

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

UNITED STATES BANKRUPTCY COURT      Northern District of Texas	<b>PROOF OF CLAIM</b>
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Name of Debtor: <b>Opus West Corporation</b>	Case Number: <b>09-34356</b>
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*NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.*

Name of Creditor (the person or other entity to whom the debtor owes money or property): <b>Miller Builders, L.L.P.</b>	<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim.
Name and address where notices should be sent: <b>Nancy H. Hamren</b> <b>Coats, Rose, Yale, Ryman &amp; Lee, P.C.</b> <b>3 E. Greenway Plaza, Suite 2000, Houston, TX 77046</b> Telephone number: <b>713-653-7362</b>	Court Claim Number: _____ (If known)
	Filed on: _____

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 NOV 09 2009  
 BMC GROUP

Name and address where payment should be sent (if different from above):  Telephone number: _____	<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.  <input type="checkbox"/> Check this box if you are the debtor or trustee in this case.
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<b>1. Amount of Claim as of Date Case Filed:</b> <u>\$454,488.90</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 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 to seek pre- and post-petition interest and attorney's fees.	<b>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.</b>  Specify the priority of the claim.
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<b>2. Basis for Claim:</b> <u>Provided labor and/or materials</u> for the improvement of real property (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> _____ (See instruction #3a on reverse side.)  <b>4. Secured Claim</b> (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.  Nature of property or right of setoff: <input checked="" type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: <u>Westway Park (11125 W. Equity Drive, Houston, TX 77041) and Crossing at Fort Bend Parkway (14404 1/2 Hillcroft, Houston, TX 77085)</u> Value of Property: \$ <u>Unknown</u> Annual Interest Rate <u>    </u> %  Amount of arrearage and other charges as of time case filed included in secured claim, if any: \$ <u>Full Amount</u> Basis for perfection: <u>Lien Affidavits attached as Exhibits A and B</u>  Amount of Secured Claim: \$ <u>Unknown</u> Amount Unsecured: <u>\$454,488.90 unless equity in the property</u>	<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)(____).
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<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 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: _____	Amount entitled to priority: \$ _____  <i>*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.</i>
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Date: <u>11/9/09</u>	Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.  Nancy H. Hamren, Attorney	FOR COURT USE ONLY  OPUS WEST 00531
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06/12/2009 RP3 \$28.00

STATE OF TEXAS §  
§  
§  
COUNTY OF HARRIS §  
**AFFIDAVIT CLAIMING MECHANICS' AND  
MATERIALMEN'S LIEN**

BEFORE ME, a notary public in and for the State of Texas, on this day personally appeared the undersigned, who being by me duly sworn, on oath states:

1. My name is Michael S. Miller. I am the Managing Partner of Miller Builders, LLP. ("Claimant") and am authorized to make this affidavit on its behalf as the sworn statement of its claim.

2. Claimant furnished labor and/or materials for the improvement of the following described property in Harris County, Texas:

*Commonly known as 11125 W. Equity Drive, Houston, Texas 77041 and as more particularly described on the attached Exhibit A.*

3. The labor and/or material was furnished for such improvement to Opus West Construction Corporation. The last known addresses of Opus West Construction Corporation are 15455 North Dallas Parkway, Suite 450, Addison, Texas 75001, 2555 East Camelback Road, Suite 800, Phoenix, Arizona 85016 and/or c/o Tax Department, 10350 Bren Road West, Minnetonka, Minnesota 55343. The labor and/or material was furnished pursuant to an agreement with Opus West Construction Corporation during the months of February through March, 2009.

4. Opus West Construction Corporation is the original contractor for such improvement, whose last known addresses are 15455 North Dallas Parkway, Suite 450, Addison, Texas 75001, 2555 East Camelback Road, Suite 800, Phoenix, Arizona 85016 and/or c/o Tax Department 10350 Bren Road West, Minnetonka, Minnesota 55343.

5. Devry Park Limited Partnership and/or its General Partner, Adler Management Corporation, and/or Opus West, L.P. and/or its General Partner, Opus West Corporation, are the owners or reputed owners of the land and improvements thereon, whose last known addresses are 10350 Bren Road West, Minnetonka, Minnesota 55343, c/o Tax Department 401 East 8<sup>th</sup> Street, Suite 250A, Sioux Falls, South Dakota 57103 and/or 2555 East Camelback Road, Suite 800, Phoenix, Arizona 85016.

