


UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS		PROOF OF CLAIM
<b>Name of Debtor: (Check Only One):</b> <input type="checkbox"/> Opus West Corporation <input checked="" type="checkbox"/> Opus West Construction Corporation <input type="checkbox"/> O.W. Commercial, Inc. <input type="checkbox"/> Opus West LP <input type="checkbox"/> Opus West Partners, Inc.		<b>Case Number:</b> 0934356
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. All other requests for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
<b>Name of Creditor (the person or other entity to whom the debtor owes money or property):</b> Malibu Art Tile & Stone Forensic Stone and Tile Consultants Lindell L. Lummer RECEIVED		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim.  <b>Court Claim Number:</b> (If known)  <b>Filed on:</b>
<b>Name and address where notices should be sent:</b> 2761 Triunfo Canyon Road Agoura Calif. 91301 <b>Telephone number:</b> 818. 706-7369 <b>Email Address:</b> lummer@earthlink.net NOV 05 2009 BMC GROUP		<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.
<b>Name and address where payment should be sent (if different from above):</b>  <b>Telephone number:</b> (w) 818. 706-7369 (c) 818 642-0369		
<b>1. Amount of Claim as of Date Case Filed:</b> \$ 12,027.45 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.		<b>5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a).</b> <b>If any portion of your claim falls in one of the following categories, check the box and state the amount.</b>  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)( ).  <b>Amount entitled to priority:</b> \$
<b>2. Basis for Claim:</b> Services Performed (See instruction #2 on reverse side.)		
<b>3. Last four digits of any number by which creditor identifies debtor:</b> _____ <b>3a. Debtor may have scheduled account as:</b> N/A (See instruction §3a on reverse side).		
<b>4. Secured Claim (See instruction #4 on reverse side.)</b> Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information. <b>Nature of property or right of setoff:</b> <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Equipment <input type="checkbox"/> Other <b>Value of Property:</b> \$ _____ <b>Annual Interest Rate</b> ____% <b>Amount of arrearage and other charges as of time case filed included in secured claim, if any:</b> \$ _____ <b>Basis for perfection:</b> _____ <b>Amount Unsecured:</b> \$ _____		
<b>6. Credits:</b> The amount of all payments on this claim has been credited for the purpose of making this proof of claim. <b>7. Documents:</b> Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements or running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instruction 7 and definition of "redacted" on reverse side.) DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain: _____		
<b>Date:</b> 11/03/09	<b>Signature:</b> The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any. Lindell L. Lummer (Lindell L. Lummer)	<b>FOR COURT USE ONLY</b> OPUS WEST  00364

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

Modified B10 (GCG) (12/08)



# Malibu Art Tile & Stone

**FORENSIC STONE & TILE CONSULTANTS**

**2761 Triunfo Canyon Road**

**Agoura Hills, California 91301**

**Tel: 818/706-7369 Fax: 818/706-276**

- **FEDERAL ID #95-4673313 License # 750731**  
[lummer@earthlink.net](mailto:lummer@earthlink.net)

STATEMENT

10.24.09

TO: Cecelia James  
Accounts Payable  
Opus West

via email: [cecelia.james@opuswest.com](mailto:cecelia.james@opuswest.com)

Re: jobsite 8000 & 5000 Scholarship Road, Irvine, Ca. 92612

Please expedite payment in the amount of: **\$12,027.45**

Breakout as follows:

03.19.09 Invoice No. 2	\$12,176.90
Less Inspection Retainer/Deposit	( 1,500.00)
03.24.09 late fees	160.15
04.24.09 late fees	162.56
05.24.09 late fees	164.99
06.24.09 late fees	167.47
07.24.09 late fees	169.98
08.24.09 late fees	172.53
09.24.09 late fees	175.12
10.24.09 late fees	177.75

**Terms: Net on receipt 1.5% late fees on past due accounts**

Export: LINDELL LUMMER

Case No.: Job#: 8000 & 5000 Scholarship Rd., Irvine

CLIENT: Opus / OWR Construction, Inc., Irvine, Ca.

