family rental project to be constructed on a 11.79 acre parcel of undeveloped land in Santa Rosa, California. The legal description of the property is located in Exhibit A.

The project is briefly described as 124 residential units, constructed in ten buildings on the site. The ten buildings are wood framed over a concrete structure which generally serves as garage area under each of the buildings. Each building, the public amenity spaces and public areas on site shall include connections to public utilities, which are in the general area of the site.

### Scope of Work

#### A. Schematic Phase

- 1). Provide assistance to client during this phase of the project by meeting with design team to review site opportunities and constraints, previously approved plans, geotechnical investigation, and conditions of approval.
- 2). Undertake grading and utility studies of site plan alternatives and prepare updated preliminary opinions of probable cost for site development work.
- 3). Assist client with materials and meetings associated with securing one extension of the existing site plan Use Permit approval. (Note: This task has been completed and paid.)
- 4). Meet with Fire Marshall to review emergency access options and minimum requirements that will impact site plan.

#### B. Design Development/Tentative Map

Based upon client approved schematic site plan, prepare Tentative Map for 124 apartment unit project, including preliminary grading and utility plans, the following will proceed:

- 1). Submit map to City for completeness review. Make minor adjustments to plan and submit for formal review.
- 2). Prepare preliminary earthwork analysis to assist with preparation of updated preliminary opinion of probable cost.
- 3). Attend up to three meetings with City staff during review of the Tentative Map, and up to five meetings of the design team. All meetings are assumed to occur in Santa Rosa.
- 4). Make up to one set of minor revisions to site plan based upon review comments, and resubmit for continued review.
- 5). Review proposed conditions of approval, and seek revisions as appropriate.
- 6). Attend two meetings of the Design Review Board for consideration of project approval. Abandon project in favor of previously approved plan.

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**C. Construction Documents – Apartment Project**

- 1). Attend meetings with design team to identify and resolve issues pertaining to building footprints and function.
- 2). Determine acceptable locations, depths, and sizes for domestic water, fire sprinkler risers, and sanitary sewer connections to buildings.
- 3). Conduct limited design surveys as needed to support the design effort.
- 4). Using finalized building footprints and sections from Architect, prepare civil construction documents, consisting of demolition plan; grading plan, private domestic water, sewer, and storm drainage plan, layout plan, erosion control plan, and associated notes and details. Prepare a separate set of public improvement plans for public street, sidewalk, and utility improvements.
- 5). Prepare Parcel Map to create three parcels (one for dedication to city for open space, one for project buildings and roads, and one for undeveloped open space on slope) and for right of way dedications.
- 6). Prepare descriptions and R sheets for vacation of existing easements.
- 7). Prepare fire flow calculations and submit to Fire Department for review and approval.
- 8). Prepare hydrology/hydraulic report and submit to Sonoma County Water Agency for review and approval. Submit civil plans to Building Department for review, and submit public plans to Community Development – Engineering for review.
- 9). Attend up to four meetings with City staff during review process. Submit plans to design team members for coordination review.
- 10). Attend up to six design team meetings during this phase of the project. All meetings are assumed to occur in Santa Rosa.
- 11). Make up to two sets of minor revisions to plans and map based upon review comments. Following final plan check corrections, submit wet signed sets for issuance of permits.
- 12). Prepare updated earthwork analysis and Engineer's Opinion of Probable Cost.
- 13). Prepare Notice of Intent, and Storm Water Pollution Prevention Plan for site.

**D. Bid Phase**

- 1). Provide assistance to client during this phase of the project on an as requested basis.
- 2). Services typically include responding to questions from bidders; issuance of addenda related to civil plans; attendance at pre-bid conference; and assist client with review of bids and contractor qualifications.

**E. Construction Documents**

- 1). Provide assistance to client during this phase of the project on an as requested basis.
- 2). Services typically include attending pre-construction conference; periodic site visits to respond to contractor questions and to determine compliance with design intent; review and respond to requests for information and requests for proposals; process plan revisions with the City, and conduct punch list walk through near completion of construction.

**Assumptions and Limitations**

- 1). Client to provide engineer with current preliminary title report, and geotechnical investigation containing grading, lime treatment (if required), and pavement design recommendations.
- 2). Design of site and building retaining walls, decorative pavement sections, site gates, site lighting, site landscaping and irrigation, gas, electric, telephone, and cable television facilities will be by other members of the design team.

