

**PRODUCT DEVELOPMENT, MANUFACTURING  
AND MARKETING AGREEMENT**

This Product Development, Manufacturing and Marketing Agreement (this "**Agreement**") is entered into by and between Olson Kundig Architects, Inc., a Washington corporation ("**Architect**") and 12th Avenue Iron Inc., a Washington corporation ("**Manufacturer**"). Architect and Manufacturer are sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties**."

WHEREAS, Architect is engaged in the business of architectural design;

WHEREAS, Manufacturer is engaged in the business of building and installing custom architectural metalwork;

WHEREAS, the Parties desire to establish a collaborative relationship for the design and development of various products including, without limitation, doorknobs, pulls, lights and similar products (the "**Products**") pursuant to which Architect will design Products for manufacture and sale by Manufacturer to the public (the "**Customers**"); and

WHEREAS, the Parties wish to document their respective rights and obligations with respect to the Products, their collaborative efforts and any inventions developed in the course thereof.

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements contained herein, the parties agree as follows:

**1. Product Development**

**1.1. Design.** Architect shall be solely responsible for performing all design work related to the Products ("**Product Designs**") from which Manufacturer shall develop shop drawings of sufficient detail to enable the manufacture of the Products ("**Shop Drawings**"). Manufacturer shall prepare and submit the Shop Drawings to Architect for approval according to a mutually agreed schedule and make such changes thereto as Architect may request. Architect shall have sole control over the branding of the Products, and shall have sole and final authority regarding the placement and appearance of trademarks on the Products. The Parties agree that Architect is not subject to any future commitment to provide Product Designs, or any requirement to provide a certain quantity of Product Designs.

**1.2. Manufacture.**

(a) Prototypes. Manufacturer shall build, assemble and manufacture Product prototypes ("**Prototypes**") in accordance with the approved Shop Drawings for inspection and final approval by Architect. Prototypes shall be built in accordance with mutually agreed-upon quality and material requirements, or in accordance with written guidelines providing for the same. Architect's approval of a Prototype shall be required prior to the manufacturing of any Products for sale to Customers, *provided, however*, that the Parties shall mutually agree whether any Product Designs provided by Architect or Prototypes manufactured by Manufacturer will be manufactured as Products and made available to Customers, and Architect's approval of a Prototype shall not obligate Manufacturer to manufacture a Product for sale to Customers.

(b) Products. Subject to Architect's approval of a Prototype, Manufacturer shall build, assemble and manufacture the Product in accordance with the Product Design and with mutually agreed-upon quality and material requirements, or in accordance with written guidelines providing for the same. Architect shall have the right to conduct quality control audits or otherwise inspect and approve the manufacturing processes and facilities of Manufacturer and the processes and facilities of any third party contracted by Manufacturer to perform work to confirm that the Products are manufactured according to Product Design specifications and quality requirements.

(c) Manufacturing Matters; Third-Party Contractors. Manufacturer shall be solely responsible for all matters and costs relating the building, assembling and manufacturing of Prototypes and Products, subject to Architect's quality control rights set forth in Paragraph 1.2(b) hereof. Manufacturer shall be solely responsible for engaging and supervising any third-party contractors necessary for the building, assembling or manufacturing of the Prototypes and Products. The Parties agree that Manufacturer is under no obligation to build, assemble or manufacture Prototypes or Products for every Product Design provided by Architect, and that Manufacturer may elect not to manufacture Product Designs for any or no reason.

### 1.3. Sales and Marketing.

(a) Distribution. Product sales shall initially be carried out through a web site owned and/or controlled by Manufacturer (the "**Web Site**"). The Parties will collaborate on the design and appearance of the Web Site including, without limitation, the manner in which Products will be presented for sale to Customers. Manufacturer, at its sole expense, shall be responsible for obtaining and providing photographs of the Products in quality suitable for display on the Web Site, subject to Architect's final approval. If Architect rejects photographs obtained and provided by Manufacturer, Architect shall engage the services of its in-house photography resources to obtain and provide replacement photographs of the Products in quality suitable for display on the Web Site. Manufacturer shall, at its sole expense, be responsible for development and maintenance of the Web Site. If the Parties decide to pursue alternative distribution channels, the Parties shall collaborate on the identification and approval of such distribution channels, and in the development of design, appearance and presentation standards applicable to sales and marketing activities carried out in connection therewith. The Parties' rights and obligations under this Agreement shall not be conditioned on the attainment of sales milestones or volumes.

(b) Marketing. Manufacturer shall be responsible for the performance of any and all marketing activities related to the Products, provided that such performance shall be carried out in accordance with mutually agreed-upon design, appearance and presentation standards.

