

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS		PROOF OF CLAIM
Name of Debtor: (Check Only One): <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.		Case Number: 09-34360 (jointly administered under 09-34356)
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.		
Name of Creditor (the person or other entity to whom the debtor owes money or property): BAKER DRYWALL HOUSTON, LTD.		<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: Laura L. Worsham, JONES, ALLEN & FUQUAY LLP 8828 Greenville Ave., Dallas, TX 75243 Telephone number: (214) 343-7400 Email Address: lworsham@jonesallen.com		<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.
Name and address where payment should be sent (if different from above): Telephone number:		
1. Amount of Claim as of Date Case Filed: \$ <u>370,260.00</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: \$
2. Basis for Claim: <u>goods sold/labor performed</u> (See instruction #2 on reverse side.)		
3. Last four digits of any number by which creditor identifies debtor: _____ 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"/> Equipment <input type="checkbox"/> Other Value of Property: \$ _____ Annual Interest Rate _____ % Amount of arrearage and other charges as of time case filed included in secured claim, if any: \$ _____ Basis for perfection: <u>Filed Mechanic's and Materialman's Lien Affidavit</u> Amount Unsecured: \$ <u>370,260.00</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: 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: _____		

RECEIVED
NOV 09 2009
BMC GROUP

Date:
11/9/2009

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.

/s/ Laura L. Worsham

FOR COURT USE ONLY
OPUS WEST

00522

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)

20090204878
05/14/2009 RP2 \$56.00

STATE OF TEXAS §
COUNTY OF HARRIS §

MECHANIC'S AND MATERIALMAN'S LIEN AFFIDAVIT

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared MIKE SYZDEK, who being by me here and now duly sworn, upon oath says: That the affiant is the President of BD MANAGEMENT HOUSTON, LLC, general partner of BAKER DRYWALL HOUSTON, LTD., hereinafter called "Claimant," and is duly qualified and authorized to make this affidavit, fully cognizant of the facts herein set out and such facts are true and correct:

1. OPUS WEST CONSTRUCTION CORPORATION, was the purported original contractor on the project for which the hereinafter described materials and/or labor were furnished. Claimant BAKER DRYWALL HOUSTON, LTD., executed a Subcontract Agreement with OPUS WEST CONSTRUCTION CORPORATION, to furnish such materials and/or labor for the project.

2. The project was the construction of a project identified as Crossing At Fort Bend-Junior Anchors Shell to be located on Hillcroft Street in Houston, Harris County, Texas 77085.

3. In Claimant's Subcontract Agreement with OPUS WEST CONSTRUCTION CORPORATION named OPUS WEST CORPORATION, as the owner of the real property described on Exhibit "A" attached hereto and incorporated herein by reference in its entirety.

4. The Harris County Real Property records name OPUS WEST, LP, as the owner of the real property described on Exhibit "A" attached hereto.

5. OPUS WEST CONSTRUCTION CORPORATION, and OPUS WEST CORPORATION have common officers and/or directors.

6. BAKER DRYWALL HOUSTON, LTD., as provided in §53.026 is in a direct contractual relationship with OPUS WEST CONSTRUCTION CORPORATION and/or OPUS WEST, LP and has a lien

on the real property described on Exhibit "A" attached hereto as an original contractor, because OPUS WEST CONSTRUCTION CORPORATION and/or OPUS WEST CORPORATION effectively control OPUS WEST, LP, through common officers and/or directors and by OPUS WEST, LP being the general partner of OPUS WEST, LP.

7. The last known address of OPUS WEST CONSTRUCTION CORPORATION, 15455 North Dallas Parkway, #450, Addison, Texas 75001.

8. The last known address of OPUS WEST, LP is 2555 Camelback Road, Suite 800, Phoenix, Arizona 85016.

9. The last known addresses of OPUS WEST CORPORATION is 380 Jackson Street, #700, Saint Paul, Minnesota 55101.

10. Said materials and labor were furnished to the Owners by Claimant pursuant to an Subcontract Agreement between Claimant and OPUS WEST CONSTRUCTION CORPORATION.

11. The materials and labor were furnished for the improvement of real property located in Harris County, Texas, which real property is commonly described as the Crossing at Fort Bend-Junior Anchors Shell located on Hillcroft Avenue in Houston, Texas 77085, and is further more particularly described on Exhibit "A" attached hereto and incorporated herein by reference.

12. The claimant's business address is 11312 Windfern Road, Houston, Texas 77064. The principal amount of the claim is \$370,260.00, and said amount is just and correct and all just and lawful offsets, payments and credits know to the affiant have been allowed. \$37,026.00 of such claim is for retainage. The remaining \$333,234.00 of the claim is for work and/or material performed or furnished from March 2009 and April 2009. The unpaid retainage is for retainage on work done and material furnished during the month of March 2009 and April 2009.