TIME							EXPENSES				
Date	File Number	Work Code	Export Minutes	Assistant Minutes	Export Hours	Assistant Hours	Additional Text	Export Rate	Assistant Rate	Expenses	Total
01.28.09					0.25	0.25	email (12:25 PM) to Scott Fitterer re: retainer documents	\$250.00	\$75.00		N/C
01.30.09							tel-com (9:20 AM) w/Scott Fitterer re: flooring issues	\$250.00	\$75.00		\$ 62.50
02.02.09					0.25		tel-com from Scott Fitterer re: 2/10/09 inspection	\$250.00	\$75.00		\$ 18.75
02.03.09					0.25		email (2:35 PM) to Scott Fitterer duplicate retainer documents	\$250.00	\$75.00		\$ 18.75
02.04.09					0.25		email (10:08 AM) to Scott Fitterer re: preliminary inspection	\$250.00	\$75.00		\$ 18.75
02.04 to 09							emails from & to Scott Fitterer re: case set-up financial doc.	\$250.00	\$75.00		N/C
02.07.09					0.25		email (3:38 PM) from Gil Chotam re: Dodge regupol	\$250.00	\$75.00		\$ 62.50
02.09.09					0.25		email (9:10 PM) from Gil Chotam re: Dodge regupol 1006-pdf	\$250.00	\$75.00		\$ 62.50
02.10.09					1.00		ecore research	\$250.00	\$75.00		\$ 250.00
02.10.09					0.50		download & read inject-a-floor system document	\$250.00	\$75.00		\$ 125.00
02.10.09					0.25		tel-com (4:17 PM) to Dale Roberts re: who is o-cure rep?	\$250.00	\$75.00		\$ 62.50
02.10.09					7.00	5.00	initial on-site inspection:(expert hrs includes 4 hrs driving time, 2.5 hrs on-site & 1/2 hr film processing) assistant hrs. includes 2.5 hrs prep & 2.5 on-site	\$250.00	\$75.00	\$ 87.18	\$2,212.16
02.11.09					0.25		Dodge-Regupol research	\$250.00	\$75.00		\$ 62.50
02.11.09					0.25		download & read ESR-1522	\$250.00	\$75.00		\$ 62.50
02.11.09					0.25		tel-com (12:28 PM) to Jennifer Fitzpatrick, T.I. Coordinator	\$250.00	\$75.00		\$ 62.50
02.11.09					0.50		tel-com from Jennifer Fitzpatrick re: case	\$250.00	\$75.00		\$ 125.00
02.11.09					0.25		tel-com (2:28 PM) w/Mike Payne re: slab testing time frame	\$250.00	\$75.00		\$ 62.50
02.11.09					0.25		tel-com (4:45 PM) to Jennifer Fitzpatrick for verbal ok to bill for new	\$250.00	\$75.00		\$ 62.50
02.11.09					0.25		email (7:31 PM) of photos to associates for review	\$250.00	\$75.00		\$ 62.50
02.11.09					0.25		email (1:04 PM) from J. Fitzpatrick & S. Fitterer re: floor doc.	\$250.00	\$75.00		\$ 62.50
02.12.09					2.00		reviewed project specifications 08830 & 08300	\$250.00	\$75.00		\$ 500.00
02.12.09					0.25		tel-com (6:24 PM) to Dale Roberts re: photo sent, LVM	\$250.00	\$75.00		\$ 62.50
02.12.09					5.00		on-site inspection Lindell Lummer	\$250.00	\$75.00	\$ 264.74	\$1,514.74
02.12.09					5.50		round trip driving time Lindell only	\$250.00	\$75.00		\$1,375.00
02.12.09					5.00		on-site inspection Gil Chotam	\$250.00	\$75.00		\$1,250.00
02.12.09					5.00		on-site inspection Mike Payne & Nathan Michale				N/C