6. To the extent that the managing individuals/entities of Opus West Construction Corporation, Devry Park Limited Partnership, Adler Management Corporation, Opus West, L.P. and/or Opus West Corporation are related pursuant to Section 53.026 of the Texas Property Code and thereby making Claimant the original contractor, Claimant asserts a constitutional lien as provided under Article 16, Section 37 of the Texas Constitution, and makes this sworn statement of claim in support thereof.

7. The labor and/or material furnished by Claimant is generally described as building site and concrete work.

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065-55-1978

**EXHIBIT A**

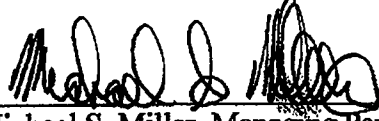
8. The amount due, owing and unpaid to claimant for such labor and/or material is \$131,489.90, (which includes retainage in the amount of \$103,878.10) which is true, correct, and just, with all just and lawful offsets, payments, and credits known to affiant allowed.

9. Claimant's mailing address is P.O. Box 1847, Pearland, Texas 77588. Claimant's physical address is 12813 Webercrest, Houston, Texas 77048.

10. Claimant sent notices to Opus West Construction Corporation and DeVry Park, L.P., by certified mail, return receipt requested, on May 15, 2009.

Claimant claims a lien against all the above described property and improvements thereon in the amount shown above pursuant to Chapter 53 of the Property Code of the State of Texas, and makes this sworn statement of claim in support thereof.

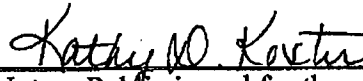
MILLER BUILDERS, L.L.P.

  
Michael S. Miller, Managing Partner

(2)  
MR  
MR

Subscribed and sworn to before me by the said Michael S. Miller this 9<sup>th</sup> day of June, 2009, to certify which witness my hand and seal of office.

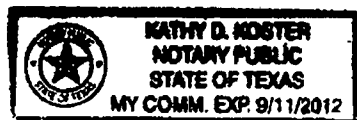


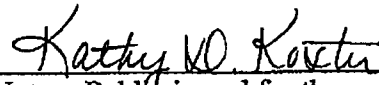
  
Notary Public in and for the  
STATE OF TEXAS

STATE OF TEXAS           §  
                                          §  
COUNTY OF Harris       §

BEFORE ME, the undersigned authority, on this day personally appeared Michael S. Miller, Managing Partner of Miller Builders, L.L.P., known to me to be the person whose name is subscribed to the foregoing instrument, who after being by me duly sworn acknowledged that the statements contained above are true and correct, that he executed same for the purposes and consideration therein expressed, in the capacity therein stated, and as the act and deed of said corporation.

Given under my hand and seal of office, this 9<sup>th</sup> day of June, 2009.



  
Notary Public in and for the  
STATE OF TEXAS

**Exhibit A**

**METES AND BOUNDS DESCRIPTION OF A  
14.958 ACRE TRACT SITUATED  
IN THE W.C.R.R. CO. SURVEY, SECTION 9,  
ABSTRACT NO. 917 HOUSTON,  
HARRIS COUNTY, TEXAS**

A 14.958 acre tract (651,571 square feet) of land situated in the W.C.R.R. Co. Survey, Section 9, Abstract No. 917, Houston, Harris County, Texas, being out of and a part of Unrestricted Reserve "A", Block 1 of Westway Park Sec. 4 as recorded under Film Code No. 479022 of the Harris County Map Records (H.C.M.R.), as conveyed to DeVry Park, Limited Partnership, recorded under Harris County Clerk's File (H.C.C.F.) No. 20080109446 of the Official Public Records of Real Property; said 14.958 acre tract being more particularly described by metes and bounds as follows (bearing based on the south right-of-way line of Equity Drive as recorded under Film Code No. 479022 of the Harris County Map Records);

