


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

UNITED STATES BANKRUPTCY COURT		PROOF OF CLAIM
Name of Debtor Opus West Corporation		Case Number 09-34356 (hdh)
<i>NOTE This form should not be used to make a claim for an administrative expense arising after the commencement of the case A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503</i>		
Name of Creditor (the person or other entity to whom the debtor owes money or property) U.S. Bank National Association		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim
Name and address where notices should be sent See attached Addendum RECEIVED NOV 09 2009 BMC GROUP		Court Claim Number: _____ (If known)
Telephone number _____		Filed on _____
Name and address where payment should be sent (if different from above)		<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
Telephone number _____		<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: Not less than \$5,832,288.12		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
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		
2. Basis for Claim: _____ Haven Point Project. See attached Addendum (See instruction #2 on reverse side)		<input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B)
3. Last four digits of any number by which creditor identifies debtor: _____		<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)
3a. Debtor may have scheduled account as: _____ (See instruction #3a on reverse side)		<input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. §507 (a)(5)
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		<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)
Nature of property or right of setoff: <input checked="" type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input checked="" type="checkbox"/> Other		<input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. §507 (a)(8)
Describe: _____		<input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. §507 (a)(____)
Value of Property: \$ _____ Annual Interest Rate _____%		Amount entitled to priority: \$ _____
Amount of arrearage and other charges as of time case filed included in secured claim, if any: \$ _____ Basis for perfection: _____		*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
Amount of Secured Claim: See attached Addendum Amount Unsecured: See attached Addendum		
6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim		
7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements You may also attach a summary Attach redacted copies of documents providing evidence of perfection of a security interest You may also attach a summary (See instruction 7 and definition of "redacted" on reverse side)		
DO NOT SEND ORIGINAL DOCUMENTS ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING		
If the documents are not available, please explain _____		
Date: 11-5-09	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	FOR COURT USE ONLY
Ziad W. Amra VICE PRESIDENT U.S. BANK N.A.		OPUS WEST  00529

Josiah M. Daniel, III, SBT #05358500
Angela B. Degeyter, SBT # 24059669
VINSON & ELKINS L.L.P.
2001 Ross Avenue, Suite 3700
Dallas, Texas 75201-2975
Tel: (214) 220-7700
Fax: (214) 220-7716

And

Thomas O. Kelly, III
DORSEY & WHITNEY LLP
Suite 1500, 50 South Sixth Street
Minneapolis, MN 55402-1498
Tel: (612) 340-2600
Fax: (612) 340-2868

**COUNSEL FOR U.S. BANK
NATIONAL ASSOCIATION**

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:) **Chapter 11**
)
OPUS WEST CORPORATION, et al.,) **Case No. 09-34356 (hdh)**
)
Debtors.) **Jointly Administered**
)

ADDENDUM TO PROOF OF CLAIM

U.S. Bank National Association, in its capacity as Administrative Bank (in such capacity, "U.S. Bank" or the "Administrative Bank"), by and through its undersigned counsel, hereby files this *Addendum to Proof of Claim* (this "Proof of Claim"). As described herein, U.S. Bank is asserting claims against Opus West Corporation ("Opus West"), Case No. 09-34356 (Opus West its affiliates, which are being jointly administered in this case are collectively referred to herein as the "Debtors"). This Proof of Claim is filed to preserve U.S. Bank's rights and remedies, of every nature, pursuant to those certain notes, contracts, and agreements more fully discussed herein.

I. FACTUAL BACKGROUND

1. On July 6, 2009 (the "Petition Date"), the Debtors filed voluntary petitions under chapter 11 of title 11 of the Bankruptcy Code commencing the chapter 11 cases.

2. The Debtors continue in possession of their property and are operating and managing their businesses as debtors in possession pursuant to Bankruptcy Code §§ 1107(a) and 1108.

3. No request has been made for the appointment of a trustee or examiner in these cases.

The Haven Point Project

4. Pursuant to a Construction Loan Agreement dated December 13, 2007 (the "Haven Loan Agreement") by and among Opus West, the Administrative Bank, and U.S. Bank and certain other parties as lenders thereunder (collectively, the "Haven Banks"), the Haven Banks made loans (the "Haven Loans") to Opus West in connection with the construction of an office complex known as Haven Point ("Haven Point") on certain premises (the "Haven Premises") in the City Rancho Cucamonga, California (the "Haven Point Project"). As of the Petition Date, the principal amount due under the Haven Loan Agreement and other Loan Documents¹ was \$9,229,722.59, and accrued interest was not less than \$244,074.89.²

5. Opus West's obligations to the Haven Banks under the Haven Loan Agreement and the other Loan Documents, including, without limitation, Opus West's obligation to pay the Administrative Bank's and the Haven Banks' costs and expenses (including reasonable attorneys' fees) incurred in connection with the Haven Loans, are secured by the Haven Premises

¹ Unless the context otherwise indicates, capitalized terms used in this section and not defined herein shall have the meanings provided in the Haven Loan Agreement.

