

| Name of Creditor (Print Name of Debtor or Debtor's Attorney) Potter Concrete Co., Inc. | Case No. 09-34356 | Filed 09/15/09 | Desc Main Document | Page 1 of 26 |
|---|--------------------------|-----------------------|---|--------------|
| Name and address where notices should be sent: Potter Concrete Co., Inc. c/o Mike Massad Winstead P.C. 1201 Elm Street, Suite 5400 Dallas, Texas 75270 Telephone Number, 214.745.5655 | | | <input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim. Court Claim Number: _____ (If known) Filed on: _____ | |
| Name and address where payment should be sent (if different from above): Potter Concrete Co., Inc. 4820 Gretna Dallas, Texas 75207 Telephone Number, 214-630-2191 | | | RECEIVED OCT 02 2009 BMC GROUP | |
| 1. Amount of Claim as of Date Case Filed: \$2,737,478.10 If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4. If all or part of your claim is entitled to priority, complete item 5. <input checked="" type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges. Claimant reserves its right (if any) to seek pre and post-petition interest on its claim as well as reasonable attorneys' fees. | | | 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: \$ _____ | |
| 2. Basis for Claim: Performed labor and furnished materials to improve property (See instruction #2 on reverse side.) | | | *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. | |
| 3. Last four digits of any number by which creditor identifies debtor: 7306 (Lakepointe Crossing Project No.) 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 type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____ Describe: _____ Value of Property: \$Greater than amount of claim. Annual Interest Rate: _____% Amount of arrearage and other charges as of time case filed included in secured claim, if any: \$Mechanics and Materialmen's Lien Basis for perfection: Lien affidavit attached Amount of Secured Claim: \$2,737,478.10 Amount Unsecured: \$0.00 | | | | |
| 6. Creditors: The amount of all payments on this claim has been credited for the purpose of making this proof of claim. | | | | |
| 7. Documents: Attached redacted copies of any documents that support this 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 SENT ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain: _____ | | | | |
| Date: 9/11/09 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. Greg Potter President <i>Greg Potter, President</i> | | | FOR COURT USE ONLY | |



B 10 (Official Form 10) (12/08)

26

| UNITED STATES BANKRUPTCY COURT | | PROOF OF CLAIM |
|--|---|---|
| Name of Debtor: In re Opus West Corporation, et al. | | 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 of 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): Potter Concrete Co., Inc. | | <input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim. Court Claim Number: _____ <i>(If known)</i> Filed on: _____ |
| Name and address where notices should be sent: Potter Concrete Co., Inc. c/o Mike Massad Winstead P.C. 1201 Elm Street, Suite 5400 Dallas, Texas 75270 Telephone Number. 214.745.5655 | | |
| Name and address where payment should be sent (if different from above): Potter Concrete Co., Inc. 4820 Gretna Dallas, Texas 75207 Telephone Number. 214-630-2191 | | <input type="checkbox"/> Check 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: \$2,737,478.10 If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4. If all or part of your claim is entitled to priority, complete item 5. <input checked="" type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges. Claimant reserves its right (if any) to seek pre and post-petition interest on its claim as well as reasonable attorneys' fees. | | 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: \$ _____ |
| 2. Basis for Claim: Performed labor and furnished materials to improve property (See instruction #2 on reverse side.) | | |
| 3. Last four digits of any number by which creditor identifies debtor: 7306 (Lakepointe Crossing Project No.) 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 type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: Value of Property: \$ <u>Greater than amount of claim</u> Annual Interest Rate ____% Amount of arrearage and other charges as of time case filed included in secured claim, if any: \$ <u>Mechanic's and Materialmen's Lien</u> Basis for perfection: <u>Lien affidavits attached</u> Amount of Secured Claim: \$ <u>2,737,438.10</u> Amount Unsecured: \$ <u>0.00</u> | | |
| 6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim. | | |
| 7. Documents: Attached 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 SENT ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. 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: _____ | 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. | |
| | | FOR COURT USE ONLY |

FORM 810 (Official Form 10) (12/08)