**BEGINNING** at a found 5/8-inch iron rod with cap in the west right-of-way line of Westway Park Boulevard (variable width as recorded under Film Code No. 479022 of the Harris County Map Records), marking the southeast corner of said Unrestricted Reserve "A", Westway Park Sec. 4 and the northeast corner of Unrestricted Reserve "B", Block 1, of Westway Park Section Two as recorded under Film Code No. 409080 of the Harris County Map Records;

**THENCE**, South  $89^{\circ}15'22''$  West, along the south line of said Unrestricted Reserve "A", Westway Park Sec. 4 and the north line of said Unrestricted Reserve "B", Westway Park Section Two, a distance of 385.82 feet to a found 5/8-inch iron rod with cap for an angle point marking the northwest corner of said Unrestricted Reserve "B" and the northeast corner of Unrestricted Reserve "A", Westway Park Section Two;

**THENCE**, South  $89^{\circ}13'59''$  West, continuing along the south line of said Unrestricted Reserve "A", Westway Park Sec. 4 and the north line of said Unrestricted Reserve "A", Westway Park Section Two, a distance of 1033.40 feet to a set 5/8-inch iron rod with cap in the east right-of-way line of Sam Houston Tollway (300 foot width) and being the southwest corner of said Unrestricted Reserve "A", Westway Park Sec. 4 and the northwest corner of said Unrestricted Reserve "A", Westway Park Section Two;

**THENCE**, North  $01^{\circ}52'55''$  West, along the east right-of-way line of Sam Houston Tollway and the west line of said Unrestricted Reserve "A", Westway Park Sec. 4, a distance of 468.12 feet to a set 5/8 inch iron rod with cap for an angle point;

**THENCE**, North  $01^{\circ}57'26''$  West, continuing along the east right-of-way line of Sam Houston Tollway and the west line of said Unrestricted Reserve "A", Westway Park Sec. 4, a distance of 3.67 feet to a set 5/8 inch iron rod with cap for a point of curvature to the right;

**THENCE**, in a northeasterly direction, along said curve to the right, having a radius of 25.00 feet, a central angle of  $91^{\circ}14'49''$ , an arc length of 39.81 feet and a chord bearing and distance of North  $43^{\circ}39'58''$  East, 35.74 feet to a set 5/8-inch iron rod with cap in the south right-of-way line of Equity Drive (variable width) and the north line of said Unrestricted Reserve "A", Westway Park Sec. 4, to a point of tangency;

**THENCE**, North  $89^{\circ}17'23''$  East, along the south right-of-way line of Equity Drive and the north line of said Unrestricted Reserve "A", Westway Park Sec. 4, a distance of 78.92 feet to a set 5/8 inch iron rod with cap for a point of curvature to the left;

**THENCE**, in a northeasterly direction, along said curve to the left and the south right-of-way line of Equity Drive and the north line of said Unrestricted Reserve "A", Westway Park Sec. 4, having a radius of 500.00 feet, a central angle of 3°19'44", an arc length of 29.05 feet and a chord bearing and distance of North 87°37'31" East, 29.05 feet to a set 5/8-inch iron rod with cap to a point of tangency;

**THENCE**, North 85°57'39" East, continuing along the south right-of-way line of Equity Drive and the north line of said Unrestricted Reserve "A", Westway Park Sec. 4, a distance of 272.31 feet to a set 5/8 inch iron rod with cap for point of curvature to the right;

**THENCE**, in a northeasterly direction, along said curve to the right and continuing along the south right-of-way line of Equity Drive and the north line of said Unrestricted Reserve "A", Westway Park Sec. 4, having a radius of 500.00 feet, a central angle of 3°19'44", an arc length of 29.05 feet and a chord bearing and distance of North 87°37'31" East, 29.05 feet to a 5/8-inch iron rod with cap to a point of tangency;

**THENCE**, North 89°17'23" East, continuing along the south right-of-way line of Equity Drive and the north line of said Unrestricted Reserve "A", Westway Park Sec. 4, a distance of 767.19 feet to point from which a found 5/8-inch iron rod with cap bears South 36°51' East, a distance of 0.33 feet marking the northwest corner of Unrestricted Reserve "A", Block 1, Westway Park Sec. 4, Partial Replat No.1 as recorded under Film Code No. 573178 of the Harris County Map Records;

