

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

<b>In re:</b>	)	
	)	<b>Chapter 11</b>
	)	
<b>BUILDING MATERIALS HOLDING CORPORATION, <i>et al.</i>,<sup>1</sup></b>	)	<b>Case No. 09-12074 (KJC)</b>
	)	
<b>Reorganized Debtors.</b>	)	<b>Jointly Administered</b>
	)	
	)	<b>Ref. Docket No. 1551</b>

**REORGANIZED DEBTORS' OBJECTION TO MOTION  
TO RECONSIDER CLAIM OF GSA HOME ENERGY SOLUTIONS**

Building Materials Holding Corporation and its affiliates, as reorganized debtors (collectively, the "Reorganized Debtors"), hereby submit this objection (the "Objection") to the Motion to Reconsider Claim of GSA Home Energy Solutions [Docket No. 1551] (the "Motion") filed by GSA Home Energy Solutions, LLC ("GSA"). In support of this Objection, the Reorganized Debtors respectfully represent as follows:

**PRELIMINARY STATEMENT**<sup>2</sup>

1. In the Motion, GSA asserts, in conclusory fashion, that the Reorganized Debtors and their estates will not be prejudiced if this Court vacates the Orders. In an attempt to support this assertion, GSA correctly notes that the administration of the Reorganized Debtors' estates, and distributions to certain classes of creditors under the Plan, is not yet complete.

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<sup>1</sup> The Reorganized Debtors, along with the last four digits of each Reorganized Debtor's tax identification number, are as follows: Building Materials Holding Corporation (4269), BMC West Corporation (0454), SelectBuild Construction, Inc. (1340), SelectBuild Northern California, Inc. (7579), Illinois Framing, Inc. (4451), C Construction, Inc. (8206), TWF Construction, Inc. (3334), H.N.R. Framing Systems, Inc. (4329), SelectBuild Southern California, Inc. (9378), SelectBuild Nevada, Inc. (8912), SelectBuild Arizona, LLC (0036), and SelectBuild Illinois, LLC (0792). The mailing address for the Reorganized Debtors is 720 Park Boulevard, Suite 200, Boise, Idaho 83712.

<sup>2</sup> Capitalized terms used in this Preliminary Statement but not yet otherwise defined herein shall have the meanings ascribed to such terms in this Objection.

However, GSA ignores the fact that it seeks to vacate the Orders so that it can litigate meritless claims, and in the process of doing so, conduct unnecessary and burdensome discovery.

GSA seeks an allowed unsecured claim in excess of \$1,000,000 on account of the rejection of the HES Agreement. As set forth in the Substantive Objection, BMC West fully satisfied the Guarantee provided for under such agreement, and aside from the Guarantee, BMC West is not obligated to make any guaranteed payments to, or purchase any Products from, GSA. Therefore, GSA is not entitled to recover on account of any purported lost profits under the agreement.

2. Stated differently, GSA sought a substantial recovery from these estates on account of contractual obligations which simply did not exist under the HES Agreement. Furthermore, notwithstanding GSA's naked assertions in the Motion to the contrary, the Reorganized Debtors have returned to GSA any Products and other materials to which it is entitled, and GSA is not entitled to recover any attorneys' fees. Vacating the Orders would force the Reorganized Debtors to needlessly expend time, energy and resources litigating unwarranted claims at a stage when they should be focused on completing the administration of their estates and the distributions on account of legitimate claims against their estates.

3. In denying the relief requested, this Court need not look any further than the merits (or lack thereof) of the Claims to determine that vacating the Orders would impose a meaningful burden on the Reorganized Debtors and their estates. While the Reorganized Debtors appreciate the circumstances in which GSA finds itself as a result of its failure to respond to the Claims Objections, the Claims are without merit in any event, and therefore GSA has incurred no recognizable prejudice as a result of the entry of the Orders. However, if this Court were to vacate the Orders, the Reorganized Debtors would be forced to engage in protracted claims litigation with GSA on account of claims that are entirely without merit. In

light of this resulting prejudice to the Reorganized Debtors and their estates, GSA cannot demonstrate that its failure to respond to the Claims Objections was the result of excusable neglect. Accordingly, the Motion should be denied.

### **GENERAL BACKGROUND**

4. On June 16, 2009 (the “Petition Date”), each of the now Reorganized Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the “Chapter 11 Cases”). The Reorganized Debtors continue to operate their businesses and manage their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in the Chapter 11 Cases.

5. On the Petition Date, the Reorganized Debtors filed their proposed chapter 11 plan (as amended and/or supplemented, the “Plan”) and accompanying disclosure statement (as amended and/or supplemented, the “Disclosure Statement”). The Reorganized Debtors filed amended versions of the Plan and Disclosure Statement since that time. The Court approved the Disclosure Statement by order entered on October 22, 2009.

6. On December 17, 2009, the Court entered the Order Confirming Joint Plan of Reorganization for the Debtors Under Chapter 11 of the Bankruptcy Code Amended December 14, 2009 (With Technical Modifications) [Docket No. 1182] confirming the Plan. The Effective Date (as defined in the Plan) of the Plan occurred on January 4, 2010.

### **RELEVANT BACKGROUND**

#### **A. HES Agreement**

7. On or around September 15, 2008, BMC West Corporation (“BMC West,” and together with GSA, the “Parties”), one of the Debtors, and GSA entered into that certain

Home Energy Solutions Agreement (the “HES Agreement”), a copy of which is annexed hereto as Exhibit A and attached to each of the Claims (as defined below). Pursuant to the HES Agreement, GSA granted BMC West exclusive distribution rights for certain products (collectively, the “Products”) distributed by GSA.

8. In consideration for the exclusive right to distribute the Products, BMC West agreed to pay GSA a rebate (each, a “Rebate Payment”) calculated on annual gross purchases, using a formula provided for in the HES Agreement. Additionally, for the first twelve (12) months of the HES Agreement (the “Guarantee Period”), BMC West guaranteed (the “Guarantee”) GSA a Rebate Payment of \$30,000 or 10% of Products purchased, whichever is greater.

9. Aside from the Guarantee, BMC West was not obligated under the HES Agreement to make any guaranteed payments to, or purchase any Products from, GSA. If at any point following the first year of the HES Agreement BMC West had not purchased a total of \$500,000 in Products over any six-month period, BMC West could terminate the agreement.

10. On November 19, 2009, this Court entered an order [Docket No. 960] (the “Rejection Order”) rejecting the HES Agreement effective as of October 26, 2009.

## **B. Claims**

11. On December 18, 2009, in accordance with the Rejection Order, GSA filed Claim Number 2853 (“Claim 2853”) in the Chapter 11 Cases, asserting a general unsecured claim in the amount of \$1,114,147.60 against BMC West on account of damages, solely in the form of purported lost profits, allegedly arising from the rejection of the HES Agreement. In asserting these alleged lost profits, GSA relied solely on certain pro forma projections that it asserts the Parties calculated prior to entering into the HES Agreement.

12. On January 26, 2010, GSA filed Claim Number 2898 (“Claim 2898”) and Claim Number 2899 (“Claim 2899,” and together with Claim 2853 and Claim 2898, the “Claims”). As best the Reorganized Debtors can tell, Claim 2898 and Claim 2899 are substantially identical in all material respects to Claim Number 2853.<sup>3</sup>

**C. Claims Objections**

13. On March 18, 2010, the Reorganized Debtors filed their Sixteenth Omnibus (Non-Substantive) Objection to Claims Pursuant to Section 502(b) of the Bankruptcy Code, Bankruptcy Rules 3003 and 3007 and Local Rule 3007-1 [Docket No. 1480] (the “Non-Substantive Objection”), objecting to Claim 2853 as having been amended and superseded by Claim 2899.