| | | |
|---|--|--|
| UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS (DALLAS) | | PROOF OF CLAIM |
| Name of Debtor: In re Opus West Corporation, et al. | | 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" of 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): Potter Concrete Co., Inc. | | <input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim Court Claim Number: (if known) Filed on: |
| Name and address where notices should be sent: Potter Concrete Co., Inc. c/o Michael P. Massad, Jr. Hunton & Williams LLP 1445 Ross Avenue, Suite 3700 Dallas, Texas 75202 | | |
| Telephone Number: 214-979-3000 | | |
| Name and address where payment should be sent (if different from above): Potter Concrete Co., Inc. 4820 Gretna Dallas, Texas 75207 | | <input type="checkbox"/> Check this box to 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. |
| Telephone number: (214) 630-2191 | | |
| 1. Amount of Claim as of Date Case Filed: \$ 2,737,478.10 If all or Part of your claim is secured, complete item 4 below, however, if all of your claim is unsecured, do not complete item 4. If all or part of your claim is entitled to priority, complete item 5. <input checked="" type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Claimant reserves its right (if any) to seek pre and post-petition interest on its claim as well as reasonable attorneys' fees. | | 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 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 of 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 \$ |
| 2. Basis for Claim: Performed labor and furnished materials to improve property (See instructions #2 on reverse side) | | |
| 3. Last four digits of any number by which creditor identifies debtor: 7306 (Lakepointe Crossing Project No.) 3a. Debtor may have scheduled account as: (See instruction #3a on reverse side) | | |
| 4. Secured Claim (See instruction #4 on reverse side.) Check appropriate box if your claim is secured by a lien on property or a right of set off 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: Value of Property: <u>\$ Greater than amount of claim</u> Annual Interest Rate _____ % Amount of arrearage and other charges as of time case filed included in secured claim, If any: <u>\$ Mechanics' and Materialmen's Lien</u> Basis for perfection: <u>Lien affidavits and notices (attached)</u> Amount of Secured Claim: <u>\$ 2,737,478.10</u> Amount Unsecured: <u>\$ 0.00</u> | | |
| 6. Credits: The amount of all payments on this claim has been credited and deducted 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. | | |
| Date: | | FOR COURT USE ONLY |
| 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. | | |

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.

COPY

LIEN AFFIDAVIT AND CLAIM

STATE OF TEXAS §
COUNTY OF ROCKWALL §

BEFORE ME, the undersigned authority, personally appeared Noel Nalls, Vice President of Potter Concrete Co. Inc. n/k/a Potter Holdings, Inc., who upon his oath, deposed and stated the following:

1. My name is Noel Nalls and I am a resident of Ellis County, Texas. I am Vice President of Potter Concrete Co, Inc. n/k/a Potter Holdings, Inc., hereinafter sometimes referred to as "Claimant." I am over 18 years of age, and am competent and authorized to make this affidavit.
2. Claimant's mailing business address and physical address is 4820 Gretna, Dallas, Texas 75207.
3. Claimant furnished labor and materials for improvements to the property described herein under a contract by and between Claimant and Opus West Construction Corporation, the original contractor on the project, whose last known addresses are 15455 N. Dallas Parkway, Suite 450, Addison, Texas 75001; 2555 East Camelback Road, Suite 800, Phoenix, Arizona 85016 and 10350 Bren Road West, Minnetonka, Minnesota 55343.
4. The name of the owner or reputed owner of the real estate hereinafter described is Opus West LP, whose last known address is 2555 East Camelback Road, Suite 800, Phoenix, Arizona 85016.
5. The labor, materials, and work furnished by Claimant are generally described as follows: Turn-key concrete.
6. The real property sought to be charged with a lien by Claimant is described as 2525 East State Highway 121, Lewisville, Denton County, Texas and more particularly described as follows:

Lot 1R-1, Block A, CROSSROADS CENTRE NORTH, an Addition to the City of Lewisville, Denton County, Texas, according to the Map or Plat thereof recorded in Cabinet Y, Page 662, Plat Records of Denton County, Texas.
7. After allowing all just credits, offsets, and payments, the amount of \$2,839,738.10 remains unpaid and is due and owing to Claimant under its contract with Opus West Construction Corporation and Claimant claims a lien on said property and improvements under the provisions of Texas Property Code § 53.001 et seq. to secure payment of said amount.
8. The month or months that the work was done and materials were furnished for which payment is requested are August, September, October, November, December 2008, January, February and March 2009.

9. Notice of the claim was sent to the Owner on the following dates and by the following method:

| | <u>Date sent</u> | <u>Method Sent</u> |
|----|-------------------|---|
| a. | August 20, 2008 | Certified Mail , Return Receipt Requested |
| b. | February 13, 2009 | Certified Mail, Return Receipt Requested |
| c. | March 13, 2009 | Certified Mail, Return Receipt Requested |

10. The name of the entity with which Claimant contracted on this project is Opus West Construction Corporation. Upon information and belief, Opus West LP can effectively control Opus West Construction Corporation through ownership of voting stock, interlocking directorships or otherwise. Further, upon information and belief, Opus West Construction Corporation can effectively control Opus West LP through ownership of voting stock, interlocking directorships or otherwise. Further, upon information and belief, Opus West LP contracted with Opus West Construction Corporation for the construction or repair of a house, building, or improvements and the contract was made without good faith intention of the parties that Opus West Construction Corporation was to perform the contract. Pursuant to Section 53.026 of the Texas Property Code, Claimant herein should be considered to be in direct contractual relationship with the owner and have a lien as an original contractor.

11. Since Claimant contracted directly with the owner, Claimant also claims its constitutional lien on the above-described real property pursuant to Article 16, §37 of the Constitution of the State of Texas.

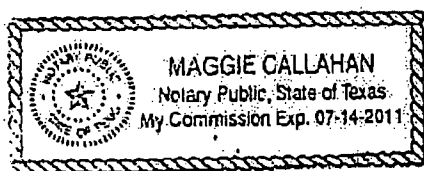
12. One (1) copy of this Affidavit is being sent by Certified Mail, Return Receipt Requested to the owner described above, addressed to the owner's last known address as described above and one (1) copy of this Affidavit is being sent by Certified Mail, Return Receipt Requested to the original contractor described above, addressed to the original contractor's last known addresses as described above.