13. Notice of the Claimant's claim were sent to OPUS WEST CONSTRUCTION CORPORATION and OPUS WEST CORPORATION on April 15, 2009.

14. A general statement of the materials and labor supplied and performed by Claimant for the renovation and/or improvement of the real property described herein are as follows:

(a) Furnish labor and material to perform that certain Contract, a copy of which, marked as Exhibit "B", is attached hereto and incorporated herein by reference in its entirety.

16. The purpose of this affidavit is to claim a statutory mechanic's and materialman's lien as well as constitutional lien on the above described land and improvements.

17. Claimant is sending one copy of this Affidavit to OPUS WEST CONSTRUCTION CORPORATION, OPUS WEST CORPORATION and OPUS WEST at the address for such entities set forth in this Affidavit.

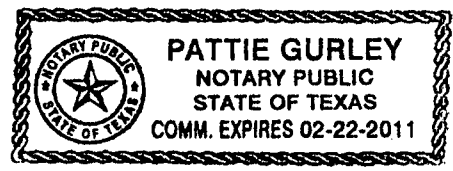
BAKER DRYWALL HOUSTON, LTD.

207

By: BD Management Houston, LLC
Its: General Partner

By: Mike Syzdek
President of BD Management Houston, LLC

SUBSCRIBED and SWORN to BEFORE ME, by the said MIKE SYZDEK, this the 13th day of May, 2009, to certify which witness my hand and seal of office.



Pattie Gurley
Notary Public in and for the State of Texas

RETURN TO:

Nathan Allen, Jr.
Jones, Allen & Fuquay, L.L.P.
8828 Greenville Avenue
Dallas, Texas 75243-7199

2009 MAY 14 AM 11:14
Bundy L. Thompson
COUNTY CLERK
HARRIS COUNTY, TEXAS
FILED

Exhibit "A"

A TRACT OF LAND CONTAINING 7.6446 ACRES OF LAND IN THE C.W. ADAMS SURVEY, ABSTRACT NUMBER 101, AND BEING OUT OF AND A PART OF RESTRICTED RESERVE "A" BLOCK 1, CROSSINGS AT FORT BEND PARKWAY AND MORE PARTICULARLY DESCRIBED IN THE ATTACHED EXHIBIT "A", AND SOMETIMES KNOWN AS RESERVE A3, BLOCK 1, CROSSINGS AT FORT BEND PARKWAY AND COMMONLY KNOWN AS 14404½ HILLCROFT, IN HARRIS COUNTY, TEXAS.



Being all of that certain tract or parcel containing 7.6446 acres (333,000 square feet) of land situated in the C.W. Adams Survey, Abstract Number 101 and being out of and a part of Restricted Reserve "A", Block 1 of Crossings At Fort Bend Parkway, a subdivision of record at Film Code Number 597210 of the Map Records, Harris County, Texas, said 7.6446 acres being more particularly described by metes and bounds as follows. (All bearings are based on the recorded plat of said Crossings At Fort Bend Parkway):

COMMENCING at a 5/8-inch iron rod found in a curve to the left in the westerly right-of-way line of Hillcroft Avenue (width varies), as recorded under Harris County Clerk's File Numbers C806739 and C878625, marking the southeast corner of a called 4.598 acres conveyed to Shell Pipeline Corporation under Harris County Clerk's File Number R731323 and the northeast corner of Unrestricted Reserve "C", Block 1 of said Crossings At Fort Bend Parkway;

THENCE along the westerly right-of-way line of said Hillcroft Avenue a distance of 376.98 feet along the arc of said curve to the left, having a radius of 2,050.00 feet, a central angle of 10°32'11", and a chord which bears South 33°15'48" East 376.45 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" found marking the common north corner of said Restricted Reserve "A" and said Unrestricted Reserve "C";

THENCE South 32°52'48" West, 281.47 feet departing the westerly right-of way line of said Hillcroft Avenue, along the common line of said Restricted Reserve "A" and said Unrestricted Reserve "C" to the POINT OF BEGINNING and the north corner of the herein described tract:

THENCE departing said common line, over and across said Restricted Reserve "A" the following seven (7) courses:

South 57°07'12" East, 313.65 feet to the beginning of a curve to the left and the east corner of the herein described tract;

88.43 feet along the arc of said curve to the left, having a radius of 200.00 feet, a central angle of 25°19'58", and a chord which bears South 09°51'43" West 87.71 feet, to the end of said curve;



South 02°48'16" East, 445.18 feet to the beginning of a non-tangent curve to the right;

254.73 feet along the arc of said curve to the right, having a radius of 900.00 feet, a central angle of 16°13'01", and a chord which bears South 05°13'58" West 253.88 feet, to the south corner of the herein described tract;

North 57°07'12" West 338.11 feet, to an "ell" corner of the herein described tract;

North 32°52'48" East 75.02 feet, to an "ell" corner of the herein described tract;