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- 3). Proposal is based upon best estimate of the effort required to prepare and process the plans for this project through the City of Santa Rosa. The actual effort required, and therefore fees, may be lower or higher depending upon many factors beyond the control of consultant.
- 4). Proposal assumes that building footprints and sections will be finalized prior to the start of the preparation of construction documents. Changes to the footprints or sections that occur following the initiation of construction document preparation will result in possibly significant revisions to the civil plans, which will have cost and schedule implications.
- 5). Proposal excludes any work in conjunction with filling or permitting related to wetlands, if any are determined to exist on the site.
- 6). Fees for Bid and Construction Administration Phases are budget figures only, as exact extent of services desired by client is unknown at this time. Budget estimates assume that project will not be fast tracked, so that a separate rough grading permit will NOT be required, along with associated interim erosion control plans, etc. They also assume that project grading will start sufficiently early in the construction season so as to preclude excessive wet weather measures. Fees for these phases of the work also DO NOT INCLUDE such supplemental services as preparation of separate detailed pad alignment plans; retaining wall construction layout drawings, etc., which are typically not required or included with normal civil engineering plans in this area. All of these additional services can be provided for an additional fee, to be determined once the project is further along, and contractor issues have been decided.
- 7). Proposal is based upon storm water regulations currently in place. If new storm water regulations are adopted during the design stage of the project, and if these new regulations are determined to be retroactive to previously approved projects, additional fees will be required to attempt to redesign project to comply with new regulations.

**Fee Summary**

|            |                             |              |
|------------|-----------------------------|--------------|
| A.         | Schematic Design            | \$18,000.00  |
| B.         | Design Development          | \$21,400.00  |
| C.         | Construction Documents      | \$115,000.00 |
| D.         | Bid Phase                   | \$1,000.00   |
| E.         | Construction Administration | \$7,500.00   |
| Total Cost |                             | \$163,900.00 |


In addition to those tasks described above, the following items are to be included in the Civil Engineering Scope of Work:

It is understood and agreed that although certain portions of the following described scope of services may have previously been completed by this Consultant and this Consultant's consultants, such prior completion, and/or payment by others for such prior completion, in no way relieves Consultant or its consultants from their obligations to provide [Opus] with full and satisfactory performance, completion and delivery of any and all scope described herein."

**Exclusions**

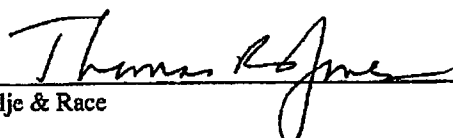
- 1). Charges for hydrant flow tests, reproduction and plotting, which will be billed in addition to engineering fees, and which are estimated to total \$5800 through completion of construction documents. This figure does not include reproduction for other team members, or for use during construction.

This Agreement entered into as of the day and year first written above.

  
Opus West Construction Corporation

MARK T. EDNER  
(Printed Name and Title)

SR. PROJECT MANAGER

  
Brelje & Race

Thomas R. Jones, Principal  
(Printed Name and Title)

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**Attachment "A"**  
**Hourly Rate Schedule for Civil Engineering**

**PROFESSIONAL SERVICES**

|                          |                            |
|--------------------------|----------------------------|
| Principal                | \$110.00 to \$ 125.00/hour |
| Senior Engineer/Surveyor | 75.00 to 100.00/hour       |
| Senior Planner           | 70.00 to 80.00/hour        |
| Engineer/Surveyor        | 65.00 to 75.00/hour        |
| Planner                  | 60.00 to 70.00/hour        |
| Technician/Drafter       | 65.00 to 75.00/hour        |

**COMPUTER TIME**

\$25.00/hour

**COMPUTER PLOT**

|        |               |
|--------|---------------|
| Vellum | \$8.00/sheet  |
| Mylar  | \$15.00/sheet |

**TYPING AND CLERICAL**

\$40.00/hour

**MILEAGE**

\$0.45/mile

**FIELD SURVEYING**

|                                                      |               |
|------------------------------------------------------|---------------|
| One-man Party<br>(Including GPS Equipment & Vehicle) | \$100.00/hour |
|------------------------------------------------------|---------------|

|                                                         |               |
|---------------------------------------------------------|---------------|
| Two-man Party<br>(Including Survey Equipment & Vehicle) | \$172.00/hour |
|---------------------------------------------------------|---------------|

|                                                           |               |
|-----------------------------------------------------------|---------------|
| Three-man Party<br>(Including Survey Equipment & Vehicle) | \$210.00/hour |
|-----------------------------------------------------------|---------------|

|               |              |
|---------------|--------------|
| GPS Equipment | \$25.00/hour |
|---------------|--------------|

**OUTSIDE CONSULTANTS**

Cost + 15% Handling Charge

**MATERIALS & OUTSIDE SERVICES**

Cost + 25% Handling Charge

Stakes, Pipes, Monuments,  
Maps, Prints, etc.

Charges for outside services, equipment, and facilities not furnished directly by Brelje & Race Engineers will be billed at cost plus 10%. Such charges may include, but shall not be limited to printing and reproduction services; shipping, delivery, and courier charges; subconsultant fees and expenses; special fees, permits, and insurance; transportation on public carriers, meals, and lodging; and consumable materials. Mileage will be charged at \$0.35 per mile.

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**Attachment "B"**  
**Additional Insurance Requirements**

1. Prior to starting the Work, Consultant will procure, maintain and pay for such insurance as will protect it against claims for injury or death, or for damage to property, which may arise out of or result from Consultant's operations under the Contract Documents, whether such operations be by self or by any subcontractors or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Such insurance will include, but not be limited to, the minimum coverages and limits of liability specified in the Contract Documents, or if greater, any coverages or limits of liability required by law.