14. Contemporaneously with the filing of the Non-Substantive Objection, the Reorganized Debtors filed their Seventeenth Omnibus (Substantive) Objection to Claims Pursuant to Section 502(b) of the Bankruptcy Code, Bankruptcy Rules 3003 and 3007 and Local Rule 3007-1 [Docket No. 1481] (the “Substantive Objection,” and together with the Non-Substantive Objection, the “Claims Objections”). Pursuant to the Substantive Objection, the Reorganized Debtors objected to Claim 2898 on the basis that only BMC West, and not BMHC, was a party to the HES Agreement, and therefore the Reorganized Debtors were not liable on account of such claim. The Reorganized Debtors also objected to Claim 2899 on the basis that (i) BMC West fully satisfied the Guarantee through its payment of \$375,310 to GSA for the Guarantee Period, and (ii) with the exception of the Guarantee, BMC West had no obligation under the HES Agreement to make any guaranteed payments or purchase any Products.

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<sup>3</sup> GSA did, however, attach a cover letter to Claim 2898 and Claim 2899 requesting the Clerk of the Court to file the claims in the bankruptcy cases of Debtors Building Materials Holding Corporation (“BMHC”) (Case No. 09-12074) and BMC West (Case No. 09-12075). As a result of this request, out of an abundance of caution, the Reorganized Debtors treated Claim 2898 and Claim 2899 as having been filed against BMHC and BMC West, respectively.

15. Attached in support of each of the Claims Objections was a sworn declaration of Paul S. Street, the Chief Executive Officer of BMHC. The deadline to respond to the Claims Objections was April 12, 2010 at 4:00 p.m. (ET) (the “Objection Deadline”). As admitted in the Motion and sworn to in the Affidavit of Service for the Claims Objection [Docket No. 1491], a copy of which is attached hereto as Exhibit B, the Reorganized Debtors duly served copies of the Claims Objections on counsel for GSA.

16. Prior to the Objection Deadline, GSA did not object or otherwise respond to the Claims Objections. On April 19, 2010, this Court entered an order sustaining the Non-Substantive Objection [Docket No. 1540] and the Substantive Objection [Docket No. 1539] (together, the “Orders”), copies of which are attached hereto as Exhibits C and D, respectively.

### **OBJECTION**

17. Section 502(j) of the Bankruptcy Code provides, in pertinent part, that “[a] claim that has been allowed or disallowed may be reconsidered for cause.” 11 U.S.C. § 502(j). While GSA sets forth various standards which it believes this Court should apply to determine whether “cause” exists to reconsider the Claims, because the Claims have been disallowed as a result of GSA’s failure to respond to the Claims Objections, GSA has the burden to demonstrate “excusable neglect.”

18. The United States Supreme Court has held that the following four (4) factors are relevant in considering whether a movant has demonstrated that its neglect is excusable:

- (a) the danger of prejudice to the debtor;
- (b) the length of the delay and its potential impact on judicial proceedings;
- (c) the reason for the delay, including whether it was within the reasonable control of the movant; and

(d) whether the movant acted in good faith.

Pioneer Inv. Servs. Co. v. Brunswick Assocs., L.P., 507 U.S. 380, 395 (1993); see also In re O'Brien Env'tl. Energy, Inc., 188 F.3d 116 (3d Cir. 1999).

19. This Court should refrain from granting the relief requested because doing so would force the Reorganized Debtors to engage in protracted litigation and respond to unwarranted discovery regarding meritless claims. Such a result would prejudice the Reorganized Debtors and their estates through the expenditure of time, energy and resources which is necessarily attendant to claims litigation. Moreover, GSA cannot demonstrate that it has incurred any prejudice as a result of the entry of the Orders, as it is simply not entitled to the recovery it sought. The prejudice the Reorganized Debtors and their estates would incur, and the lack of prejudice on GSA's part, dictates that this Court should deny the Motion.

20. The terms of the HES Agreement are clear and unambiguous: BMC West's primary obligation under the HES Agreement was to satisfy the Guarantee which, as set forth in the Substantive Objection, it has satisfied through the payment of \$375,310. See Lyons v. Montgomery, 701 S.W.2d 641, 643 (Tex. 1985) (stating that under Texas law, which governs the HES Agreement, a court should construe an unambiguous contract according to the plain meaning of its express wording). With the exception of its obligations on account of the Guarantee, BMC West had no obligation under the HES Agreement to make any guaranteed payments to, or purchase any Products from, GSA. Thus, GSA is not entitled to any recovery on account of purported lost profits under the HES Agreement, which is the sole basis that it asserts in the Claims for the \$1,114,147.60 in rejection damages.

21. In asserting its claim for alleged lost profits, GSA relies solely on certain "pro forma projections of profits" that it alleges the Parties calculated prior to entering into the

HES Agreement. In reality, any such projections were developed by the Parties solely in an effort to assist BMC West in evaluating the business relationship. Aside from the Guarantee, the HES Agreement did not obligate BMC West to make any guaranteed payments to, or purchase any Products from, GSA, and the projections GSA mistakenly relies upon in the Claims are not incorporated in any manner into the agreement.

22. Indeed, Section 18 of the HES Agreement expressly provides that the HES Agreement “constitutes the entire agreement between the [P]arties relating to the subject matter [thereof] and supersedes all prior proposals, understandings, course of conduct and writings by and between the [P]arties and relating to the subject matter [thereof].” HES Agreement, at § 18. Section 18 of the HES Agreement further provides, in pertinent part, that the agreement shall not “be deemed to be amended, including by any future purchase orders, unless such amendment is in writing and duly executed by [the Parties].” Id.

23. In fact, the sole consideration to GSA under the HES Agreement for granting BMC West exclusive distribution rights for the Products is the Guarantee and the Rebate Payments for Products actually purchased by BMC West. Stated differently, the HES Agreement obligated BMC West to make certain (i) guaranteed payments to GSA for the Guarantee Period and (ii) payments to GSA if BMC West purchased Products. What the HES Agreement clearly and unequivocally did not do, is obligate BMC West to actually purchase any Products subsequent to the Guarantee Period.

24. To further illustrate BMC West’s obligations under the HES Agreement, if one considers a hypothetical in which the Chapter 11 Cases had not been commenced, the Rejection Order had not been entered, and BMC West satisfied the Guarantee yet never purchased any Products subsequent to the Guarantee Period, it cannot reasonably be maintained



under the clear and unambiguous terms of the HES Agreement that BMC West breached any contractual obligations to GSA in refraining from purchasing any Products. This hypothetical further demonstrates that the Claims represent nothing more than an ill-found attempt by GSA to seek a recovery where no contractual obligation existed on BMC West's part.

25. Additionally, while the alleged lost profits were the sole basis asserted by GSA in the Claims for the \$1,114,147.60 rejection damages claim, GSA now asserts in the Motion that it has additional claims under the HES Agreement against BMC West. As with the claim for alleged profits, these claims are, to the extent set forth below, equally without merit. Contrary to GSA's assertions, the Reorganized Debtors have returned to GSA any Products and other materials to which it is entitled, are not continuing to sell any Products purchased from GSA under the HES Agreement (see Objection, at ¶ 92) and are unaware of any significant unpaid pre-petition invoices related to the HES Agreement (see Objection, at ¶ 51).<sup>4</sup> Furthermore, because the sole basis asserted in the Claims for GSA's alleged rejection damages claim was the purported lost profits, even if this Court grants the Motion, GSA must first move to amend the Claims to assert these additional claims, which will further delay, and increase the cost of administering, the claims reconciliation process, all to no avail as any such claims, with the potential exception of \$6,648 of unpaid pre-petition invoices, are without merit. In support of this, the Reorganized Debtors rely on the Declaration of Paul S. Street attached hereto as Exhibit E.