North 57°07'12" West 464.49 feet, to a point in the westerly line of said Restricted Reserve "A" and the easterly line of Restricted Reserve "B", Block I of said Crossings At Fort Bend Parkway, same being an angle point of the herein described tract;

THENCE North 12°07'12" West 18.61 feet, along the said common line of said Restricted Reserves "A" and "B" to a 5/8-inch iron rod with cap stamped "Terra Surveying" found marking an angle point in said common line and the west corner of the herein described tract;

THENCE North 32°52'48" East 69.42 feet, continuing along said common line to a 5/8-inch iron rod with cap stamped "Terra Surveying" found marking the common east corner of said Restricted Reserve "B" and said Unrestricted Reserve "C", same being an angle point in the westerly line of said Restricted Reserve "A" and of the herein described tract;

THENCE North 77°52'48" East 127.72 feet, along the common line of said Restricted Reserve "A" and said Unrestricted Reserve "C" to a 5/8-inch iron rod with cap stamped "Terra Surveying" found marking an angle point in said common line and in the westerly line of the herein described tract;

THENCE North 32°52'48" East 419.30 feet, along said common line to the POINT OF BEGINNING and containing 7.6446 acres (333,000 square feet) of land.



Crossing at Fort Bend - Junior Anchors Shell / 97327.11
/ Framing, Drywall, EIFS, Stone
Baker Drywall Houston LTD / Dante Gomez
Contract Phone: 281.664.2777 / Contract Fax: 281.664.2770
Payment Terms: Standard
Retainage: 10%

RECEIVED
MAR 02 2009

OPUS WEST - DALLAS

SUBCONTRACT AGREEMENT (Labor and Materials)

This Subcontract Agreement ("Subcontract") is made as of this 16th day of February, 2009, by and between Opus West Construction Corporation ("Contractor"), with its office located at 10375 Richmond Avenue - Suite 550, Houston, TX 77042, and Baker Drywall Houston LTD ("Subcontractor") with its office located at 11312 Windfern, Houston, TX 77064.

Contractor and Subcontractor agree as follows:

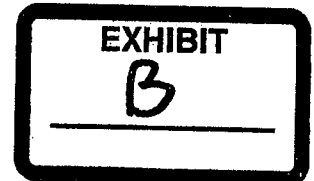
1. **Subcontract Documents.** The term "Subcontract Documents" is defined in Paragraph 1 of the attached Rider "A." **RECEIVED MAR 10 2009**
2. **Project.** Contractor is providing construction-related materials and services, as applicable, to Owner (defined below) in connection with the project generally described as Crossing at Fort Bend - Junior Anchors Shell ("Project"), located at 14404 1/2 Hillcroft Street, Houston, TX 77085 ("Project Site"), and consisting of the total work provided by Contractor under contract documents between Owner and Contractor.
3. **Owner.** The Owner of the Project is Opus West Corporation ("Owner").
4. **Architect/Engineer.** The Architect(s)/Engineer(s) of record for the Project are:
Civil Engineer: Kimloy-Horn and Associates, Inc.
Architect of Record: Opus Architects & Engineers
5. **Scope of Work.** Subcontractor's scope of work for the Project is described in the attached Rider "A" and is defined therein as the Work.
6. **Schedule.** Time is of the essence. Accordingly, all time limits and requirements for completion set forth in the Subcontract Documents, including any intermediate milestones (collectively referred to in the Contract Documents as the "Schedule"), are of the essence of this Subcontract. Subcontractor shall begin its Work as soon as the Project is ready for the Work or within three (3) calendar days after being notified orally or in writing to proceed by Contractor. The Substantial Completion of the Work (defined in the General Conditions of Subcontract) shall be achieved as required by job progress, so as to allow the entire Project to be substantially completed on or before 06/15/2009. Subcontractor shall conform to all progress and schedule requirements of the Subcontract Documents and as directed by Contractor's project manager or superintendent, and must achieve the milestones (if any) as described in the attached Rider "A".
7. **Subcontract Sum.** Contractor shall pay Subcontractor the sum of \$ 441,393.00 ("Subcontract Sum"). The Subcontract Sum includes freight and delivery charges and all applicable state and local taxes including sales and use tax, and if required by law, these taxes must be separately stated on any payment applications, invoices or similar documents delivered by Subcontractor to Contractor for completion of the Work in accordance with the terms and conditions of the Subcontract Documents. A breakdown of the components of the Subcontract Sum is set forth in the attached Rider "A".
8. **Riders.** The following Riders are attached to and made a part of this Subcontract:
8.1 Rider A (Scope of Work)
8.2 Rider B (Indemnification)
8.3 Rider C (Insurance)

Contractor and Subcontractor sign as follows:

Approved by Contractor's project manager Joel Wang
Joel Wang

CONTRACTOR
Opus West Construction Corporation
By: [Signature]
Paul Lemke
(Print Name)
Vice President of Construction, Texas
(Title)
3/4/09
(Date)

SUBCONTRACTOR
Baker Drywall Houston LTD,
By: [Signature]
Mike Sreed
(Print Name)
President of General Partner
(Title)
2/26/09
(Date)



Crossing at Fort Bend - Junior Anchors Shell / 97327.11
 Framing, Drywall, EIFS, Stone

RIDER A

This Rider A is attached to and made a part of the Subcontract between Opus West Construction Corporation and Baker Drywall Houston LTD dated 02/16/2009. All capitalized terms used, but not defined in this Rider A, have the meaning ascribed to them in the Subcontract.