02.13.09					0.25		tel-com (8:46 AM) from Dale Roberts re: photos need job walk	\$250.00	\$75.00		\$ 62.50
02.13.09					0.25		tel-com (9:37 AM) to Mitch Hawkins, LVM	\$250.00	\$75.00		\$ 62.50
02.13.09					0.50		tel-com (12:43 PM) to Wm Hawkins, Laticrete sent photos	\$250.00	\$75.00		\$ 125.00
02.13.09					0.25		email (1:03 PM) from Mitch Hawkins re: contact info for Brian	\$250.00	\$75.00		\$ 62.50
02.13.09					0.50		email (2:01 PM) to Mitch Hawkins re: case & Jennifer's #	\$250.00	\$75.00		\$ 125.00
02.13.09					0.25		email (2:05 PM) from Mitch rec'd contact info for Brian Swann	\$250.00	\$75.00		\$ 62.50
02.13.09					0.25		email (2:13 PM) to Mike Granatowski w/ Mapei	\$250.00	\$75.00		\$ 62.50
02.13.09					0.50		email (2:33 PM) from Brian Swann, Laticrete re: mtg. w/ Jennifer for	\$250.00	\$75.00		\$ 125.00
02.13.09					0.25		email 7:39 PM photos to Mike Granatowski	\$250.00	\$75.00		\$ 62.50
02.14.09					0.25		email (1:AM) to M. Granatowski sent photos	\$250.00	\$75.00		\$ 62.50
02.14.09							talking point notes made by Lindell				N/C
02.16.09					0.25		email (5:39 PM) to Lindell re: coring				N/C
02.18.09					0.25		email (9:37 AM) from J.Fitz., re: Laticrete suggestions	\$250.00	\$75.00		\$ 62.50
02.18.09						0.25	email (10:51 AM) to J. Fitz. Re: Lindell's schedule	\$250.00	\$75.00		\$ 18.75
02.18.09					0.25		email (1:36 PM) from M. Granatowski re: schedule to visit job	\$250.00	\$75.00		\$ 62.50
02.18.09					1.50		email (5:22 PM) from B. Swann, Laticrete re: read & review	\$250.00	\$75.00		\$ 375.00
02.19.09					0.25		email (9:21 AM) from J. Fitz re: pricing for Laticrete	\$250.00	\$75.00		\$ 62.50
02.19.09					0.25		note on coring locations	\$250.00	\$75.00		\$ 62.50
02.20.09					0.25		email (2:38 PM) from B. Swann re: Dal-Tile pricing for Opus	\$250.00	\$75.00		\$ 62.50
02.21.09					0.25		email (12:46 PM) to M. Granatowski re: schedule w/Jennifer	\$250.00	\$75.00		\$ 62.50
02.23.09					0.25		tel-com (12:50 PM) to Michael Scheffler, P.E. w/WJE re:	\$250.00	\$75.00		\$ 62.50
02.23.09					0.25		tel-com to B. Swann re: definition of low speed mixer	\$250.00	\$75.00		\$ 62.50
02.23.09					1.00		email (12:02 PM) from Dale Roberts, Customs Building Products, re:	\$250.00	\$75.00		\$ 250.00
02.23.09					0.25		email (12:30 PM) from B. Swann re: 816 LatIPach	\$250.00	\$75.00		\$ 62.50
02.23.09					0.25		email (2:29 PM) from B. Swann re: rpm speed for mixing	\$250.00	\$75.00		\$ 62.50
02.24.09					0.25		email (8:13 AM) from J. Fitz. Re: had another floor pop yesterday	\$250.00	\$75.00		\$ 62.50
02.24.09					0.25		email (4:08 AM) from M. Hawkins re: 300 rpm max mixer	\$250.00	\$75.00		\$ 62.50
02.26.09					0.25		email (12:54 PM) to M. Scheffler re: petrographic analysis	\$250.00	\$75.00		\$ 62.50
02.26.09					0.25		email (1:05 PM) to Skaggs Concrete re: coring prices	\$250.00	\$75.00		\$62.50