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<sup>4</sup> In Paragraph 51 of the Motion, GSA asserts that with the filing of the Claims, it provided copies of all unpaid invoices to the Reorganized Debtors. No such invoices, however, are attached to the Claims. Nevertheless, in connection with the filing of this Objection, the Reorganized Debtors have reviewed their books and records and determined that there are approximately \$6,648 of unpaid pre-petition invoices. Notwithstanding the fact that the Reorganized Debtors scheduled this amount as a contingent claim, GSA failed to assert such amounts in the Claims; rather, it asserted only a rejection damages claim on account of \$1,114,147.60 in purported lost profits.

26. Also, because GSA is not entitled to any recovery on account of the Claims, GSA has not asserted any basis on which it would be entitled to attorneys' fees, and under the HES Agreement, GSA is not entitled any such fees. See Travelers Casualty & Surety Co. of Am. v. Pacific Gas and Elec. Co., 549 U.S. 443 (2007) (under the so-called American Rule, absent a statutory provision or contractual provision to the contrary, "the prevailing litigant is ordinarily not entitled to collect a reasonable attorneys' fee from the loser").

27. In sum, this Court should enter an order denying the Motion because GSA has incurred no prejudice as a result of the entry of the Orders. Protracted litigation and discovery is simply not required for this Court to determine that the Reorganized Debtors' estates have no liability to GSA on account of the rejection of the HES Agreement. The clear and unambiguous terms of the HES Agreement demonstrate that, with the exception of the Guarantee, BMC West had no obligation to make any guaranteed payments to, or purchase any Products from, GSA. Under these circumstances, the Reorganized Debtors' estates should not be held liable to GSA for any profits allegedly lost by GSA under the HES Agreement.

28. More fundamentally, the Reorganized Debtors and their estates should not be forced to expend substantial time, energy and resources litigating meritless claims and responding to unwarranted discovery. Such a result would impose significant prejudice on the Reorganized Debtors and their estates, and dictates GSA's failure to respond to the Claims Objection cannot be the result of excusable neglect. Accordingly, the Reorganized Debtors respectfully submit that the Motion should be denied.

### **RESERVATION OF RIGHTS**

29. The Reorganized Debtors do not agree with some of the allegations and statements contained in the Motion with respect to the facts and circumstances surrounding the

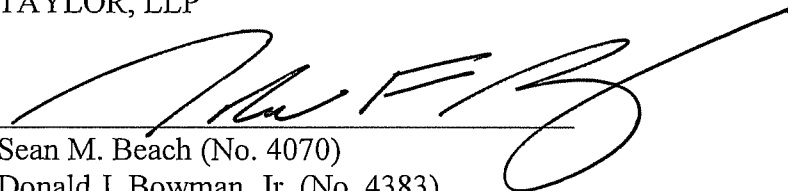
HES Agreement, the Claims and the Claims Objections. Nothing included in or omitted from this Objection shall be deemed an admission by the Reorganized Debtors with respect to such matters, or impair, prejudice, waive or otherwise affect any of the Reorganized Debtors' rights, claims or defenses with respect thereto. In the event this Court grants the relief requested in the Motion, the Reorganized Debtors reserve the right to file additional or supplemental objections to the Claims and to file a reply or any other appropriate pleadings on account of any response filed by GSA to the Claims Objections.

### CONCLUSION

WHEREFORE, the Reorganized Debtors respectfully request the Court to sustain this Objection and enter an order denying the Motion and granting the Reorganized Debtors such other and further relief as this Court deems just and proper.

Dated: Wilmington, Delaware  
May 12, 2010

YOUNG CONAWAY STARGATT &  
TAYLOR, LLP



Sean M. Beach (No. 4070)  
Donald J. Bowman, Jr. (No. 4383)  
Robert F. Poppiti, Jr. (No. 5052)  
The Brandywine Building  
1000 West St., 17th Floor  
Wilmington, DE 19801  
Telephone: 302.571.6600  
Facsimile: 302.571.1253

---- and ----

GIBSON, DUNN & CRUTCHER LLP  
Michael A. Rosenthal (admitted *pro hac vice*)  
Matthew K. Kelsey (admitted *pro hac vice*)  
Saeed M. Muzumdar (admitted *pro hac vice*)  
200 Park Ave, 47th Floor  
New York, NY 10166-0193  
Telephone: 212.351.4000  
Facsimile: 212.351.4035

Aaron G. York (admitted *pro hac vice*)  
Jeremy L. Graves (admitted *pro hac vice*)  
2100 McKinney Ave, Suite 1100  
Dallas, TX 75201-6911  
Telephone: 214.698.3100  
Facsimile: 214.571.2900

ATTORNEYS FOR REORGANIZED DEBTORS

**EXHIBIT A**

HES Agreement



### HOME ENERGY SOLUTIONS AGREEMENT

This Agreement is effective as of this 15<sup>th</sup> day of September 2008 (the "Effective Date") by and between GSA Home Energy Solutions, LLC ("HES") a Texas corporation with a place of business at 100E Whitestone Blvd, Suite 148-308, Cedar Park, TX 78613, and BMC West Corporation ("BMC"), with a usual place of business at 1100 Brushy Creek Road at 1201 BMC Drive, Cedar Park, TX 78613. This agreement allows for expansion of the exclusivity to BMC for all facilities in the State of Texas.

The Term of the Contract will grant BMC exclusive distribution rights for all HES Residential products and HES Commercial window film and Commercial Solar Hot Water (CSHW), to help solidify a short ramp up period along with a long term success strategy for future technology product additions to the HES program. HES will sell its entire current product line outlined in this agreement along with any future technology products negotiated on HES/BMC behalf for the actual cost it has been negotiated for (*Window film will be priced at \$2.00 per square foot above raw cost of material to cover cost incurred by HES for installation. Some additional cost may be charged for difficult installations, charges will always be at a fair market value as to not jeopardize marketability*). HES will be have the authority and will be the chief negotiator for future technology (Green) products. HES will work with the BMC appointed employee in all negotiations. These product additions will fall under the HES program and will be implemented as deemed necessary by BMC and HES. This alliance should solidify BMC and HES a strong competitive edge over its competition.

In consideration for the exclusive right to distribute HES products, BMC will pay the following on HES products purchased

- a) The rebate will be calculated on annual gross purchases with the following formula.
    - 10% on purchases between \$1 - \$5,000,000
    - 7% on all purchases between \$5,000,000 - \$10,000,000
    - 5% on all purchases over \$10,000,000 with no cap
  - b) Rebate will be calculated at the end of each month and paid within ten days following the last calendar day of the month.
  - c) A rebate of \$30,000 or 10% of HES products purchased whichever is greater will be guaranteed for each of the first twelve months of this agreement.
  - d) If at any point in this agreement following the first year, BMC has not purchased a total of \$500,000 in HES products over any six month period of the following four calendar years, this contract may be terminated by either party
- 1 The contract will be pro-rated to the date of September 8, 2008.
  - 2 This contract provides exclusive license(s) to BMC for specific HES products, trademarks and associated marketing activities designed by Home Energy Solutions. HES will provide proprietary sales and management training to assist in their implementation. Do to the complexity of some of the product and system being introduced. HES would ask that Steve Rosenbaum be the BMC employee who is appointed to assist HES in its execution



- Leads generated by HES will be referred to BMC
- BMC logos will be added to HES merchandising projects, including Television program
- Product warranties will be provided in written form

A plan for execution will be provided. This will be a joint effort between BMC and HES.

