

UNITED STATES BANKRUPTCY COURT Northern District of Texas		PROOF OF CLAIM
Name of Debtor: OPUS WEST, L.P.		Case Number: 09-34356
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (the person or other entity to whom the debtor owes money or property): RE CUPP CONSTRUCTION, L.P.		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim. Court Claim Number: _____ (If known)
Name and address where notices should be sent: Harrison Steck, P.C., Counsel for RE CUPP CONSTRUCTION, L.L.P. 512 Main Street, Suite 1100, Fort Worth, Texas 76106, Attn: Andrew Piel; apiel@harrisonsteck.com Telephone number: (817) 348-0400		
Name and address where payment should be sent (if different from above): Telephone number:		<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. <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>141,907.42</u> If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4. If all or part of your claim is entitled to priority, complete item 5. <input 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. Specify the priority of the claim. <input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B). <input type="checkbox"/> Wages, salaries, or commissions (up to \$10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. §507 (a)(4). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. §507 (a)(5). <input type="checkbox"/> Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. §507 (a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. §507 (a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. §507 (a)(). Amount entitled to priority: \$ _____ *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.
2. Basis for Claim: <u>Services & Materials</u> (See instruction #2 on reverse side.)		
3. Last four digits of any number by which creditor identifies debtor: <u>5861</u> 3a. Debtor may have scheduled account as: _____ (See instruction #3a on reverse side.)		
4. Secured Claim (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information. Nature of property or right of setoff: <input checked="" type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: <u>LIEN AGAINST REAL PROPERTY (2525 E. ST. HWY. 121, LEWISVILLE, TX)</u> Value of Property: \$ <u>30,859,780.00</u> Annual Interest Rate _____ % Amount of arrearage and other charges as of time case filed included in secured claim, If any: \$ <u>141,907.42</u> Basis for perfection: <u>Mechanic's Lien</u> Amount of Secured Claim: \$ <u>141,907.42</u> 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.) DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain: SEE COPY OF LIEN ATTACHED HERETO		
Date: <u>8/14/2009</u>	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. RANDALL E. CUPP	
		FOR COURT USE ONLY

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

RECEIVED

AUG 25 2009

BMC GROUP

OPUS WEST



00133

AFFIDAVIT FOR MECHANIC'S LIEN

THE STATE OF TEXAS §
§
COUNTY OF DENTON §

BEFORE ME, the undersigned, personally appeared RANDALL E. CUPP, who, upon his oath, deposed and stated the following:

1. “My name is RANDALL E. CUPP. I am the PRESIDENT OF BTS SERVICES, INC., THE GENERAL PARTNER OF LIEN CLAIMANT RE CUPP CONSTRUCTION, L.P., hereinafter referred to as ‘Claimant.’ The facts disclosed in this, my affidavit are true, I have personal knowledge of the facts set forth below, and I am competent and authorized to make this affidavit.”

2. “Claimant’s mailing address is:

 1320 N WHITE CHAPEL BLVD
 SOUTHLAKE, TEXAS 76092-4303.”

3. “Pursuant to an agreement by and between Claimant and OPUS WEST CONSTRUCTION CORPORATION, whose last known address is 15455 NORTH DALLAS PARKWAY, SUITE 450, ADDISON, TEXAS 75001, Claimant performed labor and/or furnished materials to improve the following described real property in DENTON COUNTY, TEXAS, which is the real property sought to be charged with a lien by Claimant:

ALL THAT CERTAIN PROPERTY LOCATED IN DENTON COUNTY, TEXAS PURPORTEDLY OWNED BY OPUS WEST, L.P. LOCATED IN THE CITY OF LEWISVILLE TEXAS AND BEING A PART OF THE B.B.B. AND C.R.R. SURVEY, ABSTRACT NO. 180 AND BEING A PART OF THE J.W. JOHNSON SURVEY, ABSTRACT NO 1609, AND BEING LOT 4, BLOCK A CROSSROADS CENTER NORTH, AN ADDITION TO THE CITY OF LEWISVILLE AS RECORDED IN CABINET W, PAGE 7, DENTON COUNTY PLAT RECORDS AND FURTHER DESCRIBED AS BEING LOT 4, BLOCK A, AS DESCRIBED IN THAT CERTAIN INSTRUMENT RECORDED ON DECEMBER 10, 2004 IN CABINET U, PAGE 8 OF THE MAP RECORDS OF DENTON COUNTY, TEXAS, AND BEING THE SAME PROPERTY DESCRIBED AS LOT 4, BLOCK A, IN EXHIBIT A OF THAT CERTAIN INSTRUMENT RECORDED AS INSTRUMENT NO. 2008-94984 IN THE OFFICIAL PUBLIC RECORDS OF DENTON COUNTY, TEXAS AND BEGIN FURTHER KNOWN AS 121 LAKE POINTE CROSSING PHASE 2, LOCATED AT 2525 EAST STATE HIGHWAY 121, LEWISVILLE, TEXAS 75056.”

4. “The labor and materials furnished by Claimant are generally described as follows:

ALL LABOR AND MATERIALS NECESSARY TO PERFORM THE EARTHWORK CALLED FOR BY THE PLANS FOR THE PROJECT.”

5. “The owner or reputed owner of said real property described above and the Owner’s address is as follows:

Owner: OPUS WEST, L.P.
Owner’s Address: 2555 EAST CAMELBACK ROAD, SUITE 800
PHOENIX, ARIZONA 85016-9267.”

6. “After allowing all just credits, offsets, and payments, the amount of ONE-HUNDRED, FOURTY-ONE THOUSAND DOLLARS, NINE-HUNDRED SEVEN AND 42/100 CENTS (\$141,907.42) remains unpaid and is due and owing to Claimant, and CUPP CONSTRUCTION, L.P. Claimant, claims a lien on said property and improvements to secure payment of said amount.”

7. “Payment is requested for work performed and/or materials furnished during the months of SEPTEMBER, OCTOBER, NOVEMBER, AND DECEMBER 2008, AS WELL AS JANUARY, FEBRUARY, MARCH AND APRIL 2009. Notice of the claim was sent to the Owner by certified mail, return receipt requested, on APRIL 23, 2009. The original contractor for the improvement for which a lien is claimed and the Original Contractor’s address is as follows:

Original Contractor: OPUS WEST CONSTRUCTION CORPORATION
Original Contractor’s Address: 10350 BREN ROAD WEST
HOPKINS, MINNESOTA 55343-9014.”

8 “I have reviewed records from the Texas Secretary of State. These records indicate the following:

- (i) Real Property Owner OPUS WEST, L.P., has as its General Partner a corporation called OPUS WEST CORPORATION;
- (ii) OPUS WEST CORPORATION shares with Original Contractor OPUS WEST CONSTRUCTION CORPORATION eleven (11) of the same Charter Officers;
- (iii) The same individual, Thomas W. Robert is the President of both OPUS WEST CORPORATION and OPUS WEST CONSTRUCTION CORPORATION;
- (iii) The same individual, Charles Vogel is the Vice-President of both OPUS WEST CORPORATION and OPUS WEST CONSTRUCTION CORPORATION; and

- (iv) The eleven (11) Charter Officers of OPUS WEST CONSTRUCTION CORPORATION have the same address as Real Property Owner OPUS WEST, L.P.

Further, OPUS WEST CORPORATION was listed as the Real Property Owner in Claimant's Contract with OPUS WEST CONSTRUCTION CORPORATION."


9. "Based upon the foregoing, it appears that (i) Original Contractor OPUS WEST CONSTRUCTION CORPORATION can effectively control OPUS WEST CORPORATION, general partner of Real Property Owner OPUS WEST, L.P., and thus control Real Property Owner OPUS WEST, L.P. through ownership of voting stock, interlocking directorships, or otherwise; and (ii) OPUS WEST CORPORATION, general partner of Real Property Owner OPUS WEST, L.P., can effectively control OPUS WEST CONSTRUCTION CORPORATION through ownership of voting stock, interlocking directorships, or otherwise. Pursuant to Section 53.026 of the TEXAS PROPERTY CODE, Claimant is considered to be in direct contractual relationship with Real Property Owner OPUS WEST, L.P., and has a lien as an original contractor."