Comprehensive general liability insurance required will include coverage for products/completed operations (extending two (2) years after completion of the Work), broad form property damage including completed operations, personal injury with employment exclusion deleted, blanket XCU, incidental malpractice, host liquor liability, and blanket contractual liability insurance applicable to Consultant's indemnity obligations under Paragraph 4.17.1 and other contractual indemnities assumed by Consultant under the Contract Documents.

The comprehensive general liability, auto liability and umbrella/excess liability insurance policies required will be endorsed to add the Owner and Contractor as additional insureds "for liability arising out of operations performed under the Contract Documents, including without limitation, the Owner's and Contractor's acts or omissions in connection with their general support, coordination, and supervision of such operations. The insurance afforded by the "additional insured" endorsement will be primary insurance and will not contribute with or be excess over any other insurance available to the Owner or Contractor.

Comprehensive automobile liability insurance required will include coverage for all owned, hired and non-owned vehicles.

Employer's liability, comprehensive general liability and automobile liability insurance may be arranged under single policies for the full minimum limits required or by a combination of underlying policies with the balance provided by an excess or umbrella liability policy.

Two (2) copies of Certificates of Insurance issued by companies and in form acceptable to Contractor will be filed with Contractor prior to commencement of the Work. Such Certificates will contain a provision that coverages afforded under the policies will not be canceled or modified until at least thirty (30) days' prior written notice has been give to Contractor. In the event Consultant fails to procure or maintain any insurance coverage required under the Contract Documents, Contractor may purchase such coverage and deduct the cost thereof from any monies due or to become due to Consultant or will be entitled to any other remedies available.

2. The following are the minimum insurance coverages to be carried by all Subcontractors and Sub-subcontractors.

- a. Workmen Compensation Insurance - As required by law.

Workmen's Compensation Coverage: \$100,000/\$500,000/\$100,000

- b. Commercial Liability - Provide Commercial General Liability including Business Auto Liability.

Coverage limits required:

- i) Contractors Operations
- ii) Independent Contractor's Contingent Liability
- iii) Broad Form Contractual Liability
- iv) Completed Operations

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**Attachment "B" (continued)**  
**Additional Insurance Requirements**

- c. Where there is an exposure for damage due to explosion, collapse or underground operations, Blanket XCU will be provided by Subcontractor.

**Limits Required:**

|                                          |             |
|------------------------------------------|-------------|
| General Aggregate:                       | \$2,000,000 |
| Products/Completed Operations Aggregate; | \$2,000,000 |
| Personal and Advertising Injury:         | \$1,000,000 |
| Each Occurrence:                         | \$1,000,000 |
| Fire Damage:                             | \$ 50,000   |
| Medical Expenses                         | \$ 5,000    |
| Automobile:                              | \$1,000,000 |

30 days written notice of cancellation will be given.

In no event will Subcontractor carry limits lower than that generally carried by Subcontractor on similar project. Subcontractor will maintain the above insurance at all times until final completion of the Work and expiration of Project Warranty except Completed Operations insurance will be maintained for two (2) years after final completion of the Work.

Further, in respect to Subcontractor's liability insurances, Subcontractor will cause Contractor to be a named insured on such policy pursuant to ISO endorsement (Form B).

- d. Errors and Omissions.

Provide for all contracts including professional services including specifically primary design responsibility.

\$1,000,000 minimum limit

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## EXHIBIT "A"

### LEGAL DESCRIPTION OF THE LAND

That certain real property situated in the State of California, County of Sonoma, City of Santa Rosa, more specifically described as follows:

#### Parcel One

THAT PORTION OF LOT 5 AND LOT 6 of "Sonoma Technology Center" files in Book 390 of Maps at Page 7-10, Sonoma County Records, described as follows:

COMMENCING at the common westerly corner of said Lot 5 and said Lot 6, being a point on the easterly line of Altruria Drive, 48 feet wide, as shown on said map of Sonoma Technology Center; thence along said easterly line of Altruria Drive, Northwesterly along a curve to the left, whose center bears south  $56^{\circ}41'24''$  west (South  $55^{\circ}41'47''$  West per 390 Maps 7-10), having a radius of 299.00 feet, through a central angle of  $5^{\circ}16'11''$ , an arc length of 27.50 feet, and thence North  $39^{\circ}34'47''$  West (North  $39^{\circ}34'24''$  West per 390 Maps 7-10), 13.76 feet to the True Point of Beginning; thence continuing along said easterly line of Altruria Drive, North  $39^{\circ}34'47''$  West (North  $39^{\circ}34'24''$  West per 390 Maps 7-10), 305.69 feet to the most westerly corner of said Lot 6; thence leaving said easterly line of Altruria Drive, along the northerly boundary of said Lot 6, North  $78^{\circ}57'53''$  East, 685.95 feet (North  $78^{\circ}59'21''$  East, 686.23 feet per 390 Maps 7-10) to a found 3" steel fence post at the most northerly corner of said Lot 6; thence leaving said northerly boundary, along the easterly boundary of said Lot 6 and said Lot 5, South  $21^{\circ}16'35''$  East 560.16 feet (South  $21^{\circ}14'44''$  East, 559.30 feet per 390 Maps 7-10) to a found  $\frac{1}{2}$  iron pipe with tag R.C.E. 10430, and thence South  $18^{\circ}35'17''$  East (South  $18^{\circ}35'03''$  East per 390 Maps 7-10), 62.18 feet; thence leaving said easterly boundary of Lot 5, North  $76^{\circ}38'35''$  West, 18.32 feet; thence northwesterly along a tangent curve to the right, having a radius of 277.00 feet through a central angle of  $19^{\circ}19'59''$ , an arc length of 93.47 feet; thence North  $57^{\circ}18'36''$  West, 354.53 feet; thence westerly along a tangent curve to the left, having a radius of 223.00 feet, through a central angle of  $67^{\circ}00'00''$ , an arc length of 260.77 feet thence South  $55^{\circ}41'24''$  West, 32.61 feet; thence westerly along a tangent curve to the right, having a radius of 20.00 feet, through a central angle of  $84^{\circ}43'49''$ , an arc length of 29.58 feet to the True Point of Beginning.

A.P. No.: 173-020-27

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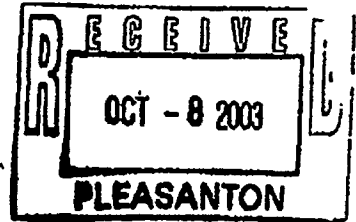
**Parcel Two**

Lot 7, as shown on that certain map entitled "Sonoma Technology Center", filed in the office of the County Recorder of Sonoma County, State of California, on September 30, 1986 in Book 390 of Maps at page(s) 7 through 10, Sonoma County Records, and as Amended by "Certificate of Correction", recorded February 21, 1997, as Recorders Document No. 1997 0014313, Sonoma County Records.

A.P. No.: 173-020-26

S/K

TERMS OF AGREEMENT BETWEEN OWNER AND CONSULTANT  
FOR SURVEYING SERVICES, DATED SEPTEMBER 29, 2003



The following are Terms of Agreement Between Opus West Construction Corp. (OWNER) and Brélje & Race, Engineers (CONSULTANT), for providing Professional Consulting Services for the Lakes at Fountaingrove Project.

**ARTICLE 1. TERMS OF PAYMENT**

**A. Invoicing**

CONSULTANT may submit invoices to CONTRACTOR for progress payments on a periodic basis. Such invoices shall represent the value of the completed Scope-of-Services. See Attachment "A" for scope of services and compensation.

**B. Progress Payments**

CONTRACTOR shall pay each invoice within thirty (30) days of invoice receipt.

Consultant invoices to be submitted per the attached Attachment "D".

**C. Failure to Make Payment Provisions**

If CONTRACTOR fails to make payment due to CONSULTANT for services and expenses within thirty (30) days after receipt of CONSULTANT'S invoice, the amount due CONSULTANT will be increased at the rate of Bank One Prime plus four percent (4%) from said thirtieth (30<sup>th</sup>) day, and in addition, CONSULTANT may, after giving seven (7) days notice to CONTRACTOR, suspend services under this Agreement

**D. Fee Schedule Rate Adjustments**

Per Attachment "B", the unit costs or hourly rates mentioned in the Agreement are to be valid six (6) months from the date of execution of the Agreement. CONSULTANT reserves the prerogative to review unit costs and adjust CONSULTANT'S compensation rate, taking into consideration changes in price indexes and pay scales applicable to the period when services are, in fact, being rendered.

**E. Compensation Adjustment**

If there are protracted delays for reasons beyond CONSULTANT'S control, within the customary period of time after six (6) months, CONSULTANT'S compensation shall be adjusted, taking into consideration changes in prices indexes and pay scales applicable to the period when services are, in fact, being rendered.

**F. Payment Upon Project Suspension**

In the event of all or any portion of work prepared or partially prepared by CONSULTANT is suspended, canceled or abandoned, CONTRACTOR shall pay CONSULTANT for completed work on the basis of percentage of work complete, plus compensation for any extra work at rates set forth on the attached Hourly Rate Schedule.

**ARTICLE 2. OBLIGATIONS OF CONSULTANT**

**A. Performance**

The Standard of Care applicable to CONSULTANT'S service will be the degree of skill and care normally

exercised by professionals of the consulting industry as observed by professional consultants performing similar services under like conditions.

**B. Insurance**

CONSULTANT will maintain throughout this Agreement the following insurance coverage if reasonably available at commercially affordable rates, and shall promptly notify in writing CONTRACTOR 30 days prior to any policy cancellation or termination:

**1. General Liability Insurance**

With limits of not less than \$1,000,000, combines single limit per occurrence.

**2. Comprehensive Business Automobile Insurance**

In an amount not less than \$1,000,000, combines single limit per occurrence.