Potter Concrete Co., Inc.
n/k/a Potter Holdings, Inc.

By:

Noel Nalls
Noel Nalls, Vice President

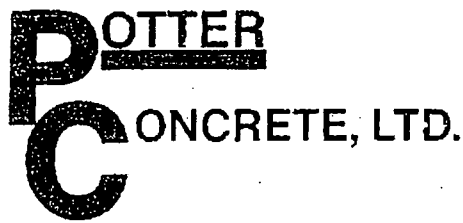
SUBSCRIBED AND SWORN TO before me by the said Noel Nalls, Vice President of Potter Concrete Co., Inc. n/k/a Potter Holdings, Inc., on this 13 day of March 2009, to certify which witness my hand and seal of office.



Maggie Callahan
Notary Public In and For the State of Texas

RETURN ORIGINAL
RECORDED COPY TO:
Thomas, Feldman & Wilshusen
9400 N. Central Expwy. Ste.
900
Dallas, Texas 75231

Lien Affidavit and Claim - Page 3
(POTT-GEN Lakepoint Crossing Phase 2)



Concrete Contractors

August 20, 2008

Opus West Construction Corporation
15455 N. Dallas Pkwy, Suite 450
Addison, Texas 75001

Via: Certified Mail/Return Receipt Requested #7007 2560 0002 7740 2821

Re: Lake Pointe Crossing

The following notice is provided to comply with the requirements of Section 53.057 of the Texas Property Code and is being sent to you as the owner of a project located at 2525 E. Highway 121, Lewisville, Texas 75056. This notice is not intended to call into question the credit of your general contractor or any other contracting parties. If you are not the owner of the above-referenced project, please notify the undersigned at your earliest convenience.

On or about the 14th of August 2008, Potter Concrete LTD. entered into a verbal agreement with Opus West Construction Corporation to furnish all labor and materials necessary to provide the concrete work at the above-referenced project. This agreement is a retainage agreement as defined in Section 53.057, Texas Property Code. The retainage is to be withheld as follows: The percentage of each progress estimate of Subcontractor to be paid hereunder will be Ninety percent (90%). Final payment includes all retention becomes due and payable within 30 days after Architect's certification of final. The total sum anticipated to be retained under this agreement is \$ 546,701.10. In addition, retainage in the same percentage will be withheld from any additional amount owed to Potter Concrete LTD. resulting from any change order as follows: 10%.

The Subcontract agreement referenced above requires us to furnish all labor, materials, skill and equipment necessary or required and to perform all the work necessary for completion of this Subcontract per the Scope of Work described in the subcontract agreement.

Sincerely,

POTTER CONCRETE, LTD.

By: Potter Concrete Management, LLC, General Partner


Noel Nails

Vice President



- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
 - Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Opus West Construction Corporation
15455 N. Dallas Pkwy, Suite 450
Addison, Texas 75001

Signature

G Bunch
B. Received by (Printed Name)
G BUNCH

☐ Agent
☐ Address

C. Date of Delivery
5-22-02

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail ☐ Express Mail
☐ Registered ☒ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

2. Article Number

(Transfer from service label)

7007 2560 0002 7740 2821

PS Form 3811, February 2004

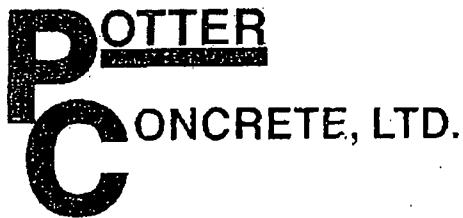
Domestic Return Receipt

102595-02-M-1

7007 2560 0002 7740 2821

| | |
|---|--|
| CERTIFIED MAIL RECEIPT | |
| Domestic Mail Only. No Insurance Coverage Provided. | |
| For delivery information visit our website at www.usps.com | |
| OFFICIAL USE | |
| Postage \$ | |
| Certified Fee | |
| Return Receipt Fee (Endorsement Required) | |
| Restricted Delivery Fee (Endorsement Required) | |
| Postmark Here | |
| To: Opus West Construction Corporation | |
| Sent: 5455 N. Dallas Pkwy, Suite 450 | |
| City: Addison, Texas 75001 | |
| State: TX | |
| Zip: 75001 | |
| PS Form 3800, August 2003 See www.usps.com for instructions | |

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Concrete Contractors

Opus West Construction
15455 N. Dallas Pkwy, Suite 450
Addison, Texas 75001

Via: Certified Mail/Return Receipt Requested # 7007 1490 0004 2884 2129

Lakepointe Crossing
Re: Notice of Unpaid Account
\$ 1,531,627.20

Dear Sirs:

Our company, Potter Concrete LTD. has furnished labor and materials to Opus West Construction for construction recently in progress at the above-referenced construction project.

It is our understanding that you are the owner of the real property on which the improvements are being constructed. If you are not the owner of the property, please advise us at once.

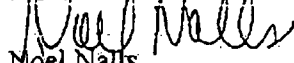
The principal amount of the claim is \$1,531,627.20 and is unpaid.