- 3 **Products Defined.** SOLEX Solar Attic Fan, HES windows and doors, HES Solar Domestic Hot Water ("SDHW") & HES Solar Commercial Hot Water (SCHW), 3M residential & Commercial window film, Aquatherm Solar pool heating, Great Lakes Windows and Doors, Velux Skylights and Sun Tunnels and tradeshow(s) support. HES will provide assistance in contract negotiations and corporate strategies to help solidify BMC a position of power in the Technology (Green) market. More products will be added from time to time to meet market changes.
- 4 **Home Energy Solutions Centers.** BMC will showcase a Home Energy Solutions section within existing BMC locations where products are represented allowing the general public, contractors, architects and remodelers to view and purchase HES program products. From time to time demonstration products may need to be purchased from HES.
  - 4.1 **Removal of Equipment.** If BMC obtains loan or demonstration equipment for the purpose of sales and marketing activities that individual BMC are in compliance with this Agreement, HES will not remove Equipment rented, loaned or leased to BMC during the term of this Agreement, provided that HES will have the right to remove the Equipment upon a BMC breach or default under this Agreement or under a relevant Member Contract, including if the BMC staff misuses or abuses the Equipment. When Equipment is removed from any Center location for any reason whatsoever, BMC shall provide to HES access to such location during usual business hours and shall provide such cooperation and assistance as may be required by HES. Any alleged default that may give rise to a right to remove Equipment shall be subject to the default notice and cure provisions set forth in this Agreement.
  - 4.2 **Ownership and Location of Equipment.** For all Equipment rented, loaned or leased to any BMC, HES will retain at all times absolute and exclusive ownership of, and, except as set forth herein, all right, title and interest to, the Equipment and every component thereof. Except in the case of leased equipment and only as set forth herein, BMC will have or obtain an ownership or other right, title or interest in or to the Equipment, nor will they have a right to purchase or otherwise acquire title to or an ownership interest in the Equipment or any component thereof, except as the HES and BMC may later agree in writing. BMC will cooperate with HES in providing notice and acknowledgement of HES' absolute ownership of the Equipment, including allowing HES to affix labels to the Equipment or any part, as may be practicable, providing written notice of HES' ownership of the Equipment to any party claiming a security interest in any assets owned by BMC, and filing or allowing HES to file one or more Uniform Commercial Code financing statements giving notice of HES' ownership of the Equipment, and BMC will execute any such financing statements.
- 5 **Ordering, Shipping, and Payment Terms**
  - 5.1 **Ordering and Forecasting.** BMC will order its Products directly from HES. In each year of this Agreement, BMC will provide HES with an individual annual forecast for its annual requirement for the HES Program Products. In the event any purchase order is outside normal ordering patterns, e.g., orders in excess of fifteen percent (15%) of the previous three (3) months' order volume, HES will have sixty (60) days to adjust to such purchase orders.



- 5.2. Shipping Terms. Terms of purchase for the Products shall be FOB HES' place of shipment. In the event any Product is damaged, lost or destroyed during shipment, HES shall cooperate requests for information and assistance in submitting claims to the freight carrier or to any insurer for such damage, loss or destruction. BMC shall pay all freight charges for delivery of all Products. Returns to HES of any defective Products shall be at HES' expense. Returns of rental, loaned or leased Equipment to HES upon termination of this Agreement or of any Contract with a BMC shall be at BMC's expense.
- 5.3. Invoicing. Invoices for Products shall be submitted directly to BMC, which shall pay such invoices within Fifteen (15) days of the invoice date. HES reserves the right to charge 1.5% interest per month (18%/year), or the maximum permitted by law if such maximum is lower than 1.5% per month, on any amounts not paid when due.
6. Additional Products. Additional products, including services or information technology products ("Additional Products") which are not within the scope of this Agreement but may still be purchased by BMC on terms to be mutually agreed with HES.
7. Product Upgrades. In the event HES markets a product that represents the next generation of equipment, solutions or disposables as compared to the Products offered under this Agreement (hereinafter referred to as the "New Technology"), then HES shall make such New Technology available to BMC upon mutually agreeable terms, after the terms of this Agreement and of the Contracts are fulfilled, unless otherwise mutually agreed. Notwithstanding the foregoing, nothing herein is intended to limit HES' responsibility to address Product defects, including where appropriate in HES' discretion, through Product upgrades provided at no charge to customers.
8. Logos and Labeling. BMC at its expense will logo each truck being used at the licensed facilities with the HES official logo on all tailgates of pickup trucks and where reasonably appropriate and visible on all delivery vehicles. HES will provide any graphic files needed for such work. BMC business cards will need to carry the official HES logo to show the affiliation between the two companies for employees of the licensed facilities.
9. Taxes. BMC shall be responsible for the payment of any taxes assessed on the transactions contemplated by this Agreement, including on the possession, storage, use or operation by BMC of the Equipment rented or leased to it, to the extent applicable, whether characterized as sales, use, gross receipts or excise taxes, fees, or assessments, or otherwise or the purchase by BMC of any Product or Service. Prices herein do not include applicable taxes. To the extent Member Centers claim exemption from such taxes; they will provide HES with appropriate documentation of such exemption.
10. Training. HES have staff technical specialists proficient in the technical and marketing aspects of its Products. In addition to HES staff, HES Manufacturers will provide technical and customer service support to HES products when appropriate.
11. No Other Warranties; Limitation of Liability.

THE EXPRESS WARRANTIES MADE BY HES IN THIS AGREEMENT AND ANY ACCOMPANYING CONTRACTS ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, INCLUDING WARRANTIES OF QUALITY WHETHER WRITTEN, ORAL OR IMPLIED, AND ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. EACH PARTY HEREBY WAIVES ALL OTHER REMEDIES, WARRANTIES, GUARANTIES OR LIABILITIES, EXPRESS OR IMPLIED, AND ANY CLAIM FOR SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, HOWEVER OCCASIONED, INCLUDING ANY SUCH LOSSES RESULTING FROM TERMINATION OR THIRD-PARTY CLAIMS.





HES shall, in no event, incur any liability or obligation for damages or of any nature whatsoever to BMC or to any other person or entity claiming through them or any of them with respect to any Products improperly stored, subjected to accident, damage, misuse or abnormal, unusual or improper operating conditions or conditions not made known or contemplated by HES at the time of this Agreement or of any use plan or other agreement with BMC, or applied or used for a purpose or installation other than or at variance in any degree from that for which designed, or operated in any manner or degree beyond their proper capacity or contrary to operating instructions

12. Responsibility For Use Of Products. BMC and HES shall agree not to misuse or abuse the Equipment or any component thereof and shall not permit any of the Disposables, Equipment or any component thereof, or the Ancillary Items, to be used in a manner not conforming to the Operator's Manual and/or instructions provided in its Operator's Manual or by its manufacturers trained personnel. The uses and applications to which the Products may be applied, and the results obtained from the Products, shall be the responsibility of BMC and HES, safe and effective use of the Products requires application of proper techniques of setup and operation and should be undertaken only by trained personnel
13. Warranty and or Guarantee of products. HES product manufacturers will be notified and when applicable, be held liable for claims of their product(s) defects, or failure to meet their intended purpose by purchaser or user of products including claims for personal injury, property damage, product liability, misrepresentation, warranty, negligence or any other tort, contractual or statutory claim.
14. Term and Termination. The term of this Agreement shall commence on the Effective Date and shall remain in effect until the end of the agreed upon term (The "Initial Term") The Initial Term shall be comprised of the period beginning with the Effective Date and the five following calendar years 1 ("Contract Years") beginning on the date this agreement is signed Any renewal shall be subject to the mutual written agreement of the parties.  
  