I. Work/Subcontract Documents.

Subcontractor shall furnish all necessary labor, materials, equipment, skills, services (including design and engineering, if applicable), supervision and appurtenances necessary to complete all Framing, Drywall, EIFS, Stone work ("Work") for the Project, including but not limited to, strict compliance with the following documents (the "Subcontract Documents"):

Description	Number	Date
This Subcontract Agreement		02/16/2009
Project Specifications		11/12/2008
Project Spec Book 11.12.08		
Project Drawings		
Title Sheet - Outlet 8	T1.1	08/15/2007
Title Sheet	T1.1	07/09/2008
Title Sheet	C0.0	07/09/2008
Cover Sheet - Outlet 8	C1.0	08/29/2007
General Notes	C1.0	07/09/2008
General Details - Outlet 8	C10.0	08/29/2007
Erosion Control Plan	C2.0	07/09/2008
General Notes	C2.0	08/29/2007
Erosion Control Details	C2.1	07/09/2008
Paving and Dimensional Control Plan	C3.0	07/09/2008
Erosion Control Plan - Outlet 8	C3.0	08/29/2007
Erosion Control Details	C3.1	08/29/2007
Grading Plan	C4.0	07/09/2008
Dimensional Control Plan - Outlet 8	C4.0	08/29/2007
Drainage Area Map	C4.1	07/09/2008
Storm Drainage Plan	C4.2	07/09/2008
Utility Plan	C5.0	07/09/2008
Drainage Area Map - Outlet 8	C5.0	08/29/2007
Construction Details	C6.0	07/09/2008
Grading Plan - Outlet 8	C6.0	08/29/2007
Storm Drainage Plan - Outlet 8	C7.0	08/29/2007
Storm Drainage Details - Outlet 8	C7.1	08/29/2007
Utility Plan - Outlet 8	C8.0	08/29/2007
Utility Details - Outlet 8	C8.1	08/29/2007
Paving Plan - Outlet 8	C9.0	08/29/2007
Landscape Plan - Outlet 8	L1.0	08/29/2007
Planting Details - Outlet 8	L2.0	08/29/2007
Architectural Code Summary Plan	A0.1	11/18/2008
Architectural Code Summary Plan - Outlet 8	A0.1	08/15/2007
Architectural Code Summary Plan - Outlet 8	A0.1	01/19/2007
Architectural Site Plan - Outlet 8	A1.1	08/15/2007
Architectural Site Plan	A1.1	07/09/2008
Overall Floor Plan	A2.1	11/18/2008
Floor Plan - Outlet 8	A2.1	08/15/2007
Enlarged Floor Plan	A2.2	11/18/2008
Floor Plan - Outlet 8	A2.2	08/15/2007
Roof Plan and Details	A2.3	11/18/2008
Roof Plan	A2.3	08/15/2007
Exterior Elevations	A3.1	11/18/2008
Exterior Elevations - Outlet 8	A3.1	08/15/2007

Crossing at Fort Bend - Junior Anchors Shell / 97327.11
Framing, Drywall, EIFS, Stone

- 3 Subcontractor shall furnish and install all exterior framing & sheathing, interior framing & drywall, EIFS, stone and masonry work at Inline Retail.
- 4 Subcontractor shall furnish and install plywood backing at framed parapet locations.
- 5 Subcontract shall tape and float the interior of all Fire Risor Rooms.
- 6 Subcontractor shall furnish and install two (2) layers of felt behind the exterior stone.

2. Schedule.

Subcontractor will achieve the following milestones (referred to as the "Schedule")

Description	Planned Start	Planned End	Planned Duration
Submittal Preparation			1 Week (Framing & Drywall); 3 Weeks (Stone & EIFS)
Material Lead Time			10 Days (Framing & Drywall); 5 Weeks (EIFS); 3 Weeks (Stone)
Inline Retail Installation			3 Weeks (Framing & Sheathing); 3 Weeks (EIFS); 2 Weeks (Stone)
Outlet #8 - Building A Installation			2 Weeks (Framing & Sheathing); 3 Weeks(EIFS); 2 Weeks (Stone)

Schedule Clarifications

Need to maintain 3 week schedule as directed by Superintendent in weekly subcontractor meetings.