² See Loan Obligation Summary, attached hereto as Exhibit A.

and other collateral (collectively, the "Haven Collateral") described in various Loan Documents, including, without limitation:

- (a) a Promissory Note Secured by Deed of Trust (Construction), dated as of January 2, 2008, between Opus West and U.S. Bank, individually and as agent for the other Banks party to the Loan Agreement;
- (b) a Construction Deed of Trust dated as of December 12, 2007 among Opus West, as Trustor, Chicago Title Insurance, as Trustee, and U.S. Bank, as Beneficiary (the "Construction Deed of Trust");
- (c) an Indemnity Agreement (Borrower), between Opus West and U.S. Bank, individually and as agent for the other Banks party to the Haven Loan Agreement;
- (d) an Assignment of Permits Licenses, and Approvals, dated as of December 13, 2007 between Opus West and U.S. Bank, individually and as agent for the other Banks party to the Haven Loan Agreement;
- (e) an Assignment of Contracts, Plans and Specifications dated as of December 13, 2007 between Opus West and U.S. Bank, individually and as agent for the other Banks party to the Haven Loan Agreement; and
- (f) an Assignment of Plans and Related Agreements dated as of February, 2008 by Opus West in favor of U.S. Bank, individually and as agent for the Banks party to the Haven Loan Agreement.³

6. Certain defaults under the Haven Loan Agreement and other Loan Documents were in existence on the Petition Date. By the letter dated March 13, 2009,⁴ and by letter dated April 14, 2009,⁵ the Administrative Bank notified Opus West of the existing defaults and that the Administrative Bank had accelerated and declared, on behalf of the Haven Banks, all of the outstanding principal balance, all accrued and unpaid interest, fees, and other amounts owing to the Administrative Bank and the Haven Banks pursuant to the Loan Documents immediately due and payable in full. Pursuant to the letter dated April 14, 2009, the Administrative Bank made

³ A true and correct copy of the Haven Loan Agreement is attached hereto as Exhibit B, and a true and correct copy of the Construction Deed of Trust is attached hereto as Exhibit C. U.S. Bank will make copies of the additional Loan Documents available upon request.

⁴ A true and correct copy of the March 13, 2009 letter is attached hereto as Exhibit D.

⁵ A true and correct copy of the April 14, 2009 letter is attached hereto as Exhibit E.

demand upon Opus West for the immediate payment in full of the outstanding principal balance, all accrued and unpaid interest, fees, and other amounts owing to the Administrative Bank and the Haven Banks pursuant to the Loan Documents.⁶

7. After the Petition Date, the Debtors agreed to permit U.S. Bank to seek relief from the automatic stay to exercise all of its rights and remedies under the Haven Loan Agreement and Loan Documents, including, but not limited to, foreclosing on the Haven Collateral. The parties agreed that a modification of the automatic stay was appropriate under Bankruptcy Code § 362(d)(1) because Opus West could not provide adequate protection to U.S. Bank. In addition, such relief was appropriate under Bankruptcy Code § 362(d)(2) because Opus West lacked equity in the Haven Collateral, and such property was not necessary for effective reorganization.

8. On July 17, 2009, U.S. Bank filed a *Motion for Approval of Agreement to Modify the Automatic Stay Pursuant to Bankruptcy Rule 4001(d)* (the "Haven Lift Stay Motion") [Dkt. No. 121], seeking the Court's approval of the parties' lift-stay agreement. No objections were filed and, on August 4, 2009, the Court entered an Order granting the Haven Lift Stay Motion [Dkt. No. 235], authorizing U.S. Bank to pursue its rights and remedies under non-bankruptcy law, including the right to foreclose on the Haven Collateral to preserve and establish the amount of U.S. Bank's deficiency claim.

9. Subsequent to obtaining relief from the automatic stay, U.S. Bank began judicial foreclosure proceedings in Bernardino County, California. Although the state-court foreclosure and sale process has not been completed, a recent appraisal performed at the request of U.S. Bank placed the current market value of Haven Point at approximately \$3,660,000.00, given the

⁶ See Exhibit D.

state of the project and current market conditions.⁷ As such, U.S. Bank estimates that its resulting deficiency claim with regard to the Haven Point Project will likely amount to *at least* \$5,813,797.48, plus the costs of foreclosure, plus pre-petition attorneys' fees in the amount of at least \$18,490.64.