**THENCE**, South 00°52'40" East, along the west line of Unrestricted Reserve "A" and "B", Westway Park Sec. 4, Partial Replat No. 1, a distance of 445.06 feet to a found 5/8-inch iron rod for the southwest corner of said Unrestricted Reserve "B", Westway Park Sec. 4, Partial Replat No. 1;

**THENCE**, North 89°24'06" East, along the south line of Unrestricted Reserve "B", Westway Park Sec. 4, Partial Replat No.1, a distance of 218.97 feet to a found 5/8-inch iron rod in the west right-of-way line of Westway Park Boulevard and for the southeast corner of said Unrestricted Reserve "B", Westway Park Sec. 4, Partial Replat No.1 and the beginning of a curve to the left, non-tangent at this point;

**THENCE**, in a southeasterly direction, along the west right-of-way line of Westway Park Boulevard and said curve to the left, having a radius of 1500.00 feet, a central angle of 01°33'49", an arc length of 40.93 feet and a chord bearing and distance of South 06°29'30" East, 40.93 feet to a set "X" in concrete for a point of reverse curvature;

**THENCE**, in a southeasterly direction, continuing along the west right-of-way line of Westway Park Boulevard and curve to the right, having a radius of 750.00 feet, a central angle of 03°28'17", an arc length of 45.44 feet and a chord bearing and distance of South 05°32'16" East, 45.43 feet to the **POINT OF BEGINNING** and containing 14.958 acres (651,571 square feet) of land.

**RECORDER'S MEMORANDUM**

At the time of recordation, 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.

After recording return to:

Tom R. Barber  
Coats Rose Yale Ryman & Lee, P.C.  
2600 South Shore Blvd., Suite 200  
League City, Texas 77573

**FILED FOR RECORD**  
8:00 AM

**JUN 12 2009**

*Dorely B. Keyman*  
County Clerk, Harris County, Texas

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

**JUN 12 2009**



*Dorely B. Keyman*  
COUNTY CLERK  
HARRIS COUNTY, TEXAS

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LAPP  
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06/12/2009 RP3 \$24.00

STATE OF TEXAS §  
§  
§  
COUNTY OF HARRIS §

**AFFIDAVIT CLAIMING MECHANICS' AND  
MATERIALMEN'S LIEN**

BEFORE ME, a notary public in and for the State of Texas, on this day personally appeared the undersigned, who being by me duly sworn, on oath states:

1. My name is Michael S. Miller. I am the Managing Partner of Miller Builders, L.L.P. ("Claimant") and am authorized to make this affidavit on its behalf as the sworn statement of its claim.

2. Claimant furnished labor and/or materials for the improvement of the following described property in Harris County, Texas:

*Commonly known as 14404 1/2 Hillcroft Street, Houston, Texas 77085 and as more particularly described Reserve A, Block 1, Crossing at Fort Bend Parkway, as shown on that certain Subdivision and Development Plat recorded at Film Code no. 597210 of the Map Records of Harris County, Texas*

D

3. The labor and/or material was furnished for such improvement to Opus West Construction Corporation. The last known addresses of Opus West Construction Corporation are 15455 North Dallas Parkway, Suite 450, Addison, Texas 75001, 2555 East Camelback Road, Suite 800, Phoenix, Arizona 85016 and/or c/o Tax Department, 10350 Bren Road West, Minnetonka, Minnesota 55343. The labor and/or material was furnished pursuant to an agreement with Opus West Construction Corporation during the months of February through April, 2009.

4. Opus West Construction Corporation is the original contractor for such improvement, whose last known addresses are 15455 North Dallas Parkway, Suite 450, Addison, Texas 75001 and/or 2555 East Camelback Road, Suite 800, Phoenix, Arizona 85016.

5. Opus West, L.P. and/or its General Partner, Opus West Corporation, are the owners or reputed owners of the land and improvements thereon, whose last known address is 2555 East Camelback Road, Suite 800, Phoenix, Arizona 85016.