**3. Professional Liability Insurance—**

With a limit not less than \$500,000 per occurrence, with an annual aggregate of no less than \$1,000,000.

**4. See Attachment "C" for additional insurance requirements.**

**C. Liability**

CONSULTANT agrees that its services will be performed, within the limits prescribed by CONTRACTOR, with the degree of skill and care normally exercised by professionals of the Consulting Industry as observed by professional consultants performing similar services under like conditions.

CONTRACTOR agrees to limit CONSULTANTS and its agents, employees, representatives and subconsultants liability to OWNER and all contractors and subcontractors on the Project arising from negligent acts, errors or omissions, such that the total aggregate liability to all those named shall not exceed \$1,000,000 or CONSULTANT'S total fee for services, whichever is greater.

**D. Safety**

CONSULTANT is responsible for the safety on-site of its own employees and subconsultants. Neither the professional activities of CONSULTANT'S employees nor of its subconsultants shall be construed to imply CONSULTANT has responsibility for any activities on-site performed by personnel other than CONSULTANT'S employees or subconsultants.

**ARTICLE 3. OWNERS OBLIGATION**

**A. Information and Review**

CONTRACTOR shall provide all criteria and full information as to CONTRACTOR'S requirements for the Project; designate a person to act with authority on CONTRACTOR'S behalf in respect to all aspects of the project, and respond promptly to CONSULTANT'S submissions; and give prompt written

Ex. C

OW35337

notice to CONSULTANT whenever CONTRACTOR observes or otherwise becomes aware of any condition which may affect CONSULTANT'S performance of services.

**B. Failure to Implement Recommendations**

CONSULTANT will not be held liable for problems that may occur if CONSULTANT'S recommendations are not implemented. Accordingly, CONTRACTOR waives any claim against and agrees to defend and hold CONSULTANT harmless from any claim or liability for injury or loss that results from failure to implement CONSULTANT'S recommendation or from CONSULTANT recommendations in a manner that is not in strict accordance with them. CONTRACTOR also agrees to compensate CONSULTANT for any time spent and expenses incurred by CONSULTANT in defense of any such claim, with such compensation to be based upon CONSULTANT'S prevailing fee schedule and expense reimbursement policy.

**C. Prompt Payment**

CONTRACTOR shall promptly pay for all services as duly executed via this Agreement

**D. Furnished Data**

CONTRACTOR shall furnish to CONSULTANT geotechnical information and recommendations; environmental assessments and impact statements; property legal descriptions and recent title report identifying any encumbrances; and zoning and deed restrictions via appropriate licensed professionals as required; all of which CONSULTANT may rely upon in performing services hereunder.

**E. Access Approval**

Obtain approval for access to and make all provisions for CONSULTANT to enter upon public and private property as required for CONSULTANT to provide the services authorized via this Agreement.

**F. Special Additional Services Provision**

Provide any additional services via qualified personnel which may be required for the successful completion of this Project, which is not within CONSULTANT'S Scope-of-Services, including but not limited to, legal, accounting, independent, cost estimating and insurance consulting services.

**ARTICLE 4. MISCELLANEOUS PROVISIONS**

**A. Controlling Law**

This Agreement is to be governed by the law of the place of the project.

**B. Dispute Resolution**

CONTRACTOR and CONSULTANT agree that they shall attempt to settle any claim or controversy arising out of this Agreement through consultation and negotiation in the spirit of mutual friendship and cooperation. If any such attempt should fail, then the dispute shall first be submitted to a mutually acceptable neutral advisor for initial fact finding and mediation. Neither party shall unreasonably withhold acceptance of such an advisor, and selection of such advisor shall be made within 45 days after written

notice by one of the parties for such fact finding and mediation. The cost of such fact finding and mediation, and of any other subsequent alternative dispute resolution agreed upon by the parties, shall be shared equally by CONTRACTOR and CONSULTANT. Any dispute which the parties cannot so resolve between themselves in good faith within six months of the date of the initial demand by either party for such fact finding shall be finally determined by a court within the State of California.

**C. Ownership of Instruments of Service**

All reports, plans, specification, field data and notes and other documents, including all documents on electronic media, prepared by CONSULTANT are instruments of service and shall remain the property of CONSULTANTS.

**D. Delays in Work**

CONSULTANT is not responsible for delays caused by factors beyond CONSULTANT'S reasonable control. Including but not limited to delays because of strikes, lockouts, work slowdowns or stoppages, accidents, acts of God, failure of any governmental or other regulatory agency to act in a timely manner, failure of CONTRACTOR to furnish timely information or approve or disapprove of CONSULTANT'S services or work product promptly, or delays caused by faulty performance by CONTRACTOR or by contractors of any level. When such delays beyond CONSULTANT'S reasonable control occur, CONTRACTOR agrees CONSULTANT is not responsible for damages, nor shall CONSULTANT be deemed to be in default of this Agreement.