Potter Concrete LTD. must provide you with the following notice required by the Texas Property Code: IF THIS ACCOUNT REMAINS UNPAID, YOU WILL BE PERSONALLY LIABLE OR YOUR PROPERTY SUBJECTED TO A LIEN UNLESS YOU WITHHOLD PAYMENT FROM YOUR ORIGINAL CONTRACTOR FOR THE PAYMENT OF THE CLAIM OR UNLESS THE CLAIM IS OTHERWISE PAID OR SETTLED.

We regret that this action must be taken. If there is any reason why you believe that you or your property should not be liable for this claim, please let us know at once.

Sincerely,

POTTER CONCRETE LTD.
POTTER CONCRETE MANAGEMENT, LLC, GENERAL PARTNER


Noel Nalls
Vice President



| SENDER: COMPLETE THIS SECTION | | COMPLETE THIS SECTION ON DELIVERY | |
|--|--|--|--|
| <ul style="list-style-type: none">■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.■ Print your name and address on the reverse so that we can return the card to you.■ Attach this card to the back of the mailpiece, or on the front if space permits. | | <p>A. Signature X <i>L. Buchanan</i> <input type="checkbox"/> Agent <input type="checkbox"/> Address</p> | |
| <p>1. Article Addressed to:</p> <p>Opus West Construction 5455 N. Dallas Pkwy, Suite 450 Addison, Texas 75001</p> | | <p>B. Received by (Printed Name) <i>L. Buchanan</i> C. Date of Delivery <i>2-17-09</i></p> | |
| | | <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p> | |
| | | <p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> | |
| <p>2. Article Number (Transfer from service label)</p> | | <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p> | |
| | | <p>7007 1490 0004 2884 2129</p> | |

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1

POTTER HOLDINGS, INC.

4820 Gretna
Dallas, Texas 75207

Phone (214) 630-2191

Fax (214) 689-1066

March 13, 2009

Certified #7008 1300 0001 7022 2788
Return Receipt Requested and
Federal Express
Opus West LP
2555 East Camelback Road, Suite 800
Phoenix, AZ 85016

Certified #7008 1300 0001 7022 2801
Return Receipt Requested and
Federal Express
Opus West Construction Corporation
2555 East Camelback Road, Suite 800
Phoenix, AZ 85016

Certified #7008 1300 0001 7022 2795
Return Receipt Requested and
Federal Express
Opus West Construction Corporation
15455 N. Dallas Parkway, Suite 450
Addison, TX 75001

Certified #7008 1300 0001 7022 2849
Return Receipt Requested and
Federal Express
Opus West Construction Corporation
c/o Tax Department
10350 Bren Road West
Minnetonka, MN 55343

RE: Notice of Unpaid Account
Project: 121 Lakepointe Crossing Phase 2
2525 East State Highway 121
Lewisville, Texas
Amount Unpaid: \$2,839,738.10

Dear Sirs/Madams:

Potter Concrete Co., Inc. n/k/a Potter Holdings, Inc. has furnished labor and materials to the above-referenced project under a contract with Opus West Construction Corporation. There remains due and owing \$2,839,738.10 for such labor and materials furnished to Opus West Construction Corporation as more fully set forth on the attached pay applications sent to Opus West Construction Corporation.

This claim has accrued under § 53.053 of the Texas Property Code and/or is past-due under the terms of the contract referenced above. Demand is hereby made under §53.083 of the Texas Property Code for payment of the amount set forth above.

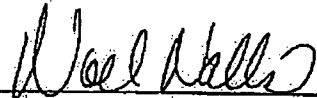
This notice is sent to comply with the requirements of § 53.056 of the Texas Property Code, which requires that we advise you that if this claim remains unpaid, you may be personally liable and your property subjected to a lien unless payment is withheld from Opus West Construction Corporation for the payment of this claim or unless the bill is otherwise paid or settled.

Opus West LP
Opus West Construction Corporation
Page 2

Pursuant to the laws of the State of Texas, attached is a copy of a Lien Affidavit and Claim filed of record.

POTTER HOLDINGS, INC.
f/k/a Potter Concrete Co., Inc.

By:


Noel Nalls, Vice President

LAM:
Enclosure

POTTER HOLDINGS, INC.

4820 Gretna
Dallas, Texas 75207

Phone (214) 630-2191

Fax (214) 689-1066

Statement of Account

| <u>Date</u> | <u>Pay Application No.</u> | <u>Amount</u> |
|-------------|----------------------------|-------------------|
| 12/15/2008 | No. 4* | \$1,531,627.20 |
| 1/19/2009 | No. 5* | 165,400.20 |
| 2/19/2009 | No. 6* | 569,945.70 |
| 3/9/2009 | No. 7-Retainage* | <u>572,766.00</u> |

Amount Due, Owing
And Unpaid:

\$2,839,738.10

*Copies attached

Denton County
Cynthia Mitchell
County Clerk
Denton, Tx 76202



Instrument Number: 2009-30746

As

Recorded On: March 13, 2009

Mechanics Lien Affidavit

Parties: POTTER CONCRETE CO INC

To

Billable Pages: 4

Number of Pages: 4

Comment:

(Parties listed above are for Clerks reference only)

** Examined and Charged as Follows: **

| | |
|--------------------------|-------|
| Mechanics Lien Affidavit | 23.00 |
| Total Recording: | 23.00 |

***** DO NOT REMOVE. THIS PAGE IS PART OF THE INSTRUMENT *****

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

File Information:

Document Number: 2009-30746

Receipt Number: 565675

Recorded Date/Time: March 13, 2009 12:02:46P

User / Station: A McElroy - Cash Station 2

Record and Return To:

THOMAS FELDMAN & WILSHUSEN LLP
9400 N CENTRAL EXPY
STE 900
DALLAS TX 75231-5051



THE STATE OF TEXAS }
COUNTY OF DENTON }

I hereby certify that this instrument was FILED in the File Number sequence on the date/time printed herein, and was duly RECORDED in the Official Records of Denton County, Texas.

Cynthia
County Clerk

7008 1300 0001 7022 2788

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage)

For delivery information, visit our website at www.usps.com

OFFICIAL U

Postage \$
Certified Fee
Return Receipt Fee (Endorsement Required)
Restricted Delivery Fee (Endorsement Required)
Total Charges & Fees \$

To: Opus West LP
2555 East Camelback Rd
Suite 800
Phoenix AZ 85016

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Opus West LP
2555 East Camelback Rd
Suite 800
Phoenix AZ 85016

2. Article Number

(Transfer from service label)

7008 1300 0001 7022 2788

COMPLETE THIS SECTION ON DELIVERY

A. Signature *[Signature]* ☐ Agent ☐ Addressee
B. Received by (Printed Name) *MLEAKINS*
C. Date of Delivery *3-16*
D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

7008 1300 0001 7022 2795

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage)

For delivery information, visit our website at www.usps.com

OFFICIAL U

Postage \$
Certified Fee
Return Receipt Fee (Endorsement Required)
Restricted Delivery Fee (Endorsement Required)
Total Charges & Fees \$

To: Opus West Construction Corporation
15455 N. Dallas Parkway
Suite 450
Addison TX 75001

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Opus West Construction Corporation
15455 N. Dallas Parkway
Suite 450
Addison TX 75001

2. Article Number

(Transfer from service label)

7008 1300 0001 7022 2795

COMPLETE THIS SECTION ON DELIVERY

A. Signature *[Signature]* ☐ Agent ☐ Addressee
B. Received by (Printed Name) *L. Buchanan*
C. Date of Delivery *3/16*
D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

7008 1300 0001 7022 2849

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage)

For delivery information, visit our website at www.usps.com

OFFICIAL U

Postage \$
Certified Fee
Return Receipt Fee (Endorsement Required)
Restricted Delivery Fee (Endorsement Required)
Total Charges & Fees \$

To: Opus West Construction Corporation
c/o Tax Dept.
10350 Bren Road West
Minnetonka MN 55345

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Opus West Construction Corporation
c/o Tax Dept.
10350 Bren Road West
Minnetonka MN 55345

2. Article Number

(Transfer from service label)

7008 1300 0001 7022 2849

A. Signature

[Signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name)

Jim Jensen *3-17-09*

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

7008 1300 0001 7022 2801

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage)

For delivery information, visit our website at www.usps.com

OFFICIAL USE

| | |
|--|--|
| Postage \$ | |
| Certified Fee | |
| Return Receipt Fee (Endorsement Required) | |
| Restricted Delivery Fee (Endorsement Required) | |

Opus West Construction Corporation
2555 East Camelback Rd.
Suite 800
Phoenix AZ 85016

PS Form 3800, August 2006

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Opus West Construction Corporation
2555 East Camelback Rd.
Suite 800
Phoenix AZ 85016

2. Article Number

(Transfer from service label)

7008 1300 0001 7022 2801

PS Form 3811, February 2004

COMPLETE THIS SECTION ON DELIVERY

A. Signature

[Signature]

- ☐ Agent
☐ Addressee

B. Received by (Printed Name)

ML Ekins

C. Date of Delivery

3-16

- D. Is delivery address different from item 1?** ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

- ☐ Yes

102595-02-M-15

From: Origin ID: TRLA (214) 369-3008
Gayle Seibel
Thomas, Feldman & Wihusen
8400 N. CENTRAL EXPWY
SUITE 900
DALLAS, TX 75231



Ship Date: 13MAR09
ActWgt: 1.0 LB
CAD: 2232360/NET9011
Account#: S *****

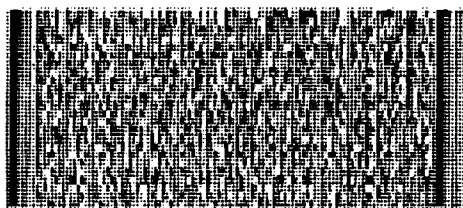
Delivery Address: Bar Code:



SHIP TO: (111) 111-1111 BILL SENDER
Opus West Construction Corporation
Opus West Construction Corporation
2555 E CAMELBACK RD STE 800

PHOENIX, AZ 85016

Ref # POTT-GEN (Lakepointe Crossing)
Invoice #
PO #
Dept #



TRK# 7974 1558 0100
(0201)

MON - 16MAR A1
STANDARD OVERNIGHT

XH ZSYA

85016
AZ-US
PHX



After printing this label:

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2. Fold the printed page along the horizontal line.
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Warning: Use only the printed original label for shipping. Using a photocopy of this label for shipping purposes is fraudulent and could result in additional billing charges, along with the cancellation of your FedEx account number.