Lee

6. To the extent that the managing individuals/entities of Opus West Construction Corporation, Opus West, L.P. and/or Opus West Corporation are related pursuant to Section 53.026 of the Texas Property Code and thereby making Claimant the original contractor, Claimant asserts a constitutional lien as provided under Article 16, Section 37 of the Texas Constitution, and makes this sworn statement of claim in support thereof.

7. The labor and/or material furnished by Claimant is generally described as building site and concrete work.

**EXHIBIT B**

8. The amount due, owing and unpaid to claimant for such labor and/or material is \$322,999.00, (which includes retainage in the amount of \$70,522.60) which is true, correct, and just, with all just and lawful offsets, payments, and credits known to affiant allowed.

9. Claimant's mailing address is P.O. Box 1847, Pearland, Texas 77588. Claimant's physical address is 12813 Webercrest, Houston, Texas 77048.

10. Claimant sent notices to Opus West Construction Corporation and Opus West Corporation, by certified mail, return receipt requested, on May 15, 2009.

Claimant claims a lien against all the above described property and improvements thereon in the amount shown above pursuant to Chapter 53 of the Property Code of the State of Texas, and makes this sworn statement of claim in support thereof.

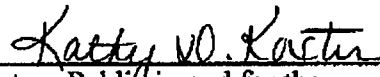
MILLER BUILDERS, L.L.P.

  
 Michael S. Miller, Managing Partner

(2)  
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Subscribed and sworn to before me by the said Michael S. Miller this 9<sup>th</sup> day of June, 2009, to certify which witness my hand and seal of office.

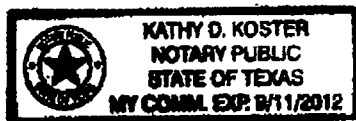


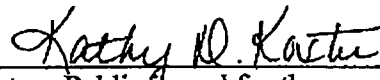
  
 Notary Public in and for the  
 STATE OF TEXAS

STATE OF TEXAS §  
 COUNTY OF Harris §

BEFORE ME, the undersigned authority, on this day personally appeared Michael S. Miller, Managing Partner of Miller Builders, L.L.P., known to me to be the person whose name is subscribed to the foregoing instrument, who after being by me duly sworn acknowledged that the statements contained above are true and correct, that he executed same for the purposes and consideration therein expressed, in the capacity therein stated, and as the act and deed of said corporation.

Given under my hand and seal of office, this 9<sup>th</sup> day of June, 2009.



  
 Notary Public in and for the  
 STATE OF TEXAS

SP 065-45-1572

AFTER RECORDING RETURN TO:

Tom R. Barber  
Coats, Rose, Yale, Ryman & Lee, P.C.  
2600 South Shore Blvd., Suite 200  
League City, Texas 77573

FILED FOR RECORD  
8:00 AM

JUN 12 2009

*Crosby B. Layman*  
County Clerk, Harris County, Texas

FILED FOR RECORD

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 shown hereon by me, and was duly RECORDED in the Official Public Records of Real Property of Harris County, Texas on

JUN 12 2009



*Crosby B. Layman*  
COUNTY CLERK  
HARRIS COUNTY, 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):**

<p><i>Creditor:</i> (12472496) Miller Builders, L.L.P. CO Nancy H. Hamren Coats, Rose, Yale, Ryman &amp; Lee, P.C. 3 E. Greenway Plaza, Suite 2000 Houston, TX 77046</p>	<p><b>Claim No: 47</b> <i>Original Filed</i> <i>Date:</i> 11/09/2009 <i>Original Entered</i> <i>Date:</i> 11/09/2009</p>	<p><i>Status:</i> <i>Filed by:</i> CR <i>Entered by:</i> Hamren, Nancy <i>Modified:</i></p>
<p>Unsecured claimed: \$454488.90</p> <p><b>Total      claimed: \$454488.90</b></p>		
<p><i>History:</i></p> <p><u>Details</u>    <u>47-1</u> 11/09/2009 Claim #47 filed by Miller Builders, L.L.P., total amount claimed: \$454488.9 (Hamren, Nancy )</p>		
<p><i>Description:</i></p>		
<p><i>Remarks:</i> (47-1) Secured Amount Unknown</p>		

## Claims Register Summary