**E. Termination**

OWNER may terminate the Agreement at any time upon giving CONSULTANT five (5) working days prior written notice. CONSULTANT may terminate this Agreement upon giving CONTRACTOR thirty (30) calendar days prior written notice for any of the following reasons:

1. Breach by CONTRACTOR of an material term of this Agreement including but not limited to Payment Terms.
2. Transfer of ownership of the project by CONTRACTOR to any other persons or entities not a party to this Agreement without the prior written consent of CONSULTANT.
3. Material changes in the conditions under which this Agreement was entered into, coupled with the failure of the parties hereto to reach accord on the fees and changes for any Additional Services required because of such changes.
4. Loss or incapacitation of key personnel of the CONSULTANT.

CONTRACTOR R shall within five (5) working days of termination pay CONSULTANT for all services rendered and all costs incurred up to the date of termination, in accordance with the compensation provisions of this contract.

## Attachment "A" Scope of Services and Compensation

### 1. GENERAL DESCRIPTION

Provide professional surveying for the Lakes at Fountaingrove Apartments project located at 900 & 950 Altruria Drive, Santa Rosa, CA 95403. This proposal is based on civil drawings provided by Brelje & Race Engineers Civil Engineers & Surveyors, Inc. Onsite drawings (C1-C7 - Delta 2) dated March, 2003 and offsite drawings (1 of 13 through 13 of 13) dated March, 2003. Retaining Walls Company North fax dated July 29, 2003 on the retaining wall profiles and staking requirements, and building staking sketches dated August 13, 2003.

### 2. SCOPE OF WORK

#### A. OFFSITE

1. Altruria Drive: No surveying provided.
2. Rough Grade stakes-one (1) set, includes:
  - a. Kelsey Knolls, left side only, 50' o.c.
3. Storm drainage-one (1) set, includes:
  - a. Drop Inlets (2 stakes per structure)
  - b. Catch Basins (3 stakes per structure)
  - c. Manholes (2 stakes per structure)
4. Sanitary sewer-one (1) set, includes:
  - a. Manholes
  - b. Clean outs
5. Water mains-one (1) set, includes:
  - a. Fire Lines
  - b. Domestic Lines
  - c. Fire Hydrants
  - d. Stubs
6. Finish Grade-one (1) set, includes:
  - a. Kelsey Knolls curb, left side only, 25' o.c.
7. Street Lights (4) - Lath set behind new curb
8. P.G.&E.
  - a. Joint Trench - Stakes to reference top face of curb.
  - b. 3' x 5' Boxes.
9. Centerline monuments

#### B. ONSITE

1. Rough Grade stakes-one (1) set, includes:
  - a. Outside project perimeter - Slope stakes 75' o.c.
  - b. Preliminary building pads - Maximum of thirty stakes with vertical cut/fills for extreme rough grading.
  - c. Parking lot perimeter - Offset grade stakes.
  - d. Building pads 1 through 10, garage and recreation building - Offset stakes at each corner with information on overbuild and grade breaks as shown on the attached sketches dated August 13, 2003.
2. Storm Drainage-one (1) set, includes:
  - a. Drop Inlets (2 stakes per structure).
  - b. Catch Basins (3 stakes per structure).
  - c. Manholes (2 stakes per structure).
3. Swales - Limited to swales from Building 5 to Building 7.

**Attachment "A" (continued)**  
**Scope of Services and Compensation**

4. Sanitary sewer-one (1) set includes:
  - a. Manholes
  - b. Clean outs
5. Water Mains-one (1) set includes:
  - a. Fire Hydrants
  - b. Stubs
6. Pad Verification-elevation only:
  - a. Building pads 1 through 10, garage, and recreation building.
7. Retaining Walls: (Per Retaining Wall Company North fax dated July 29, 2003 and sketches dated August 13, 2003.)
  - a. Top of wall - Offset grade stakes at 50' o.c.
  - b. Finish Grade Face of wall - Offset grade stakes at 50' o.c.
8. Sidewalk-one side only  
Limited to meandering portions of sidewalk. Portions of sidewalks lying next to streets and retaining walls are not included.
9. Building Layout-one (1) set includes:
  - a. Buildings 1 through 10, garage and recreation building - Offset stakes at each corner in two directions as shown on the attached sketches dated August 13, 2003.
10. P.G. & E. Staking: No staking provided. Plans unavailable at this time.
11. Finish Grade-one (1) set includes:
  - a. Parking lot curb (tangents at 50' o.c. and curves at 25' o.c.)
  - b. Valley gutter.
12. Pool Area-one (1) set includes:  
Maximum of 35 stakes.

**3. FEE SUMMARY**

|                   |                    |
|-------------------|--------------------|
| A. Off site Work  | \$5,300.00         |
| B. Onsite Work    | \$67,850.00        |
| <b>Total Cost</b> | <b>\$73,150.00</b> |

Please note that it is understood and agreed that although certain portions of the following described scope of services may have previously been completed by this Consultant and this Consultant's consultants, such prior completion, and/or payment by others for such prior completion, in no way relieves Consultant or its consultants from their obligations to provide [Opus] with full and satisfactory performance, completion and delivery of any and all scope described herein."