Use of this system constitutes your agreement to the service conditions in the current FedEx Service Guide, available on fedex.com. FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$500, e.g. jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits, see current FedEx Service Guide.

From: Origin ID: TRLA (214) 369-3008
Gayle Seibel
Thomas, Feldman & Wilshusen
9400 N. CENTRAL EXPWAY
SUITE 900
DALLAS, TX 75231



Ship Date: 13MAR09
ActWgt: 1.0 LB
CAD: 2232360/INET9011
Account#: S

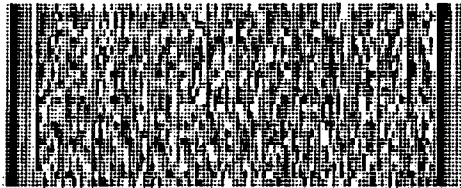
Delivery Address Bar Code



Ref #: POTT-GEN (Lakepointe Crossing)
Invoice #
PO #
Dept #

SHIP TO: (111) 111-1111 BILL SENDER
Opus West LP
Opus West LP
2555 E CAMELBACK RD STE 800

PHOENIX, AZ 85016

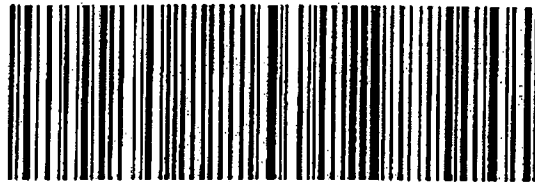


TRK# 7974 1553 8610
0201

MON - 16MAR A1
STANDARD OVERNIGHT

XH ZSYA

85016
AZ-US
PHX



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From: Origin ID: TRLA (214) 369-3008
Gayle Seibel
Thomas, Feldman & Wilshusen
9400 N. CENTRAL EXPWY
SUITE 900
DALLAS, TX 75231



Ship Date: 13MAR09
ActWgt: 1.0 LB
CAD: 2232360/NET9011
Account# S*****

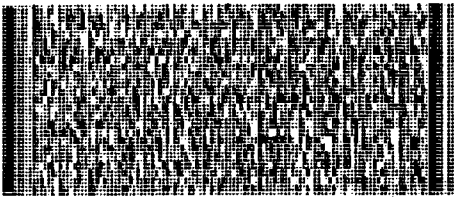
Delivery Address Bar Code



Ref # POTT-GEN (Lakepointe Crossing)
Invoice #
PO #
Dept #

SHIP TO: (111) 111-1111 BILL SENDER
Opus West Construction Corporation
Opus West Construction Corporation
15455 DALLAS PKWY STE 450

ADDISON, TX 75001

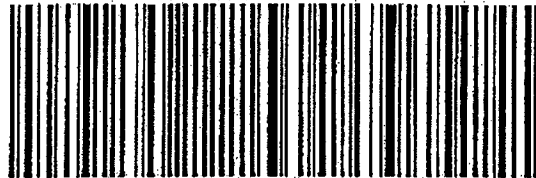


TRK# 7974 1565 9471
0201

MON - 16MAR A2
STANDARD OVERNIGHT

SE PNXA

75001
TX-US
DFW



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From: Origin ID: TRLA (214) 369-3008
Gayle Seibel
Thomas, Feldman & Wilshusen
9400 N. CENTRAL EXPWY
SUITE 900
DALLAS, TX 75231



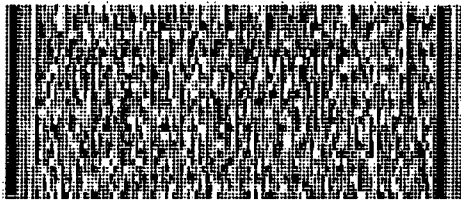
Ship Date: 13MAR09
ActWgt: 1.0 LB
CAD: 2232360/INET9011
Account#: S

Delivery Address Bar Code



Ref # POTT-GEN (Lakepointe Crossing)
Invoice #
PO #
Dept #

SHIP TO: (111) 111-1111 BILL SENDER
c/o Tax Department
Opus West Construction Corporation
10350 BREN RD W
WEST
MINNETONKA, MN 55343



TRK# 7974 1567 4140
0201

MON - 16MAR A1
STANDARD OVERNIGHT

SE BBBA

55343
MN-US
MSP



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Cynthia Mitchell
County Clerk
Denton, Tx 76202



70 2009 00030746

Instrument Number: 2009-30746

As

Recorded On: March 13, 2009

Mechanics Lien Affidavit

Parties: POTTER CONCRETE CO INC

To.