3. Subcontract Sum Breakdown.

Subcontractor provides the following breakdown of the Subcontract Sum including sales tax to be charged and remitted:

Subcontract Recap

Sub-Job Number	Sub-Job Name	Name	Amount
97327.10	Crossing at Fort Bend - Building A Outlet 8	Outlet #8 Building A Exterior Framing & Sheathing	\$106,292.00
97327.10	Crossing at Fort Bend - Building A Outlet 8	Outlet #8 Building A EIFS	\$87,601.00
97327.10	Crossing at Fort Bend - Building A Outlet 8	Outlet #8 Building Stone & Masonry	\$21,262.00
97327.11	Crossing at Fort Bend - Junior Anchors Shell	Inline Retail Exterior Framing & Sheathing	\$91,245.00
97327.11	Crossing at Fort Bend - Junior Anchors Shell	Inline Retail EIFS	\$89,491.00
97327.11	Crossing at Fort Bend - Junior Anchors Shell	Inline Retail Stone & Masonry	\$45,503.00
Total Subcontract Sum			\$441,394.00

Subcontract Summary

Name	Account Code	Amount
Exterior Stone - Subcontract	97327.10-B10-04600.00-S	\$21,262.00
Ext Metal Stud Wall - Subcontract	97327.10-B10-05410.00-S	\$106,292.00
Roof/Deck Insulation - Subcontract	97327.10-B20-07210.00-S	\$87,601.00
Exterior Stone - Subcontract	97327.11-B10-04600.00-S	\$45,503.00
Ext Metal Stud Wall - Subcontract	97327.11-B10-05410.00-S	\$91,245.00
EIFS - Subcontract	97327.11-B10-07240.00-S	\$89,491.00
Total Subcontract Sum		\$441,394.00

END OF RIDER A

Crossing at Fort Bend - Junior Anchors Steel / 97327.11
Framing, Drywall, EIFS, Stone

RIDER B

This Rider B is attached to and made a part of the Subcontract between Opus West Construction Corporation and Baker Drywall Houston LTD dated 02/16/2009. All capitalized terms used but not defined in this Rider B have the meaning ascribed to them in the Subcontract or General Conditions of Subcontract, as applicable. To the extent of any conflict between the provisions of this Rider B and the provisions of any other Subcontract Document, this Rider B shall be controlling.

Section 1. Licensing.

Subcontractor represents and warrants that it and each of its Sub-subcontractors are and will remain duly and validly licensed to the full extent required under all applicable Laws for the performance by each such party of their respective portion of the Work under this Subcontract, and that each such party shall maintain such required license(s) in good standing throughout the full and complete performance of the Work by such party hereunder. Subcontractor will submit proof of such licensure to Contractor upon request.

Section 2. Change Orders.

Any "Change Order" shall be set forth in writing, on Contractor's form, signed by an authorized representative of Contractor, and shall be executed by Contractor prior to Subcontractor proceeding with the requested change in the Work under the applicable conditions of the Subcontract Documents.

Section 3. Pay When and If Paid.

At all times Subcontractor shall be paid only to the extent that Contractor has been paid by Owner for the Work performed by Subcontractor. Notwithstanding any other provision of this Subcontract, and notwithstanding any provisions between Contractor and Owner with respect to payment, the parties agree that payment by Owner to Contractor shall be an express condition precedent to Contractor's obligation to pay Subcontractor. The parties clearly and unambiguously agree that payment by Contractor to Subcontractor is expressly contingent upon Contractor receiving its funds from Owner. All payments to Subcontractor shall be made by the Contractor solely out of the funds actually received by the Contractor from the Owner, and from no other source whatsoever. Subcontractor acknowledges that it is sharing, to the extent of payments to be made to Subcontractor, in the risk that Owner may fail to make one or more payments to the Contractor for all or a portion of the Work.

Section 4. Title to Work.

Title to all Work, including materials, equipment, and systems, covered by an Application for Payment, whether incorporated in the Project or not, will pass to Contractor and Owner upon the earlier of (a) receipt of such payment (net of any retainage), or (b) incorporation of such Work into the Project.

Section 5. Indemnification.