**4. COORDINATION**

Consultant to coordinate work with Project Superintendent, Earthwork subcontractor, and Retaining Wall subcontractor. OWCC Field Superintendent will fax request for surveying with 24 hour minimum notice. Fax request form to be attached to invoice.

Attachment "A" (continued)  
Scope of Services and Compensation

5. EXCLUSIONS

- a) Engineering services – This scope is included in Civil Consultant agreement.
- b) Stakes for:
  - i. Landscape or irrigation work
  - ii. Under drains
  - iii. Roof drains
  - iv. Area drains
  - v. Inside building perimeters
  - vi. Sign walls
  - vii. Pot-holing
  - viii. PG&E items, or Electrical items not listed above, are not part of this agreement.

This Agreement entered into as of the day and year first written above.

APPROVED:

OPUS WEST CONSTRUCTION CORPORATION

BRELJE & RACE ENGINEERS

By: Susan L. Luente

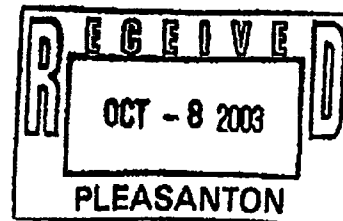
By: John A. Hoeny

Its: PROJECT MANAGER

Its: Vice President

Date: 10/10/03

Date: 10/6/03





**Attachment "B"**

**SERVICES RATE SCHEDULE**  
**EFFECTIVE SEPTEMBER 26, 2002**

**PROFESSIONAL SERVICES**

|                          |                           |
|--------------------------|---------------------------|
| Principal                | \$110.00 to \$125.00/hour |
| Senior Engineer/Surveyor | 75.00 to 100.00/hour      |
| Senior Planner           | 70.00 to 80.00/hour       |
| Engineer/Surveyor        | 65.00 to 75.00/hour       |
| Planner                  | 60.00 to 70.00/hour       |
| Technician/Drafter       | 65.00 to 75.00/hour       |

**COMPUTER TIME**

\$25.00/hour

**COMPUTER PLOT**

|        |               |
|--------|---------------|
| Vellum | \$8.00/sheet  |
| Mylar  | \$15.00/sheet |

**TYPING AND CLERICAL**

\$40.00/hour

**MILEAGE**

\$0.45/mile

**FIELD SURVEYING**

|                                                      |               |
|------------------------------------------------------|---------------|
| One-man Party<br>(Including GPS Equipment & Vehicle) | \$100.00/hour |
|------------------------------------------------------|---------------|

|                                                         |               |
|---------------------------------------------------------|---------------|
| Two-man Party<br>(Including Survey Equipment & Vehicle) | \$172.00/hour |
|---------------------------------------------------------|---------------|

|                                                           |               |
|-----------------------------------------------------------|---------------|
| Three-man Party<br>(Including Survey Equipment & Vehicle) | \$210.00/hour |
|-----------------------------------------------------------|---------------|

|               |              |
|---------------|--------------|
| GPS Equipment | \$25.00/hour |
|---------------|--------------|

**OUTSIDE CONSULTANTS**

Cost + 15% Handling Charge

**MATERIALS & OUTSIDE SERVICES**

Stakes, Pipes, Monuments,  
Maps, Prints, etc.

Cost + 25% Handling Charge

### Attachment "C" Additional Insurance Requirements

1. Prior to starting the Work, Consultant will procure, maintain and pay for such insurance as will protect it against claims for injury or death, or for damage to property, which may arise out of or result from Consultant's operations under the Contract Documents, whether such operations be by self or by any subcontractors or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Such insurance will include, but not be limited to, the minimum coverages and limits of liability specified in the Contract Documents, or if greater, any coverages or limits of liability required by law.

Comprehensive or commercial general liability insurance required will include coverage for products/completed operations (extending two (2) years after completion of the Work), broad form property damage including completed operations, personal injury with employment exclusion deleted, blanket XCU, incidental malpractice, host liquor liability, and blanket contractual liability insurance applicable to Consultant's indemnity obligations under Attachment A, Paragraph 5.d. and other contractual indemnities assumed by Consultant under the Contract Documents.

The comprehensive general liability, auto liability and umbrella/excess liability insurance policies required will be endorsed to add the Owner and Contractor as additional insureds "for liability arising out of Consultant's scope of work. The insurance afforded by the "additional insured" endorsement will be primary insurance and will not contribute with or be excess over any other insurance available to the Owner or Contractor.

Comprehensive automobile liability insurance required will include coverage for all owned, hired and non-owned vehicles.

Employer's liability, comprehensive general liability and automobile liability insurance may be arranged under single policies for the full minimum limits required or by a combination of underlying policies with the balance provided by an excess or umbrella liability policy.