02.26.09					0.25		email (3:33 PM) from Danny Skaggs re: estimate	\$250.00	\$75.00		\$ 62.50
02.26.09							email (3:48 PM) from M. Scheffler re: 2nd email not received				N/C
02.26.09					0.25		email (11:35 PM) to M. Scheffler question re: coring size & depth	\$250.00	\$75.00		\$ 62.50
03.04.09					0.25		email (11:18 PM) to Skaggs Concrete re: concrete x-ray contact	\$250.00	\$75.00		\$ 62.50
03.04.09					0.25		tel-com (2:10 PM) to B. Swann, Laticrete re: update LVM	\$250.00	\$75.00		\$ 62.50
03.04.09					0.25		tel-com (2:20 PM) from B. Swann re: update	\$250.00	\$75.00		\$ 62.50
03.04.09					0.25		email (3:57 PM) to Danny Skaggs re: coring x-ray	\$250.00	\$75.00		\$ 62.50
03.04.09					0.25		email (3:59 PM) from M. Scheffler re: schedule	\$250.00	\$75.00		\$ 62.50
03.05.09					0.25		email (8:51 AM) from Danny Skaggs re: x-ray contact info	\$250.00	\$75.00		\$ 62.50
03.05.09					0.25		tel-com (9:AM) from J. Fitz re: contact info for Mike Payne/email to	\$250.00	\$75.00		N/C
03.05.09					0.25		email (9:09 AM) from J. Fitz re: Mike Payne contact info	\$250.00	\$75.00		\$ 62.50
03.05.09					1.00		email (11:53 AM) to J. Fitz & Mike Payne re: f/u to email & phone	\$250.00	\$75.00		\$ 250.00
03.05.09					0.25		email (12:13 PM) to J. Fitz re: correct cell #				N/C
03.05.09					0.25		email (12:22 PM) from J. Fitz re: floors are 60 to 80% delaminated	\$250.00	\$75.00		\$ 62.50
03.05.09					0.25		email (2:08 PM) from Burt Lavesque, w/Opus re: flooring issue	\$250.00	\$75.00		\$ 62.50
03.05.09					0.25		email (4:04 PM) to B. Swann re: epoxy grout	\$250.00	\$75.00		\$ 62.50
03.05.09					0.25		tel-com (3:28 PM) to Mike Payne re:sound transmission after repair	\$250.00	\$75.00		\$ 62.50
03.05.09					0.25		tel-com (4:32 PM) to J. Fitz re: Mike Payne	\$250.00	\$75.00		\$ 62.50
03.06.09					0.25		tel-com (3:50 PM) to J. Fitz re: more floors popping will talk next wk.	\$250.00	\$75.00		\$ 62.50
03.06.09					0.25		tel-com (4:08 PM) to Scott @ International Inspections re: price for	\$250.00	\$75.00		\$ 62.50
03.11.09					0.25		email (2:10 PM) from M. Scheffler re: address of project	\$250.00	\$75.00		\$ 62.50
03.11.09					0.25		email (12:12 PM) from J. Fitz re: is this for M. Payne				N/C
03.11.09					0.25		email (12:49PM) to J. Fitz re: quotes Scott Fitterer requested	\$250.00	\$75.00		\$ 62.50
03.12.09					0.50		email (9:42 AM) from M. Scheffler re: proposal to perform lab	\$250.00	\$75.00		\$ 125.00
03.13.09					0.25		email (10:38 AM) from J. Fitz re: quote from M. Scheffler	\$250.00	\$75.00		\$ 62.50
03.13.09					0.25		tel-com (10:46 AM) to J. Fitz re: do you still want me to continue	\$250.00	\$75.00		\$ 62.50
03.16.09					1.00		proposal for x-ray, coring & petrographic testing for Irvine Plaza	\$250.00			N/C
03.16.09							email (9:14 PM) to J. Fitz. Re: Irvine Plaza Proposal (pdf)				N/C