(a) Subject to Subsections (b) and (c) below, Subcontractor will defend, indemnify and hold harmless Contractor, Owner and Architect/Engineer, and their respective officers, directors, partners, members, agents, and employees (each, an "Indemnitee" and collectively, the "Indemnitees") from and against any and all claims, demands, obligations, actions, causes of action, damages, costs, losses, liabilities and expenses (including, without limitation, attorneys' fees and costs and other litigation, mediation, arbitration, or dispute resolution expenses), arising from or in any way connected with Subcontractor's performance or non-performance of this Subcontract (all of the foregoing being referred to as "Claims"). Any such defense of an Indemnitee will be provided by Subcontractor by legal counsel reasonably satisfactory to such Indemnitee. Subject to Subsections (b) and (c) below, Subcontractor's obligations to defend and indemnify (i) include (without limitation) all Claims, whether occurring before, during or after the performance of this Subcontract, which arise from or relate to the activities, products, actions or omissions of Subcontractor, its Sub-subcontractors, anyone directly or indirectly employed by them, or anyone for whose acts any of them may be liable (collectively, the "Subcontractor Parties"); (ii) shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Subcontractor or any Subcontractor Party under workers' or workmen's compensation acts, disability acts, other employee benefits acts, or any insurance required to be carried by Subcontractor under the Subcontract Documents; and (iii) specifically and expressly include (without limitation) any Claims caused in part by the negligence (whether active or passive) or other misconduct of any Indemnitee. Subcontractor's failure to procure specific contractual liability and other types of insurance for the benefit of any Indemnitee, as required under the Subcontract Documents, will not render the foregoing provisions unenforceable under any applicable law. **THE OBLIGATIONS OF SUBCONTRACTOR UNDER THE FOREGOING INDEMNIFICATION SHALL APPLY TO ALL MATTERS EXCEPT THOSE ARISING SOLELY FROM THE WILLFUL NEGLIGENCE OR MALICIOUS ACTS OR OMISSIONS OF THE INDEMNITEE, INCLUDING MATTERS CAUSED BY THE ORDINARY NEGLIGENCE OF THE INDEMNITEE.**

(b) Notwithstanding the provisions of Subsection (a) above, Subcontractor is not obligated to indemnify an Indemnitee for a Claim which is ultimately determined, upon final adjudication, settlement or other resolution of the Claim ("Finally Determined"), to have been caused solely by the active negligence or willful misconduct of that Indemnitee; provided, however, that this exception does not limit or relieve Subcontractor's defense obligations prior to the Claim being so Finally Determined or Subcontractor's obligations to indemnify all other Indemnitees which are not Finally Determined to have participated in such negligence or misconduct.

(c) The parties intend that Subcontractor's indemnity and defense obligations under this Subcontract will be enforced to the fullest extent allowable under applicable law, and agree that if any of the provisions of this Section are, to any extent, held to be invalid, illegal or unenforceable for any reason, any remaining portion thereof and all other provisions of this Section will not be affected by such holding, but will remain valid and in force to the fullest extent permitted by law.

Section 6. Payments Withheld.

Notwithstanding anything to the contrary in this Subcontract, Contractor shall retain ten percent (10%) of the entire Subcontract Sum until thirty (30) days following Final Completion of the entire Project by withholding ten percent (10%) of each progress payment.

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RIDER C

This Rider C is attached to and made a part of the Subcontract between Opus West Construction Corporation, and Baker Drywall Houston LTD dated 02/16/2009. All capitalized words used but not defined in this Rider "C" have the meaning ascribed to them in the Subcontract or General Conditions of Subcontract, as applicable.

1. **Subcontractor's Insurance.** Subcontractor will purchase and maintain the insurance described in this paragraph 1.

1.1 **Subcontractor's Liability/Worker's Compensation Insurance.** Prior to commencing the Work, Subcontractor shall purchase and maintain during the progress of the Work and any periods of warranty and additional work performed by Subcontractor, insurance that will protect against claims for bodily injury, death, damage to property or other damages arising out of or in connection with the performance of the Work (including warranty and additional work) by Subcontractor, Sub-subcontractor or by anyone employed by any of them, or by anyone for whose acts any of them may be liable. Subcontractor's liability insurance may be maintained in a combination of primary and umbrella policies, and the cost of such insurance shall be included in the Subcontract Sum. Subcontractor's policies of insurance shall have the following coverages, requirements and minimum limits:

INSURANCE COVERAGE

MINIMUM LIMITS

<p>Workers' Compensation</p>	<p>Statutory Limits</p>
<p>Employer's Liability, including "Stop Gap" coverage and USL&H if applicable</p>	<p>\$1,000,000 each accident \$1,000,000 disease-policy limit \$1,000,000 disease-each employee</p>
<p>Commercial General Liability (Applies if Subcontractor is performing or supplying any of the following as part of the Work: Structural Concrete or Wood Framing, Masonry, Electrical, HVAC, Plumbing, Fire Protection, Sprinkler, Steel Erection, Elevator, Excavating, Roofing, Foundation and Curtain Wall/Glazing Subcontractors)</p>	<p>\$5,000,000 each occurrence \$5,000,000 products/completed operations aggregate \$5,000,000 general aggregate (minimum \$2,000,000 per project)</p>
<p>Commercial General Liability (Applies if Subcontractor's Work does not include any of the work item listed immediately above.)</p>	<p>\$2,000,000 each occurrence \$2,000,000 products/completed operations aggregate \$2,000,000 general aggregate (per project)</p>
<p>Commercial Automobile Liability</p>	<p>\$1,000,000 any one accident or loss</p>
<p>Professional Liability/Errors & Omissions (Applies if Subcontractor is providing engineering or design services)</p>	<p>\$1,000,000 each claim \$1,000,000 annual aggregate</p>
<p>Contractor's Pollution Liability (Applies if Subcontractor is providing any of the following as part of the Work):</p>	
<p>Demolition; Fuel Providers</p>	<p>\$1,000,000 each occurrence \$1,000,000 aggregate</p>
<p>Excavation and subterranean Work; transporting of regulated or hazardous substances</p>	<p>\$1,000,000 each occurrence \$2,000,000 aggregate</p>
<p>Asbestos, Lead or Mold Abatement</p>	<p>\$3,000,000 each occurrence \$5,000,000 aggregate</p>