This Agreement and the Contracts hereunder may only be terminated for breach by BMC of any of its obligations hereunder, provided that the non-breaching party gives the breaching party written notice of the alleged breach. If the breach remains uncured for one hundred eighty (180) days following the date of written notice, then the non-breaching party may terminate this Agreement effective on the one hundred eighty-fifth (185) day following the date of the written notice. In the event that either HES or BMC defaults on any of their obligations to each other that are subject to this Agreement, then only the terms governing BMC, and not this entire Agreement, may be terminated by the non-breaching party and the same procedure shall be followed as set forth herein
15. Successors and Assigns. In the event BMC experiences a "change in control," they shall be required to assign this Agreement, or such portion of it as applies to the affected BMC successor subject to the consent of HES which will not be unreasonably withheld, to such successor to the assets or business of BMC, if applicable, and/or take such action and do all things necessary to vest the rights and obligations of BMC in this Agreement in and to its successor. A "change in control" shall be deemed to have occurred (i) whenever BMC becomes the affiliate of a person or entity who was not their affiliate on the effective date of this Agreement, (ii) upon any sale, exchange or other transfer of all or substantially all of BMC's assets to an unaffiliated third party, including by merger, consolidation, or otherwise, or (iii) a sale, exchange or other transfer of all or substantially all of the business activities of BMC involved in this Agreement, including by merger, consolidation, or otherwise Except as herein provided, neither party shall have the right to assign this Agreement without the advance written consent of the other party, which shall not be unreasonably withheld Thus Agreement shall be binding upon and inure to the benefit of the parties thereto and their respective successors and permitted assigns,
16. No Waiver Or Invalidity. None of the terms of this Agreement shall be deemed to be waived by any party unless such waiver is in writing duly executed by the party to be charged with such waiver and such writing recites specifically that it is a waiver of the terms of this Agreement. The waiver by either party of any breach of any agreement, warranty or covenant contained in this Agreement shall not be construed to act as a waiver of any subsequent breach. The failure or delay of either party to exercise any right, power or remedy shall not operate as a waiver thereof, and all rights, powers and remedies shall continue in full force and effect. All



rights, powers and remedies of both parties provided for in this Agreement are cumulative and non-exclusive, except as otherwise expressly provided. Unenforceability or invalidity of any one or more provision hereof shall not render any other provision herein contained unenforceable or invalid

- 17 Confidentiality The parties acknowledge that the terms and provisions hereof, including without limitation, the prices of Products hereunder, are confidential and the parties agree not to disclose this contract or any term or condition thereof to any person not affiliated with them except as required by law or with the other party's written assent. The parties agree to treat this Agreement with confidentiality and to make the contents thereof known only to those employees who, by the nature of their jobs, are required to have such knowledge. This provision shall not be deemed to constitute an agreement by the parties not to seek and obtain review of this Agreement by its legal counsel. In addition, in connection with the negotiation or performance of this Agreement, the parties may obtain proprietary product and business information of the other party and each agrees to maintain as confidential any information of the other party so obtained which is either specifically designated as confidential or which a reasonable person would understand to be confidential.

Neither party will use the trademarks, proprietary names, copyrighted information or other intellectual property of the other party without the other party's advance written permission.

18. Entire Agreement and Amendment. This Agreement constitutes the entire agreement between the parties relating to the subject matter herein and supersedes all prior proposals, understandings, course of conduct and writings by and between the parties and relating to the subject matter herein. However, nothing herein is intended nor shall it be construed to modify any agreements existing between HES and BMC as of the effective date of this Agreement. None of the terms of this Agreement shall be deemed to be amended, including by any future purchase orders, unless such amendment is in writing and duly executed by all parties to this Agreement and such writing specifically states that it is an amendment to this Agreement.
- 19 Notices. Any notice required to be sent by one party to the other and any request by either party pursuant to the terms of this Agreement shall be in writing, duly delivered to the other party in person or sent by facsimile transmission or by registered or certified mail, as follows

If to HES, to:

CRAIG BUSHON  
PRESIDENT,  
GSA Home Energy Solutions, LLC  
100 E. Whitestone Blvd. Suite 148-308  
Cedar Park, TX 02184

- 20 Choice Of Law and Dispute Resolution. This Agreement shall be governed as to interpretation, validity, effect, enforceability and all other substantive or procedural matters by the laws of the State of Texas, without regard to conflict of laws principles

In the event a dispute arises between the parties relating to this Agreement, the parties will attempt to resolve the dispute amicably and, if such efforts are unsuccessful after thirty (30) days following written notice of a dispute or claim, then the matter will be submitted to mediation. Any claim or dispute concerning questions of law or fact arising out of, or relating to, this Agreement or any alleged breach thereof which is not disposed of by agreement of the parties or in mediation, including without limitation any claim concerning the interpretation or validity of this Agreement, upon written demand of one of the parties, shall be determined, solely and exclusively, by a single arbitrator sitting in accordance with the Rules of Commercial Arbitration of the American Arbitration Association then in force. If the parties cannot agree upon a single arbitrator within ten (10) days after demand by either of them for arbitration, then the American Arbitration Association shall select one arbitrator from a list of neutral arbitrators. The decision or award of the arbitrator shall be final and binding unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary or so grossly erroneous as to imply bad faith. Judgment shall be entered in a court of competent jurisdiction. The expense of the arbitration shall be shared equally by the parties.



21. **Force Majeure.** Failure of either party to perform its obligations under this Agreement shall not subject such party to any liability to the other party if such failure is caused by any cause beyond the reasonable control of such nonperforming party, including, but not limited to, acts of God, fire, explosion, flood, drought, war, riot, sabotage, terrorism, embargo, strikes or other labor trouble or a national health emergency.
22. **Authority.** Each individual signing this Agreement, and any other documents executed in connection with this Agreement, whether signed individually or on behalf of any person or entity, warrants and represents that he or she has full authority to so execute the agreement on behalf of the parties on whose behalf he or she so signs. Each separately acknowledges and represents that he or she has full authority to so execute the Agreement on behalf of the parties on whose behalf he or she so signs, and this expressly includes BMC's authority to agree, on behalf of the BMC Member Centers, to those terms and conditions set forth herein, that shall be accepted and acknowledged by the BMC Member Centers wishing to obtain the benefit of this Agreement. Each separately acknowledges and represents that this representation and warranty is an essential and material provision of this Agreement and shall survive execution of this Agreement.
23. **Publicity.** The parties, or either of them, may issue a press release, subject to the review and approval of the other party, concerning the existence, but not the specific terms of, this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and delivered by their respective duly authorized officers on the day and year first above written.

**BMC WEST CORPORATION**

By [Signature]  
Title V.P. Central Tx Region  
By [Signature]  
Title TEXAS REGION MANAGER

Date 9-16-08  
Date 9-16-08

**GSA HOME ENERGY SOLUTIONS LLC**

By [Signature]  
Title CRAIG BUSHON  
President, Home Energy Solutions LLC

Date 9-16-08

**EXHIBIT B**

Affidavit of Service for Claims Objections

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

BUILDING MATERIALS HOLDING  
CORPORATION, et al.,<sup>1</sup>

Reorganized Debtors.