Two (2) copies of Certificates of Insurance issued by companies and in form acceptable to Contractor will be filed with Contractor prior to commencement of the Work. Such Certificates will contain a provision that coverages afforded under the policies will not be canceled until at least thirty (30) days' prior written notice has been given to Contractor. In the event Consultant fails to procure or maintain any insurance coverage required under the Contract Documents, Contractor may purchase such coverage and deduct the cost thereof from any monies due or to become due to Consultant or will be entitled to any other remedies available.

2. The following are the minimum insurance coverages to be carried by all Consultants.

- a. Workmen Compensation Insurance - As required by law.

Workmen's Compensation Coverage: \$100,000/\$500,000/\$100,000

- b. Commercial Liability - Provide Commercial General Liability including Business Auto Liability.

Coverage limits required:

- i) Contractors Operations
- ii) Independent Contractor's Contingent Liability
- iii) Broad Form Contractual Liability
- iv) Completed Operations

**Attachment "C" (continued)**  
**Additional Insurance Requirements**

- c. Where there is an exposure for damage due to explosion, collapse or underground operations, Blanket XCU will be provided by Consultant.

**Limits Required:**

|                                          |             |
|------------------------------------------|-------------|
| General Aggregate:                       | \$1,000,000 |
| Products/Completed Operations Aggregate; | \$1,000,000 |
| Personal and Advertising Injury:         | \$1,000,000 |
| Each Occurrence:                         | \$1,000,000 |
| Fire Damage:                             | \$ 50,000   |
| Medical Expenses                         | \$ 5,000    |
| Automobile:                              | \$1,000,000 |

30 days written notice of cancellation will be given.

In no event will Consultant carry limits lower than that generally carried by Consultant on similar project. Consultant will maintain the above insurance at all times until final completion of the Work and expiration of Project Warranty except Completed Operations insurance will be maintained for two (2) years after final completion of the Work.

Further, in respect to Consultant's liability insurances, Consultant will cause Contractor to be a named insured on such policy pursuant to ISO endorsement (Form B).

- d. **Errors and Omissions.**

Provide for all contracts including professional services including specifically primary design responsibility.

\$1,000,000 minimum limit

LAW OFFICES OF  
**ROBLES & CASTLES**  
540 PACIFIC AVENUE  
SAN FRANCISCO, CALIFORNIA 94133  
TEL: (415) 743-9300  
FAX: (415) 743-9305

Ranjani Ramakrishna  
ranjani@roblesandcastleslaw.com

OF COUNSEL  
CRAIGIE, MCCARTHY & CLOW

November 9, 2009

Chad Dunigan  
Koeller, Nebecker, Carlson & Haluck, LLP  
1478 Stone Point Drive  
Suite 400  
Roseville, CA 95661

RE: *STRS Ohio CA Real Estate Inv.I, LCC v. Opus West Corporation*

Dear Mr. Dunigan:

We are counsel for Brelje & Race in this matter. We write in response to your letter dated October 2, 2009 to Brelje demanding an indemnity and defense for claims arising out or relating to Brelje's work for Boulders at Fountain Grove apartment complex.

As you know, STRS (Ohio), plaintiffs submitted this claim for defects in construction at the apartment complex called Boulders at Fountaingrove located in Santa Rosa, CA ("Project"). Brelje and Opus West entered into agreements for professional services provided by Brelje for the same Project.

The "Surveying Services Consulting Agreement" dated September 29, 2003 between Brelje and Opus that is referenced in your October 2<sup>nd</sup> letter contains the following provision at Article 3B:

Consultant will not be held liable for problems that may occur if CONSULTANT's recommendations are not implemented. Accordingly, CONTRACTOR waives any claim against and agrees to defend and hold CONSULTANT harmless from any claim or liability for injury or loss that results from failure to implement CONSULTANT's recommendation or CONSULTANT's recommendations in a manner that is not in strict accordance with them. CONTRACTOR also agrees to compensate for any time spent and expenses incurred by CONSULTANT in defense of any such claim, with such

Ex. D

Chad Dunigan  
11/09/09  
Page 2

compensation to be based upon CONSULTANT's prevailing fee schedule and expense reimbursement policy.

As you can see, the contractual indemnity provision runs from Opus West to and in favor of Brelje. Accordingly, this is to advise you that Brelje is hereby rejecting your demand for indemnity and defense.

In addition to the above provision contained in the Surveying Services Consulting Agreement, the Civil Engineering Services Agreement between Opus West and Brelje dated January 31, 2003, also contains an identical provision at Article 3B.

Copies of both agreements are attached.

**REQUEST FOR INDEMNIFICATION, ATTORNEY'S FEES AND COSTS**

Pursuant to Article 3B of the Surveying Services Agreement and the Civil Engineering Services Agreement, Brelje hereby tenders the defense of this matter to Opus West. Brelje also requests that Opus West indemnify Brelje for all claims arising out of the construction work at the Project related to or arising out of Brelje's contracts with Opus. Brelje also demands attorney's fees and all expenses incurred by Brelje and its attorneys in responding to plaintiff's claim.

Very truly yours,

  
Ranjani Ramakrishna

Enclosures