Billable Pages: 4

Number of Pages: 4

Comment:

(Parties listed above are for Clerks reference only)

**** Examined and Charged as Follows: ****

| | |
|--------------------------|-------|
| Mechanics Lien Affidavit | 23.00 |
| Total Recording: | 23.00 |

***** DO NOT REMOVE. THIS PAGE IS PART OF THE INSTRUMENT *****

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY
because of color or race is invalid and unenforceable under federal law.

File Information:

Document Number: 2009-30746
Receipt Number: 565675
Recorded Date/Time: March 13, 2009 12:02:46P
User / Station: A McElroy - Cash Station 2

Record and Return To:

THOMAS FELDMAN & WILSHUSEN LLP
9400 N CENTRAL EXPY
STE 900
DALLAS TX 75231-5051



THE STATE OF TEXAS }
COUNTY OF DENTON }

I hereby certify that this instrument was FILED in the File Number sequence on the date/time
printed hereon, and was duly RECORDED in the Official Records of Denton County, Texas.

Cynthia Mitchell

County Clerk
Denton County, Texas

LIEN AFFIDAVIT AND CLAIM

STATE OF TEXAS §
COUNTY OF ROCKWALL §

BEFORE ME, the undersigned authority, personally appeared Noel Nalls, Vice President of Potter Concrete Co. Inc. n/k/a Potter Holdings, Inc., who upon his oath, deposed and stated the following:

1. My name is Noel Nalls and I am a resident of Ellis County, Texas. I am Vice President of Potter Concrete Co, Inc. n/k/a Potter Holdings, Inc., hereinafter sometimes referred to as "Claimant." I am over 18 years of age, and am competent and authorized to make this affidavit.
2. Claimant's mailing business address and physical address is 4820 Gretna, Dallas, Texas 75207.
3. Claimant furnished labor and materials for improvements to the property described herein under a contract by and between Claimant and Opus West Construction Corporation, the original contractor on the project, whose last known addresses are 15455 N. Dallas Parkway, Suite 450, Addison, Texas 75001; 2555 East Camelback Road, Suite 800, Phoenix, Arizona 85016 and 10350 Bren Road West, Minnetonka, Minnesota 55343.
4. The name of the owner or reputed owner of the real estate hereinafter described is Opus West LP, whose last known address is 2555 East Camelback Road, Suite 800, Phoenix, Arizona 85016.
5. The labor, materials, and work furnished by Claimant are generally described as follows: Turn-key concrete.
6. The real property sought to be charged with a lien by Claimant is described as 2525 East State Highway 121, Lewisville, Denton County, Texas and more particularly described as follows:

Lot 1R-1, Block A, CROSSROADS CENTRE NORTH, an Addition to the City of Lewisville, Denton County, Texas, according to the Map or Plat thereof recorded in Cabinet Y, Page 662, Plat Records of Denton County, Texas.
7. After allowing all just credits, offsets, and payments, the amount of \$2,839,738.10 remains unpaid and is due and owing to Claimant under its contract with Opus West Construction Corporation and Claimant claims a lien on said property and improvements under the provisions of Texas Property Code § 53.001 et seq. to secure payment of said amount.
8. The month or months that the work was done and materials were furnished for which payment is requested are August, September, October, November, December 2008, January, February and March 2009.

9. Notice of the claim was sent to the Owner on the following dates and by the following method:

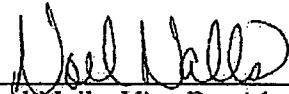
| | <u>Date sent</u> | <u>Method Sent</u> |
|----|-------------------|---|
| a. | August 20, 2008 | Certified Mail , Return Receipt Requested |
| b. | February 13, 2009 | Certified Mail, Return Receipt Requested |
| c. | March 13, 2009 | Certified Mail, Return Receipt Requested |

10. The name of the entity with which Claimant contracted on this project is Opus West Construction Corporation. Upon information and belief, Opus West LP can effectively control Opus West Construction Corporation through ownership of voting stock, interlocking directorships or otherwise. Further, upon information and belief, Opus West Construction Corporation can effectively control Opus West LP through ownership of voting stock, interlocking directorships or otherwise. Further, upon information and belief, Opus West LP contracted with Opus West Construction Corporation for the construction or repair of a house, building, or improvements and the contract was made without good faith intention of the parties that Opus West Construction Corporation was to perform the contract. Pursuant to Section 53.026 of the Texas Property Code, Claimant herein should be considered to be in direct contractual relationship with the owner and have a lien as an original contractor.

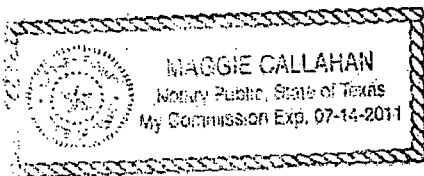
11. Since Claimant contracted directly with the owner, Claimant also claims its constitutional lien on the above-described real property pursuant to Article 16, §37 of the Constitution of the State of Texas.

12. One (1) copy of this Affidavit is being sent by Certified Mail, Return Receipt Requested to the owner described above, addressed to the owner's last known address as described above and one (1) copy of this Affidavit is being sent by Certified Mail, Return Receipt Requested to the original contractor described above, addressed to the original contractor's last known addresses as described above.

Potter Concrete Co., Inc.
n/k/a Potter Holdings, Inc.