Chapter 11

Case No. 09-12074 (KJC)

Jointly Administered

**AFFIDAVIT OF SERVICE**

STATE OF NEW YORK     )  
  ) ss  
COUNTY OF SUFFOLK    )

I, Gregory B. Guarton, being duly sworn, depose and state:

1. I am a Senior Consultant with The Garden City Group, Inc., the claims and noticing agent for the Reorganized Debtors in the above-captioned proceeding. Our business address is 105 Maxess Road, Melville, New York 11747.

2. On March 18, 2010, at the direction of Gibson, Dunn & Crutcher LLP ("Gibson Dunn"), counsel for the Reorganized Debtors, I caused a true and correct copy of the following documents to be served by first class mail, postage prepaid, on the parties as set forth on the service list annexed hereto as Exhibit A:

- Notice of and Reorganized Debtors' Sixteenth Omnibus (Non-Substantive) Objection to Claims Pursuant to Section 502(b) of the Bankruptcy Code, Bankruptcy Rules 3003 and 3007 and Local Rule 3007-1 [Docket No. 1480];
- Notice of and Reorganized Debtors' Seventeenth Omnibus (Substantive) Objection to Claims Pursuant to Section 502(b) of the Bankruptcy Code, Bankruptcy Rules 3003 and 3007 and Local Rule 3007-1 [Docket No. 1481]; and
- Fifth Notice of Claims and Scheduled Amounts Previously Satisfied [Docket No. 1482].

---

<sup>1</sup> The Reorganized Debtors, along with the last four digits of each Reorganized Debtor's federal tax identification number, are as follows: Building Materials Holding Corporation (4269), BMC West Corporation (0454), SelectBuild Construction, Inc. (1340), SelectBuild Northern California, Inc. (7579), Illinois Framing, Inc. (4451), C Construction, Inc. (8206), TWF Construction, Inc. (3334), H.N.R. Framing Systems, Inc. (4329), SelectBuild Southern California, Inc. (9378), SelectBuild Nevada, Inc. (8912), SelectBuild Arizona, LLC (0036), and SelectBuild Illinois, LLC (0792). The mailing address for the Reorganized Debtors is 720 Park Boulevard, Suite 200, Boise, Idaho 83712.

3. On March 18, 2010, also at the direction of Gibson Dunn, I caused a true and correct copy of the following document to be served by first class mail, postage prepaid, on the parties as set forth on the service list annexed hereto as Exhibit B:

- Notice of and Reorganized Debtors' Sixteenth Omnibus (Non-Substantive) Objection to Claims Pursuant to Section 502(b) of the Bankruptcy Code, Bankruptcy Rules 3003 and 3007 and Local Rule 3007-1 [Docket No. 1480].

4. On March 18, 2010, also at the direction of Gibson Dunn, I caused a true and correct copy of the following document to be served by first class mail, postage prepaid, on the parties as set forth on the service list annexed hereto as Exhibit C:

- Notice of and Reorganized Debtors' Seventeenth Omnibus (Substantive) Objection to Claims Pursuant to Section 502(b) of the Bankruptcy Code, Bankruptcy Rules 3003 and 3007 and Local Rule 3007-1 [Docket No. 1481].

5. On March 18, 2010, also at the direction of Gibson Dunn, I caused a true and correct copy of the following document to be served by first class mail, postage prepaid, on the parties as set forth on the service list annexed hereto as Exhibit D:

- Fifth Notice of Claims and Scheduled Amounts Previously Satisfied [Docket No. 1482].

/s/ Gregory B. Guarton  
Gregory B. Guarton

Sworn to before me this 22<sup>nd</sup> day of  
March, 2010

/s/ Nancy Formica  
Nancy Formica  
Notary Public, State of New York  
No. 01FO4933172  
Qualified in Queens County  
Commission Expires: August 8, 2010

# **EXHIBIT A**

AIKEN SCHENK HAWKINS & RICCIARDI P.C.  
ATT: BARBARA LEE CALDWELL  
ATTY FOR MARICOPA COUNTY  
4742 NORTH 24TH STREET, SUITE 100  
PHOENIX, AZ 85016

ALLEN MATKINS LECK GAMBLE MALLORY & NATS  
ATT: DEBRA A. RILEY, ESQ.  
ATTY FOR D.R. HORTON, INC.  
501 WEST BROADWAY, 15TH FLOOR  
SAN DIEGO, CA 92101

ASSISTANT UNITED STATES ATTORNEY  
ELLEN SLIGHTS-US ATTORNEYS OFFICE  
1007 ORANGE STREET, SUITE 700  
P.O. BOX 2046  
WILMINGTON, DE 19899

BALLARD SPAHR ANDREWS & INGERSOLL, LLP  
ATT: TOBEY M. DALUZ & JOSHUA E. ZUGERMAN  
ATTY FOR WESTCHESTER FIRE INS.; ACE USA  
919 N. MARKET STREET, 12TH FLOOR  
WILMINGTON, DE 19801

BENESCH FRIEDLANDER COPLAN & ARONOFF LLP  
ATT: BRAD SANDLER; JEN HOOVER; JEN SMITH  
ATTY FOR OFF. UNSECURED CREDITORS COMM.  
222 DELAWARE AVENUE, SUITE 801  
WILMINGTON, DE 19801

CARRUTHERS & ROTH, P.A.  
ATT: JOHN M. FLYNN, ESQ.  
235 N. EDGEWORTH STREET  
P.O. BOX 540  
GREENSBORO, NC 27401

CLIFF W. MARCEK, P.C.  
ATT: CLIFF W MARCEK, ESQ.  
ATTY FOR EDWARD & GLADYS WEISGERBER  
700 S. THIRD STREET  
LAS VEGAS, NV 89101

COLE, SCHOTZ, MEISEL, FORMAN & LEONARD  
ATT: SANJAY BHATNAGAR, ESQ.  
ATTY FOR CNH CAPITAL AMERICA, LLC  
500 DELAWARE AVENUE, SUITE 1410  
WILMINGTON, DE 19801

DEVLIN & PIGNUOLO, P.C.  
ATT: CHARLES J. PIGNUOLO  
ATTY FOR: PARTNERS IN BUILDING, L.P.  
1800 BERING DRIVE, SUITE 310  
HOUSTAN, TX 77057

DUANE MORRIS LLP  
ATT: M. REED & W. SIMKULAK, ESQ.  
ATTY FOR ACE AMERICAN INSURANCE COMPANY  
30 SOUTH 17TH STREET  
PHILADELPHIA, PA 19103

AIRGAS, INC.  
ATT: DAVID BOYLE  
259 RADNOR-CHESTER ROAD, SUITE 100  
P.O. BOX 6675  
RADNOR, PA 19087-8675

ARENT FOX LLP  
ATTN KATIE LANE AND CHRIS GIAIMO  
ATTY FOR COMMITTEE OF UNSECURED CREDITOR  
1050 CONNECTICUT AVENUE, NW  
WASHINGTON, DC 20036-5339

BALLARD SPAHR ANDREWS & INGERSOLL, LLP  
ATT: ROBERT MCL. BOOTE, ESQ.  
ATTY FOR WESTCHESTER FIRE INS.; ACE USA  
1735 MARKET STREET, 51ST FLOOR  
PHILADELPHIA, PA 19103-7599

BARTLETT HACKETT FEINBERG P.C.  
ATT: FRANK F. MCGINN  
ATTY FOR IRON MOUNTAIN INFO MANAGEMENT  
155 FEDERAL STREET, 9TH FLOOR  
BOSTON, MA 02110