(c) Inventory; Order Fulfillment and Invoicing. Manufacturer shall be solely responsible for managing Product inventory and shall be under no obligation to maintain a certain quantity of Product as inventory. Manufacturer shall be solely responsible for all costs associated with inventory management and shall bear all responsibility for order fulfillment. Manufacturer shall be solely responsible for invoicing Customers for Products sold, collecting payments and remitting a portion of the gross amounts received from sales to Architect to the address designated in accordance with Paragraph 1.4 hereof, *provided, however*, that if Manufacturer is unwilling or unable to collect such payments, Manufacturer shall be deemed to have automatically assigned the right to collect payments to Architect.

(d) Performance. The Parties shall maintain open communication throughout the term of this Agreement, and shall mutually agree upon reasonable time periods for performance including, without limitation, delivery of Product Designs, Shop Drawings, and the manufacture of Prototypes and Products. In the event of a dispute regarding the timeliness of performance, the Parties will in good faith meet and confer to work toward resolution of such dispute and establish a reasonable time for performance. In the event that a dispute cannot in good faith be resolved, this Agreement may be terminated by written notice of either Party delivered in accordance with Paragraph 8.4 hereof.

1.4. Pricing and Royalty. Manufacturer shall be solely responsible for determining the price point at which the Products will be sold to Customers. For and in consideration of the license granted to Manufacturer and Architect's other obligations under this Agreement, Manufacturer shall pay Architect a royalty of seven percent (7%) of the gross amount received from the sale of Products (the "**Royalty**"). Such Royalty shall be payable quarterly and shall be calculated based on payments actually received by Manufacturer from Products sold during the relevant quarter. Manufacturer shall deliver Royalties together with a report of all sales activity and Customer information (including without limitation Customer contact information, purchase history, and purchase payments received during the relevant quarter) to Architect at the address set forth in Paragraph 8.4 hereof, or to such other address as Architect may have designated in writing.



## 2. Ownership

**2.1. Ownership of Products.** Architect shall own all intellectual property rights in and to the Products. For purposes of this Agreement, Intellectual Property Rights means, any and all proprietary rights of any kind, tangible or intangible, now known or hereafter existing, including without limitation, copyrights, neighboring rights and moral rights; trade secret; trademark; and patent and other industrial property rights, and all registrations, and applications thereof now or hereafter in force throughout the universe. Architect shall have the sole and exclusive right to enforce any and all Intellectual Property Rights in the Products including, without limitation, by filing for and maintaining trademark, patent and copyright protection for the Products as appropriate. Manufacturer hereby irrevocably transfers, assigns and conveys to Architect any and all rights Manufacturer may have in and to the Products.

**2.2. Ownership of Tooling.** Manufacturer shall own all rights in and to any and all tooling, dies and/or molds (the "**Tooling**") developed specially for the manufacture of the Prototypes or the Products, *provided, however,* that such Tooling shall be used only for purposes of this Agreement and shall not be provided to any other party with the exception of third parties contracted by Manufacturer for the purpose of building, assembling or manufacturing the Prototypes and Products under this Agreement. Upon the termination of this Agreement, Architect shall have the right, but not the obligation, to purchase the Tooling from Manufacturer at a price equal to Manufacturer's actual cost.

**2.3. License.** Architect hereby grants Manufacturer under Architect's Intellectual Property Rights, a limited, non-exclusive, worldwide, royalty-bearing, non-transferrable, non-sublicensable license to manufacture, market and sell the Products in accordance with the terms hereof during the term of this Agreement.

## 3. Term, Termination and Breach

**3.1. Term.** The term of this Agreement shall commence on the Effective Date (as defined herein) and shall continue thereafter until terminated by either Party in accordance with this Section 3.

**3.2. Termination.** Either Party may terminate this Agreement for any or no cause upon thirty (30) days written notice provided in accordance with Paragraph 8.4 hereof. Upon termination, Manufacturer shall take all steps to immediately cease activities related to the manufacture or marketing of Products, and shall immediately cease accepting orders for Products, *provided, however,* that Manufacturer may continue to manufacture Products for the fulfillment of orders placed prior to the effective date of termination. Manufacturer's obligation to pay Royalties shall survive any termination of this Agreement.

**3.3. Breach.** Notwithstanding the foregoing, either Party may terminate this Agreement (a) if the other Party breaches any of its material obligations under this Agreement and such breach is not cured within fifteen (15) days of receiving written notice of such breach; or (b) immediately, if the other Party becomes bankrupt or fails to pay its debts as they become due. In any event, if a Party has materially failed to perform or has breached its obligations under this Agreement, the other Party may suspend its performance upon written notice to the breaching Party until such time as the breaching Party cures its nonperformance or breach.