By: 
Noel Nalls, Vice President

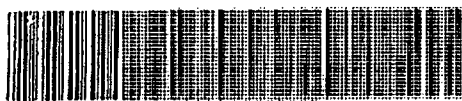
SUBSCRIBED AND SWORN TO before me by the said Noel Nalls, Vice President of Potter Concrete Co., Inc. n/k/a Potter Holdings, Inc., on this 13 day of March 2009, to certify which witness my hand and seal of office.




Notary Public In and For the State of Texas

RETURN ORIGINAL
RECORDED COPY TO:
Thomas, Feldman & Wilshusen
9400 N. Central Expwy. Ste.
900
Dallas, Texas 75231

Denton County
Cynthia Mitchell
County Clerk
Denton, Tx 76202



Instrument Number: 2009-52978

As

Partial Release

Recorded On: May 04, 2009

Parties: POTTER CONCRETE CO INC

To

Billable Pages: 3

Number of Pages: 3

Comment:

(Parties listed above are for Clerks reference only)

**** Examined and Charged as Follows: ****

| | |
|------------------|-------|
| Partial Release | 19.00 |
| Total Recording: | 19.00 |

***** DO NOT REMOVE. THIS PAGE IS PART OF THE INSTRUMENT *****

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

File Information:

Document Number: 2009-52978
Receipt Number: 580154
Recorded Date/Time: May 04, 2009 01:11:32P
User / Station: H Dunn - Cash Station 4

Record and Return To:

THOMAS FELDMAN & WILSHUSEN LP
9400 N CENTRAL EXPY STE 900
DALLAS TX 75231



THE STATE OF TEXAS }
COUNTY OF DENTON }

I hereby certify that this instrument was FILED in the File Number sequence on the date/time printed hereon, and was duly RECORDED in the Official Records of Denton County, Texas.

Cynthia Mitchell

County Clerk
Denton County, Texas

PARTIAL RELEASE OF LIEN

STATE OF TEXAS §
COUNTY OF TARRANT §

On March 13, 2009, the undersigned, Potter Concrete Co., Inc. n/k/a Potter Holdings, Inc., ("Claimant"), filed at the office of the County Clerk of Denton County, Texas a Lien Affidavit and Claim claiming a Mechanic's and Materialman's Lien against certain real property and improvements located at 2525 East State Highway 121, Lewisville, Denton County, Texas and more particularly described as follows:

Lot 1R-1, Block A, CROSSROADS CENTRE NORTH, an Addition to the City of Lewisville, Denton County, Texas, according to the Map or Plat thereof recorded in Cabinet Y, Page 662, Plat Records of Denton County, Texas.

A copy of said Lien Affidavit and Claim is attached hereto as Exhibit "A" and incorporated herein for all purposes. The name of the reputed owner of the real property is Opus West LP.

Said Lien Affidavit and Claim has been filed as Instrument Number 2009-30746 in the Real Property Records of Denton County, Texas. Since the filing of the original Lien Affidavit and Claim, Claimant has reduced its claim by \$102,260.00 leaving a balance of \$2,737,478.10.

Claimant hereby partially relinquishes said Lien in the amount of \$102,260.00 and the Denton County Clerk is hereby authorized and instructed to record this Partial Release of Lien as provided by law.

This instrument is solely a partial release of lien to the herein described property; it is not to be construed as a release of Claimant's remaining lien claim in the amount of \$2,737,478.10 or a release of any other claim or type of claim.

Dated this 1 day of May, 2009.



Potter Concrete Co., Inc.
n/k/a Potter Holdings, Inc.

By: Noel Nalls
Noel Nalls, Vice President

SUBSCRIBED AND SWORN TO before me by the said Noel Nalls, Vice President of Potter Concrete Co., Inc. n/k/a Potter Holdings, Inc., on this 1 day of May 2009, to certify which witness my hand and seal of office.

Maggie Callahan
Notary Public in and For the State of Texas

Northern District of Texas Claims Register

09-34356-hdh11 Opus West Corporation

Judge: Harlin DeWayne Hale

Chapter: 11

Office: Dallas

Last Date to file claims: 11/09/2009

Trustee:

Last Date to file (Govt):

| | | |
|---|---|---|
| Creditor: (12642258) Potter Concrete Co., Inc. c/o Michael P. Massad, Jr. Winstead P.C. 1201 Elm Street, Suite 5400 Dallas, Texas 75270 | Claim No: 15 <i>Original Filed</i> <i>Date:</i> 09/15/2009 <i>Original Entered</i> <i>Date:</i> 09/15/2009 | Status: <i>Filed by:</i> CR <i>Entered by:</i> Massad, Michael <i>Modified:</i> |
| Secured claimed: \$2737438.10 | | |
| Total claimed: \$2737438.10 | | |

| | |
|--|---|
| History: | |
| <u>Details</u> | <u>15-1</u> 09/15/2009 Claim #15 filed by Potter Concrete Co., Inc., total amount claimed: \$2737438.1 (Massad, Michael) |
| Description: (15-1) Mechanic's and Materialmen's Lien | |
| Remarks: | |

Claims Register Summary