BUCHALTER NEMER  
ATT: PAUL M. WEISER  
ATTY FOR FOR ELWOOD HA, L.L.C.  
16435 NORTH SCOTTSDALE ROAD, SUITE 440  
SCOTTSDALE, AZ 85254

CITY & COUNTY OF DENVER  
C/O DAVID V. COOKE, ASST. CITY ATTORNEY  
MUNICIPAL OPERATIONS  
201 WEST COLFAX AVENUE, DEPT. 1207  
DENVER, CO 80202-5332

COLE, SCHOTZ, MEISEL, FORMAN & LEONARD  
ATT: GARY H. LEIBOWITZ, ESQ.  
ATTY FOR CNH CAPITAL AMERICA, LLC  
300 EAST LOMBARD STREET, SUITE 2000  
BALTIMORE, MD 21202

CROSS & SIMON, LLC  
ATT: MICHAEL J. JOYCE, ESQ.  
ATTY FOR ARROWOOD INDEMNITY COMPANY  
913 NORTH MARKET STREET, 11TH FLOOR  
WILMINGTON, DE 19801

DIETRICH, GLASRUD, MALLEK & AUNE  
ATT: THOMAS W. ISAAC  
ATTY FOR WILSON HOMES, INC.  
5250 NORTH PALM AVENUE, SUITE 402  
FRESNO, CA 93704

FOSTER PEPPER PLLC  
ATT: CHRISTOPHER M. ALSTON, ESQ.  
ATTY FOR JELD-WEN  
1111 THIRD AVENUE, SUITE 3400  
SEATTLE, WA 98101



GAY, MCCALL, ISAACKS, GORDON & ROBERTS  
ATT: DAVID B. MCCALL  
ATTY FOR COLLIN COUNTY TAX ASSESSOR  
777 EAST 15TH STREET  
PLANO, TX 75074

GIBBONS P.C.  
ATT: DAVID N. CRAPO, ESQ.  
ATTY FOR SOUTHWEST MANAGEMENT, INC.  
ONE GATEWAY CENTER  
NEWARK, NJ 07102

GREENBERG TRAUIG, LLP  
ATT: ANDREW CARDONICK  
ATTY FOR GRACE BAY HOLDINGS, II, LLC  
77 WEST WACKER DRIVE SUITE 3100  
CHICAGO, IL 60601

HELLMUTH & JOHNSON, PLLC  
ATT: DAVID G. HELLMUTH  
ATTY FOR FCA CONSTRUCTION COMPANY, LLC  
10400 VIKING DRIVE, SUITE 500  
EDEN PRAIRIE, MN 55344

INTERNAL REVENUE SERVICE  
ATTN: INSOLVENCY SECTION  
11601 ROOSEVELT BLVD., MAIL DROP N781  
P.O. BOX 21126  
PHILADELPHIA, PA 19114

KESSLER & COLLINS, P.C.  
ATT: HOWARD C. RUBIN, ESQ.  
ATTY FOR CRP HOLDINGS B, L.P.  
2100 ROSS AVENUE SUITE 750  
DALLAS, TX 75201

LAMM & SMITH, P.C.  
ATT: SCOTT T. CITEK  
ATTY FOR BAY OIL COMPANY  
3730 KIRBY DRIVE, SUITE 650  
HOUSTON, TX 77098

LINEBARGER GOGGAN BLAIR & SAMPSON, LLP  
ATT: JOHN P. DILLMAN, ESQ.  
ATTY FOR HARRIS CTY; FORT BEND CTY  
P O BOX 3064  
HOUSTON, TX 77253-3064

LOUISIANA-PACIFIC CORPORATION  
ATTN: BRUCE J. IDDINGS  
PO BOX 4000-98  
HAYDEN LAKE, ID 83835-4000

MCCREARY, VESELKA, BRAGG & ALLEN, P.C.  
ATT: MICHAEL REED, ESQ.  
ATTY FOR LOCAL TEXAS TAXING AUTHORITIES  
P.O. BOX 1269  
ROUND ROCK, TX 78680

GEORGE ROSENBERG, ESQ.  
ATTY FOR: ARAPAHOE COUNTY TREASURER  
5334 S. PRINCE STREET  
LITTLEON, CO 80166

GIBBONS P.C.  
ATT: WILLIAM R. FIRTH, III, ESQ.  
ATTY FOR SOUTHWEST MANAGEMENT, INC.  
1000 NORTH WEST ST., SUITE 1200  
WILMINGTON, DE 19801

GREENBERG TRAUIG, LLP  
ATT: S. COUSINS & D. MELORO, ESQ.  
THE NEMOURS BUILDING  
1007 NORTH ORANGE STREET, SUITE 1200  
WILMINGTON, DE 19801

IKON FINANCIAL SERVICES  
ATT: SEPRINA-RENEE THOMAS, BANKR. ADMIN  
1738 BASS ROAD  
P.O. BOX 13708  
MACON, GA 31208

JONATHAN LEE RICHES  
D/B/A BERNARD MADOFF  
FEDERAL MEDICAL CENTER  
P.O.BOX 14500  
LEXINGTON, KY 40512

KLEHR, HARRISON, HARVEY, BRANZBURG & ELL  
ATT: JOANNE B. WILLIS & SALLY E. VEGHTE  
ATTY FOR COOPERATIEVE CENTRALE RAIFFEISE  
919 MARKET STREET, SUITE 1000  
WILMINGTON, DE 19801

LINEBARGER GOGGAN BLAIR & SAMPSON LLP  
ATTN: DAVID G. AELVOET  
ATTY FOR BEXAR COUNTY  
TRAVIS BUILDING, 711 NAVARRO, SUITE 300  
SAN ANTONIO, TX 78205

LINEBARGER GOGGAN BLAIR & SAMPSON, LLP  
ATTN: ELIZABETH WELLER  
ATTY FOR DALLAS & TARRANT COUNTY  
2323 BRYAN STREET, SUITE 1600  
DALLAS, TX 75201

MARGOLIS EDELSTEIN  
ATT: J. HUGGETT & A. BROWN, ESQ.  
ATTY FOR EDUARDO ACEVEDO, ET AL.  
750 SHIPYARD DRIVE, SUITE 102  
WILMINGTON, DE 19801

MIDLANDS CLAIM ADMINISTRATORS, INC.  
ATTN: JOSEPH MCMILLEN  
PO BOX 23198  
RE: FILE NOS. 25478-JM; 28644-JM  
OKLAHOMA CITY, OK 73123

MISSOURI DEPARTMENT OF REVENUE  
ATT: CHRIS KOSTER & SHERYL L. MOREAU  
301 W. HIGH STREET, ROOM 670  
PO BOX 475  
JEFFERSON CITY, MO 65105

MUNSCH HARDT KOPF & HARR, PC  
ATT: RANDALL RIOS & TIMOTHY MILLION  
ATTY FOR CEDAR CREEK LUMBER, INC.  
700 LOUISIANA, 46TH FLOOR  
HOUSTON, TX 77002

OFFICE OF THE UNITED STATES TRUSTEE  
JOSEPH J. MCMAHON, JR. ESQ.  
844 KING STREET SUITE 2207  
LOCK BOX 35  
WILMINGTON, DE 19801

PAUL HASTINGS JANOFSKY & WALKER LLP  
ATTN: JENNIFER ST. JOHN YOUNT, ESQ. &  
JENNIFER B. HILDEBRANDT, ESQ.  
515 SOUTH FLOWER ST, 25TH FL  
LOS ANGELES, CA 90071