TERMS: Net on receipt late fees of @2%/month on past due accounts  
Make checks payable to: Malibu Art Tile & Stone

TOTALS

\$ 351.90 \$12,176.90



**Malibu Art Tile & Stone**  
**FORENSIC STONE & TILE CONSULTANTS**

**2761 Triunfo Canyon Road**

**Agoura Hills, California 91301**

**Tel: 818/706-7369 Fax: 818/706-276**

- **FEDERAL ID #95-4673313 License # 750731**  
**llummer@earthlink.net**

INVOICE NO. 001

TO: OWR Construction, Inc.  
2050 Main St., Ste 800  
Irvine, Ca. 92614

Re: jobsite 8000 & 5000 Scholarship Road, Irvine, Ca. 92612

Inspection Retainer/Deposit **\$1,500.00**

**Terms: Net on receipt**

# Malibu Art Tile & Stone

## FORENSIC STONE & TILE CONSULTANTS

2761 Triunfo Canyon Road

Malibu, California 91301

Tel: 818/706-7369 Fax: 818/706-2766

License # 750731

### CONSULTING RETAINER AGREEMENT

- A two (2) hour minimum will be charged on all first time appointments.

This Agreement is entered into this 4 day of FEBRUARY, 2009, between Malibu Art Tile & Stone ("Consultant") and OWR CONSTRUCTION INC. (Client"). As necessary, Consultant will provide inspections and investigation, testimony and reports for Client at the rates on the Fee Schedule that is attached hereto and incorporated herein by reference. Project Address covered by this Retainer Agreement: 800 SHERBORN RD. IRVINE CA 92612.

A retainer deposit of \$ 1,500.00 shall be required prior to commencing any work, inspections, investigations, etc. on this project. **THIS RETAINER DEPOSIT SERVES AS A SECURITY DEPOSIT AND SHALL NOT BE USED TOWARDS ONGOING SERVICES OR BILLINGS.** The retainer shall be held by the Consultant and applied against the last payment due by the Client following the conclusion of all services by Consultant. If there is a balance due left on the retainer after the last payment is made, it shall be refunded in full to the client within 30 days of the termination or completion of all of Consultant's services. **In the event that trial, arbitration, depositions, or other time-extensive work are necessary, Consultant reserves the right to require Client to deposit additional retainer funds with Consultant prior to performing such services. If the Client fails to deposit additional retainer funds within fifteen days of a request to do so, then Consultant may suspend all services, including any appearances, unless the deposit and all past due balances are paid. Consultant shall also be entitled to additional retainer funds if Consultant is working on multiple projects for Client.**

The fee schedule shall be applicable to all projects, and is subject to change with thirty days written notice to Client. In the event that an expert deposition occurs and the party taking the deposition for any reason pays less than the rates set forth on the Schedule, the Client shall be responsible for such additional fees and expenses pursuant to the fee schedule.

No work of any kind or nature shall proceed until Consultant has received a signed copy of the fee schedule, this Retainer Agreement, and the retainer deposit from the Client. All outstanding invoices must be paid in full prior to providing copies of file documents and/or any appearances in court, arbitration, and/or deposition proceedings. In the event that any invoice is past due, Client agrees that Consultant may suspend any and all services until payment is made. All invoices are due **ON receipt**, and LATE if not received in five (5) days. Past due balances shall bear interest at the rate of 2% per month until paid. If an action is necessary to collect the balance due under this Agreement, Consultant shall be entitled to all attorney's fees and costs incurred in said action.

I (We) agree to the above terms and acknowledge receipt of the fee schedule.

Signed: SCOTT D FITZGERALD Dated: FEB 4, 2009

Address: 2000 MAIN ST. SUITE 200

Phone: (714) 622-1992 FAX (714) 622-1148