**4. Insurance.** Manufacturer shall, at its sole cost and expense, procure and maintain during the term of this Agreement any and all insurance coverage necessary to cover its activities under this Agreement including, without limitation, a policy of Commercial General Liability insurance with limits not less than \$1 million each occurrence; \$2 million general aggregate; \$2 million products completed operations aggregate and \$1 million personal advertising, and will name Architect as an additional insured under such policy. Manufacturer shall notify Architect in writing at least thirty (30) days prior to any cancellation, non-renewal, substitution or material alteration of Manufacturer's insurance policies applicable to its activities under this Agreement. Manufacturer shall be responsible for ensuring that any third-party contractors engaged under this Agreement procure and maintain insurance coverage in accordance with the requirements of this Section 4. The fact that insurance is obtained by Manufacturer



shall not be deemed to release or diminish the liability of Manufacturer including, without limitation, liability under the indemnity provisions of this Agreement.

**5. Representations and Warranties.** Each Party hereby represents and warrants to the other as follows:

(a) It is a business entity duly organized, validly existing and in good standing in the jurisdiction in which it is incorporated and it has all rights, requisite corporate power and authority to execute and deliver this Agreement.

(b) It has no agreements with any third party or commitments or obligations that materially conflict with its obligations under this Agreement. During the term of this Agreement, it will not enter into any agreement, commitment or obligation that materially conflicts with its obligations under this Agreement.

**6. Indemnity.** Architect assumes no liability whatsoever to Manufacturer or to any third party with respect to the Product Designs or Products or the use thereof. Manufacturer shall defend, indemnify and hold Architect, its owners, officers, employees, agents, servants, shareholders, parents, subsidiaries, predecessors, successors and assigns harmless from and against any and all suits, claims, actions, losses, injuries, damages, liabilities, costs and expenses (including reasonable attorneys' fees) arising out of or relating to this Agreement, including any claim relating to the manufacture or use of the Products. Architect agrees to provide Manufacturer with prompt notice of any such claim and to cooperate with Manufacturer in its defense.

**7. Confidentiality.** The Parties acknowledge that each Party (a "Discloser") has and during the course of this Agreement may continue to disclose to the other Party (a "Recipient") certain information regarding its business, operations and products that it deems confidential and proprietary ("Confidential Information"). The Parties further acknowledge that it is important to each of them that such Confidential Information is kept strictly confidential and only used by the Recipient for the limited purposes of this Agreement. Therefore, Recipient agrees not to use the Confidential Information of the Discloser for any purpose other than in furtherance of its obligations under this Agreement and not to disclose such Confidential Information to any third party without the prior agreement of the Discloser. The obligation under this Section 7 shall survive termination or expiration of this Agreement for the longer of five (5) years or until the information is no longer protected from unauthorized use or disclosure under copyright, trade secret or other applicable laws. For purposes of this Section 7, Confidential Information means any data, information, or drawings of the Discloser related to the Product and any confidential data or information about the Discloser, including without limitation, Product specifications, drawings, designs, processes, methods, know-how, discoveries, inventions, or other information or data regarding the Product, and information regarding the Discloser's products, services, customers, customer lists, marketing, finances, and other business matters. Confidential Information does not include information that is available to the public without limitation or that the Recipient can demonstrate was lawfully in its possession prior to disclosure by the Discloser. A Party shall not be in violation of this Section 7 if it discloses Confidential Information in response to court order, subpoena, or other legal process or as required under applicable law.

**8. Miscellaneous**

**8.1. Limitation of Liability.** EXCEPT FOR INDEMNITY OBLIGATIONS HEREUNDER OR ANY CLAIMS ARISING FROM ONE PARTY'S INFRINGEMENT OF THE OTHER'S INTELLECTUAL PROPERTY RIGHTS OR FOR A VIOLATION OF SECTION 7 OR PARAGRAPH 8.4, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS AFFILIATES FOR INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF PRODUCTION TIME, PROFITS, REVENUE OR BUSINESS) RESULTING FROM OR IN ANY WAY RELATED TO THIS AGREEMENT, OR THE TERMINATION OF THIS AGREEMENT. THIS LIMITATION APPLIES REGARDLESS OF WHETHER SUCH DAMAGES ARE SOUGHT BASED ON BREACH OF CONTRACT, NEGLIGENCE OR ANY OTHER LEGAL THEORY. EXCEPT AS PROVIDED ABOVE, IN NO CASE

SHALL THE LIABILITY OF EITHER PARTY TO THE OTHER IN CONNECTION WITH THIS AGREEMENT EXCEED THE AMOUNT PAID TO ARCHITECT UNDER PARAGRAPH 1.4. THE PARTIES AGREE THAT FOR PURPOSES OF THIS AGREEMENT, A PARTY'S DIRECT DAMAGES SHALL INCLUDE THE TOTAL EXPENDITURE (INCLUDING BOTH DIRECT AND INDIRECT EXPENSES) MADE BY SUCH PARTY IN THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT.