1.2 **Subcontractor's Insurance Requirements.** Subcontractor's policies of insurance set forth in Paragraph 1.1 must meet the following requirements:

- (a) Employer's Liability, Commercial General Liability and Automobile Liability insurance may be arranged under separate policies for the full minimum limits required, or by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability policy.
- (b) The Commercial General Liability insurance and Umbrella/Excess Liability insurance must (i) be on ISO Form CG 00 01 or its equivalent, (ii) include coverage for products/completed operations, (iii) be maintained for a period of three (3) years after completion of the Work, (iv) specifically cover as "insured contracts" the Subcontractor's indemnity obligations as set forth in this Subcontract and other contractual indemnities assumed by the Subcontractor under the Subcontract Documents and (v) provide a \$2,000,000 minimum general aggregate limit of liability on a per project basis and (vi) include Contractor and Owner (and others as specifically required by the Subcontract Documents) as "additional insureds." The "additional insureds" endorsements to Subcontractor's Commercial General Liability policy will be on ISO Forms GC 20 10 07 04 and GC 20 37 07 04 or equivalent and will include coverage for ongoing and complete operations. The additional insured endorsement form numbers must be listed on the insurance certificate. If the endorsement is not written on an "ISO" form, the endorsement(s) must be attached to the certificate of insurance. Subcontractor's General Liability and Umbrella/Excess insurance policies will be primary insurance and not excess over, or contributing with, any insurance purchased or maintained by Contractor or Owner.
- (c) The Commercial Automobile Liability insurance must include coverage for all owned, hired and non-owned automobiles.
- (d) Professional Liability/Errors & Omissions, if applicable to the Subcontractor's Work, must be maintained for a period of three (3) years after completion of the Work. Any retroactive date on such Professional Liability policy shall be prior to the commencement of any Work under this Subcontract.
- (e) Contractor's Pollution Liability insurance, if applicable to the Subcontractor's Work, will (i) be maintained for a period of two years after the completion of the Work, (ii)

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specifically cover as "insured contracts" Subcontractor's indemnity obligations as set forth in this Subcontract and other contractual indemnities assume by Subcontractor under the Subcontract Documents, (iii) include transportation coverage for loading, unloading, and transporting of waste from the Project Site to the final disposal location with an endorsement scheduling the non-owned disposal facility if transportation of waste is included in the Work, (iv) include a waiver of subrogation, (v) specifically include pollution coverage for all Work performed, such as asbestos, lead-based paint, and mold, (vi) cover replacement or restoration costs as a result of pollution conditions, and (vii) delete or amend any "insured vs. insured" exclusion to provide that the exclusion shall not apply to Contractor as an additional insured. Coverage will be primary insurance and not excess over, or contributing with, any insurance purchased or maintained by Contractor or Owner. Subcontractor shall provide a copy of the policy to the Contractor upon request.

- (f) All insurance policies required under this Paragraph 1 must (i) be issued by insurance companies that have an A.M. Best rating of A- VII or better and (ii) contain a provision that coverage afforded thereunder shall not be cancelled or restrictive modifications added, without thirty (30) days prior written notice to the Contractor. If Subcontractor fails to purchase and maintain the insurance coverage required under this Paragraph 1, Contractor may, but shall not be obligated to, obtain such insurance and either charge all costs for such insurance to the Subcontractor or offset the costs of such insurance against amounts due Subcontractor under the Subcontract.
- (g) Certificates of insurance will be filed with the Contractor prior to the start of the Subcontractor's Work on the Project Site. Such Certificates of Insurance must be in a form and substance acceptable to the Contractor and will provide satisfactory evidence that the Subcontractor has complied with all insurance requirements, including Contractor's, Owner's and any other required parties' status as "additional insureds".
- (h) Contractor may exclude Subcontractor from the Project Site and withhold payments to Subcontractor until a properly executed certificate of insurance evidencing the insurance required under this Paragraph 1 is received by Contractor.
- (i) The insurance coverages and limits required by this Subcontract do not limit the Subcontractor's responsibilities and liabilities specified within the Subcontract Documents or under law.