"FURTHER AFFIANT SAYS NOT."

RE CUPP CONSTRUCTION, L.P.

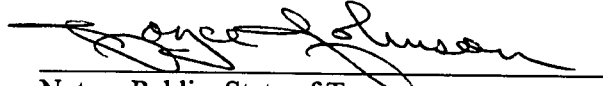
1320 N WHITE CHAPEL BLVD
SOUTHLAKE, TEXAS 76092-4303

BY:



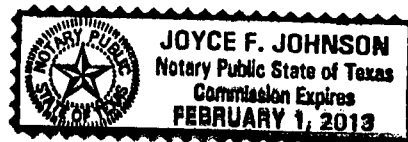
RANDALL E. CUPP.
PRESIDENT OF BTS SERVICES, INC.,
THE GENERAL PARTNER OF LIEN
CLAIMANT RE CUPP CONSTRUCTION,
L.P.

23 **SUBSCRIBED, SWORN TO AND ACKNOWLEDGED BEFORE ME** on this the 23 day of APRIL, 2009, by **RANDALL E. CUPP., PRESIDENT OF BTS SERVICES, INC., THE GENERAL PARTNER OF LIEN CLAIMANT RE CUPP CONSTRUCTION, L.P.**



Notary Public, State of Texas

My Commission Expires: _____



cc: **VIA CERTIFIED MAIL R.R.R. NO. 7008 3230 0003 2483 6423**
OPUS WEST CONSTRUCTION CORPORATION
10350 Bren Road West
Hopkins, Minnesota 55343-9014
Attn: Legal

VIA CERTIFIED MAIL R.R.R. NO. 7008 3230 0003 2483 6430
OPUS WEST CONSTRUCTION CORPORATION
15455 North Dallas Parkway, Suite 450
Addison, Texas 75001
Attn: Travis Bradley

VIA CERTIFIED MAIL R.R.R. NO. 7008 3230 0003 2483 6447
OPUS WEST CONSTRUCTION CORPORATION
c/o CORPORATION SERVICE COMPANY D/B/A CSC – LAWYERS INCORPORATION SERVICE
COMPANY, *Registered Agent for Opus West Construction Corporation*
701 Brazos Street, Suite 1050
Austin, Texas 78701-3232



HARRISON ♦ STECK, P.C.

Attorneys and Counselors at Law
512 Main Street, Suite 1100
Fort Worth, Texas 76102

Andrew B. Piel
apiel@harrisonsteck.com

Telephone: (817) 348-0400
Telecopier: (817) 348-0407

August 24, 2009

Via FedEx No. 7978 7084 9390
OPUS WEST CORPORATION, *et al.*
c/o **BMC GROUP**
18750 LAKE DRIVE EAST
CHANHASSEN MN 553217

RE: FILING PROOF OF CLAIM Against OPUS WEST, L.P.

Case Number: 09-34356

In the United States Bankruptcy Court, Northern District of Texas

Name of Debtor: **OPUS WEST, L.P.**

Name of Creditor: RE CUPP CONSTRUCTON, L.P.

Last four digits of Creditor Identifier Number: 5861

Dear Court-appointed Claims Agent:

Per instructions from the Court, enclosed is the Proof of Claim for the above-referenced bankruptcy case, signed and dated by the person making the claim, Mr. Randall E. Cupp, who is represented by the undersigned and this firm.

Credit for payments made have been applied for purposes of making this claim.

Very truly yours,

HARRISON ♦ STECK, P.C.

Counsel for R. E. CUPP

By: 

Andrew B. Piel

ABP/ldp

Enclosure: B 10 and attached documentation