II. AMOUNTS DUE TO U.S. BANK

10. As set forth above, U.S. Bank asserts a claim against Opus West based on the balance due to the Administrative Bank under the Haven Loan Documents in an amount *not less than* \$5,832,288.12, plus any and all other fees, expenses, costs, additional accrued interest, charges, and any and all other debts or obligations of Opus West to the Administrative Bank pursuant to applicable law, whether incurred pre or postpetition, whether contract, tort or statutory, including, but not limited to, 11 U.S.C. § 506(b), and pursuant to the Loan Documents.

III. DOCUMENTATION

11. U.S. Bank's claim against Opus West is evidenced by the above-described Exhibits "A" through "F" attached hereto.

IV. DEBTORS' ASSETS SECURING THE OBLIGATION

12. Opus West's obligation to pay the Administrative Bank's and the Haven Banks' costs and expenses (including reasonable attorneys' fees) incurred in connection with the Haven Loans, are secured by the Haven Collateral. Although U.S. Bank has obtained relief from the automatic stay to commence foreclosure proceedings against the Haven Collateral, the foreclosure sale has not yet occurred. This Proof of Claim is filed to assert and preserve both U.S. Bank's secured claim and deficiency claim against the Debtors.

⁷ See Summary Narrative Appraisal Report, attached hereto as Exhibit F.

V. AMENDMENTS AND MODIFICATIONS

13. This Proof of Claim is filed under compulsion of claims bar date in the Debtors' cases and U.S. Bank reserves the right to amend, modify, or supplement this Proof of Claim, or state additional or related claims, at any time hereafter, particularly with regard to the amount of U.S. Bank's claim after the foreclosure sale occurs. The filing of this Proof of Claim shall not be deemed to be an election or waiver of remedies.

VI. NO WAIVER

14. Nothing contained herein shall be deemed or construed as a waiver of any rights of U.S. Bank as to any claims, defenses, actions, set offs or recoupments to which U.S. Bank may be entitled, all of which are expressly reserved.

VII. PAYMENTS

15. All payments in connection with this Proof of Claim shall be mailed to:

Ziad W. Amra
Vice President, Special Assets Group
U.S. Bancorp Center
BC-MN-H22A
800 Nicollet Mall, 22nd Floor
Minneapolis, MN 55402

VIII. NOTICES

16. All notices regarding this Proof of Claim shall be mailed to:

Ziad W. Amra
Vice President, Special Assets Group
U.S. Bancorp Center
BC-MN-H22A
800 Nicollet Mall, 22nd Floor
Minneapolis, MN 55402
Tel.: 612.303.4517
Fax: 612.303.4660

with copy to:

Thomas O. Kelly
DORSEY & WHITNEY LLP
Suite 1500, 50 South Sixth Street
Minneapolis, MN 55402-1498
Tel: 612.340.2600
Fax: 612.340.2868

And

Josiah M. Daniel, III
Angela B. Degeyter
VINSON & ELKINS L.L.P.
2001 Ross Avenue, Suite 3700
Dallas, TX 75201
Tel.: 214.220.7766
Fax: 214.220.7716

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):

<p><i>Creditor:</i> (12454608) U.S. Bank Attention: Commercial Real Estate BC-MN-H22A 800 Nicollet Mall Minneapolis, MN 55402</p>	<p>Claim No: 51 <i>Original Filed</i> <i>Date:</i> 11/09/2009 <i>Original Entered</i> <i>Date:</i> 11/09/2009 <i>Last Amendment</i> <i>Filed:</i> 11/09/2009 <i>Last Amendment</i> <i>Entered:</i> 11/09/2009</p>	<p><i>Status:</i> <i>Filed by:</i> AT <i>Entered by:</i> Degeyter, Angela <i>Modified:</i></p>
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Secured claimed: \$5832288.12

Total claimed: \$5832288.12

History:

Details 51-1 11/09/2009 Claim #51 filed by U.S. Bank, total amount claimed: \$5832288.12 (Degeyter, Angela)

Details 51-2 11/09/2009 Amended Claim #51 filed by U.S. Bank, total amount claimed: \$5832288.12 (Degeyter, Angela)

Description: (51-1) Haven Point Project
(51-2) Haven Point

Remarks: (51-2) Revised to add remainder of exhibits

Claims Register Summary