2 **Contractor's Builder's Risk Insurance:** Contractor will purchase and maintain builders risk insurance as follows:

- 2.1 **Coverage.** Unless otherwise provided in the Subcontract Documents, Contractor will cause builder's risk insurance to be purchased and maintained with a "causes of loss" or equivalent policy form covering work to be performed by Contractor (including those working for or under Contractor) at the Project Site to the full insurable value thereof, on a replacement cost basis and subject to reasonable deductibles. Covered "causes of loss" means risks of direct physical loss or damage to covered property unless specifically excluded or limited under the policy. This insurance will include the interests of Owner, Contractor, Subcontractor and Sub-subcontractors in respect to the work to be performed by Contractor at the Project, and shall insure against perils of fire (with extended coverage), theft, vandalism, malicious mischief, collapse, windstorm, temporary falsework, shoring and forms and debris removal, and such other matters as are insured against in the form of the policy maintained by Contractor. Unless specifically provided in writing, such insurance will not include coverage for any property, structure(s) and contents (whether real or personal) owned by the Owner or third parties existing as of commencement of Contractor's work or otherwise. Contractor will carry earthquake and flood insurance if Contractor deems it appropriate.
- 2.2 **Waiver of Subrogation.** To the extent of coverage afforded by builder's risk or any other property or equipment floater insurance applicable to the Work or the Project or equipment used in the performance of the Work or Project, regardless of whether such insurance is owned by or for the benefit of Subcontractor, Contractor or Owner or their respective subcontractors and agents, Contractor and Subcontractor agree to waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Owner and any of its contractors, subcontractors, agents and employees, whether under subrogation or otherwise, for loss or damage to the extent covered by such insurance, except such rights as they may have to the proceeds of such insurance. If policies of insurance referred to in this paragraph require an endorsement to provide for continued coverage where there is a waiver of subrogation, then the owners of such policies will cause them to be so endorsed. A waiver of subrogation shall be effective as to a party even though that party would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the party had an insurable interest in the property damaged.
- 2.3 **Apportionment of Deductible.** If (i) the Project suffers an insurable loss, (ii) the loss is due in part to the negligence of Subcontractor and (iii) an insurance deductible amount (not to exceed 25,000.00) is applied to the loss payable under builder's risk or other property insurance applicable to the Project, Subcontractor will be liable to Contractor for the deductible amount; however, Contractor may, in its discretion, apportion the deductible amount among other parties responsible for the loss. Subcontractor will promptly pay Contractor, upon demand, for any such deductible amount, and Contractor may offset the deductible amount against any amounts due Subcontractor under the Subcontract. Neither Contractor nor Owner represents that builder's risk or property insurance, if any, applicable to the Project or the Work is adequate to protect the interests of Subcontractor. It is Subcontractor's obligation to determine whether it should purchase and maintain supplementary property insurance to protect its interests in the Work.
- 2.4 **Loss Payable.** Any insured loss is to be adjusted by Owner and Contractor and made payable to Contractor, as trustee, or to Owner and Contractor, as joint trustees for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage or loss payable clause.
- 2.5 **Personal Property.** Subcontractor hereby releases Contractor and Owner from all claims for loss or damage to or loss of use of Subcontractor's property in or about the Project Site and shall purchase such insurance in respect thereto as Subcontractor deems appropriate. Subcontractor shall require a similar release by Sub-subcontractors. In addition, if Contractor permits Subcontractor to use tools, equipment or other personal property that is owned, leased or otherwise in Contractor's possession Subcontractor's use will be at its sole risk and Subcontractor will indemnify Contractor against any claims and/or damages, including but not limited to attorney's fees and court costs, arising out of Subcontractor's use of the tools, equipment or other personal property.

END OF RIDER C

RECORDER'S MEMORANDUM:
At the time of recording, this instrument was found to be inadequate for the best photographic reproduction because of illegibility, carbon or photo copy, discolored paper, etc. All blackouts, additions and changes were present at the time the instrument was filed and recorded.

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.
THE STATE OF TEXAS
COUNTY OF HARRIS

I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me, and was duly RECORDED in the Official Public Records of Real Property of Harris County, Texas on

MAY 14 2009



Dorothy B. Kaufman

COUNTY CLERK
HARRIS COUNTY, TEXAS

Northern District of Texas Claims Register

09-34360-hdh11 Opus West Construction Corporation

Judge: Harlin DeWayne Hale **Chapter:** 11
Office: Dallas **Last Date to file claims:**
Trustee: **Last Date to file (Govt):**

<i>Creditor:</i> (12790651) Baker Drywall Houston, Ltd. c/o Laura L. Worsham Jones, Allen & Fuquay, LLP 8828 Greenville Avenue Dallas, TX 75243	Claim No: 16 <i>Original Filed</i> Date: 11/09/2009 <i>Original Entered</i> Date: 11/09/2009	<i>Status:</i> Filed by: CR Entered by: Worsham, Laura Modified:
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Unsecured claimed: \$370260.00

Total claimed: \$370260.00

History:

Details 16-1 11/09/2009 Claim #16 filed by Baker Drywall Houston, Ltd., total amount claimed:
 \$370260 (Worsham, Laura)

Description:

Remarks:

Claims Register Summary