**8.2. Relationship of the Parties.** It is expressly understood and agreed that the relationship between Architect and Manufacturer is that of independent contractors. This Agreement does not create any agency, partnership, or joint venture relation between Architect and Manufacturer or establish an employer and employee relationship between them. Neither Party shall make any representations that it has any right to act for or bind the other or hold itself out as the agent for the other any purpose or incur any obligation on behalf of the other.

**8.3. Employee Matters.** Manufacturer assumes full and sole responsibility for paying all compensation and expenses of Manufacturer's employees and independent contractors and for all state and federal income tax, unemployment insurance, Social Security, and other applicable withholding with respect to Manufacturer's employees. Manufacturer shall provide workers' compensation insurance for Manufacturer's employees and agents and shall hold harmless, indemnify and defend Architect for any claims arising out of any injury, disability, or death of any of Manufacturer's employees, independent contractors or agents.

**8.4. Compliance with Laws.** Each Party shall comply with all laws and regulations applicable to its duties under the Agreement.

**8.5. Governing Law.** The validity, construction and performance of this Agreement shall be governed by and interpreted in accordance with the laws of the State of Washington without regard to its provisions on the conflicts of laws. Any disputes arising out of or related to this Agreement, shall be subject to the exclusive jurisdiction of, and venue in, the state and federal courts located in King County, Washington.

**8.6. Notices.** All notices required or permitted under this Agreement shall be in writing and shall be deemed to be given (a) when personally delivered; (b) five (5) days after mailing when mailed by registered or certified mail, postage prepaid; (c) on the day of sending when sent by facsimile (with recorded transmission completion); or (d) two (2) days after sending when sent by reputable express courier, delivery charges prepaid, and addressed as follows:

To: Olson Kundig Architects, Inc.  
Attn: Kirsten Murray  
159 S. Jackson Street, Suite 600  
Seattle, WA 98104  
Tele: 206-624-5670  
Fax: 206-624-3730

To: 12th Avenue Iron, Inc.  
Attn: Steve Marks  
1415 12<sup>th</sup> Avenue  
Seattle, WA 98122  
Tele: 206-325-0792

Any changes of address of a Party shall be promptly communicated in writing to the other Party.

**8.7. Assignment.** This Agreement may not be assigned by any Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld. No assignment shall relieve any Party of responsibility for the performance of any accrued obligation which such Party then



has hereunder. Any attempted assignment in violation of this Paragraph 8.5 shall be void and without effect.

**8.8. Severability.** The provisions of this Agreement shall be deemed severable. If any provision in this Agreement shall be found or be held to be invalid or unenforceable, then the meaning of that provision shall be construed, to the extent feasible, to render the provision enforceable, and if no feasible interpretation would save such provision, it shall be severed from the remainder of this Agreement, which shall remain in full force and effect unless the provisions that are invalid or unenforceable substantially impair the value of the entire Agreement to either Party. In such event, the Parties shall use their respective reasonable efforts to negotiate a substitute, valid and enforceable provision which most nearly affects the Parties' intent in entering into this Agreement.

**8.9. Waiver.** No waiver of any term, provision or condition of this Agreement whether by conduct or otherwise in any one or more instances shall be deemed to be or construed as a further or continuing waiver of such term, provision or condition or of any other term, provision or condition of this Agreement.

**8.10. Binding Effect.** This Agreement shall bind the Parties, their successors, trustee in bankruptcy, and permitted assigns.

**8.11. Force Majeure.** No Party shall be considered in default or be liable to the other Party for any delay in performance or non-performance caused by circumstances beyond the reasonable control of such Party, including but not limited to acts of God, explosion, fire, flood, war, whether or not declared, accident, labor strike or labor disturbances, inability to procure supplies from third party vendors, sabotage, order or decrees of any court, or action of government authority.

**8.12. Non-Exclusive.** This Agreement is non-exclusive, and the Parties are free to pursue other business opportunities.

**8.13. Counterparts.** This agreement may be executed in counterparts, in which event all executed copies taken together or a copy with all of the signature pages attached thereto, shall constitute one and the same instrument, shall become effective when one or more counterparts have been signed by each Party and delivered to the other Party, and the "Effective Date" shall be the date upon which the last of the two signatures below is made.

*[signature page follows]*

IN WITNESS WHEREOF, the Parties, through their respective duly authorized officers, have executed this Agreement as of the latest date set forth below:

**OLSON KUNDIG ARCHITECTS, INC.**

**12th AVENUE IRON INC.**

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_