PAUL, HASTINGS, JANOFSKY & WALKER, LLP  
ATT: KEVIN B. FISHER & SETH MENNILLO  
ATTY FOR WELLS FARGO BANK, N.A.  
55 SECOND STREET, 24TH FLOOR  
SAN FRANCISCO, CA 94105

POST & SCHELL, P.C.  
ATT: BRIAN W. BISIGNANI, ESQ.  
ATTY FOR AON CONSULTING  
17 NORTH 2ND STREET, 12TH FLOOR  
HARRISBURG, PA 17101-1601

RICHARDS, LAYTON & FINGER, P.A.  
ATT: PAUL N. HEATH, ESQ.  
ONE RODNEY SQUARE  
920 N. KING STREET  
WILMINGTON, DE 19801

ROYAL MOULDINGS LIMITED  
ATT: MELODY C. HOGSTON  
P.O. BOX 610  
MARION, VA 24354

SCHULTE ROTH & ZABEL LLP  
ATTN: ADAM C. HARRIS & DAVID J. KARP  
919 THIRD AVENUE  
NEW YORK, NY 10022

SECRETARY OF TREASURY  
OFFICE, MANAGING AGENT OR GENERAL AGENT  
P.O. BOX 7040  
DOVER, DE 19903

MORRIS NICHOLS ARSHT & TUNNELL LLP  
ATT: ROBERT J. DEHNEY  
1201 N. MARKET STREET  
P.O. BOX 1347  
WILMINGTON DE, DE 19899-1347

OFFICE OF THE ATTORNEY GENERAL  
ATT: LAURA L. MCCLOUD  
BANKRUPTCY DIVISION  
P O BOX 20207  
NASHVILLE, TN 37202

ORRICK, HERRINGTON & SUTCLIFFE LLP  
ATT: R. D'AVERSA, L. METZGER, W. EGUCHI  
ATTY FOR COOPERATIVE CENTRALE RAIFFEISE  
666 FIFTH AVENUE  
NEW YORK, NY 10103-0001

PAUL, HASTINGS, JANOFSKY & WALKER LLP  
THOMAS L. KENT, ESQ.  
75 EAST 55TH STREET  
1ST FLOOR  
NEW YORK, NY 10022

POLSINELLI SHUGHART PC  
ATT: CHRISTOPHER WARD & SHANTI KATONA  
ATTY FOR SUNTRUST BANK  
222 DELAWARE AVENUE, SUITE 1101  
WILMINGTON, DE 19801

REED SMITH LLP  
ATT: MARK W. ECKARD, ESQ.  
ATTY FOR CIT TECH. FINAN. SERVICES  
1201 N. MARKET STREET SUITE 1500  
WILMINGTON, DE 19801

ROMERO LAW FIRM  
ATT: MARTHA E. ROMERO, ESQ.  
ATTY FOR: CALIFORNIA TAXING AUTHORITY  
6516 BRIGHT AVENUE  
WHITTIER, CA 90601

SAN DIEGO COUNTY TREASURER-TAX COLLECTOR  
ATTENTION: DAN MCALLISTER  
1600 PACIFIC HIGHWAY, ROOM 162  
BANKRUPTCY DESK  
SAN DIEGO, CA 92101

SECRETARY OF STATE  
FRANCHISE TAX  
DIVISION OF CORPORATIONS  
P.O. BOX 7040  
DOVER, DE 19903

SECURITIES & EXCHANGE COMMISSION  
ATTN: NEAL JACOBSON-SENIOR TRIAL COUNSEL  
3 WORLD FINANCIAL CENTER SUITE 400  
NEW YORK REGIONAL OFFICE  
NEW YORK, NY 10281

SECURITIES & EXCHANGE COMMISSION  
ATTN: CHRISTOPHER COX  
100 F STREET, NE  
WASHINGTON, DC 20549

SHEPPARD, MULIN, RICHTER & HAMPTON, LLP  
ATT: THEODORE A. COHEN, ESQ.  
ATTY FOR SOUTHWEST MANAGEMENT, INC.  
333 SOUTH HOPE STREET, 48TH FLOOR  
LOS ANGELES, CA 90071

TEXAS COMPTROLLER OF PUBLIC ACCOUNTS  
ATT: KIMBERLY WALSH, ASST. ATTORNEY GEN.  
BANKRUPTCY & COLLECTIONS DIVISION  
P.O. BOX 12548  
AUSTIN, TX 78711-2548

THE GARDEN CITY GROUP, INC.  
ATTN: GREGORY B. GUARTON  
105 MAXESS RD  
MELVILLE, NY 11747

WERB & SULLIVAN  
ATT: D. WERB & J. KLEIN, ESQ.  
300 DELAWARE AVE., SUITE 1300  
P.O. BOX 25046  
WILMINGTON, DE 19899

SECURITIES & EXCHANGE COMMISSION  
BANKRUPTCY UNIT  
ATTN: MICHAEL A. BERMAN, ESQ  
450 FIFTH STREET NW  
WASHINGTON, DC 20549

SMITH, KATZENSTEIN & FURLOW  
ATT: KATHLEEN M. MILLER, ESQ.  
800 DELAWARE AVENUE, 7TH FLOOR  
P.O. BOX 410  
WILMINGTON, DE 19801

THE CARLSON LAF FIRM, P.C.  
ATT: CRAIG W. CARLSON  
ATTY FOR JAUNITA STACE  
P.O.BOX 10520  
KILLEEN, TX 76547

U.S. ATTORNEY GENERAL  
DEPT. OF JUSTICE COMMERCIAL LIT BRANCH  
950 PENNSYLVANIA AVENUE N.W.  
WASHINGTON, DC 20530-0001

# **EXHIBIT B**

BELLSOUTH TELECOMMUNICATIONS, INC  
C/O JAMES GRUDUS ESQ  
AT&T SERVICES INC  
ONE AT&T WAY ROOM 3A218  
BEDMINSTER, NJ 07921

COMED  
COMED CO  
BANKRUPTCY SECTION/REVENUE MANAGEMENT  
2100 SWIFT DR  
OAKBROOK, IL 60523

DAVID A BRADY  
BMC SELECT  
720 PARK BLVD  
STE 200  
BOISE, ID 83712

DE YOUNG COMMUNITIES, INC.  
C/O PAMELA HELMER, ESQ.  
ROGER SCOTT & HELMER, LLP  
1001 MARSHALL STREET, STE 400  
REDWOOD CITY, CA 94063-2000

EMPIRE BUILDING MATERIALS  
P.O. BOX 220  
BOZEMAN, MT 59771-0220

EXPRESS FLEET SERVICE  
P.O. BOX 38492  
HOUSTON, TX 77238

FEDEX CUSTOMER INFORMATION SERVICE AS  
ASSIGNEE OF FEDEX EXPRESS/ FEDEX GROUND  
ATTN REVENUE RECOVERY/BANKRUPTCY  
3965 AIRWAYS BLVD, MODULE G, 3RD FLOOR  
MEMPHIS, TN 38116

GECITS DBA IKON FINANCIAL SVCS AS AUTH  
SVCING AGNT OF BANC OF AMERICA & LEASING  
CAPITAL LLC ATTN BANKRUPTCY ADMIN  
PO BOX 13708  
MACON, GA 31208-3708

HELLGATE TOOL REPAIR  
2006 NORTH AVE W  
MISSOULA, MT 59801-5532

MW LLC  
C/O JEFFER MANGELS BUTLER & MARMARO LLP  
ATTN MARTY TAYLOR  
695 TOWN CENTER DRIVE SUITE 230  
COSTA MESA, CA 92626

CITY OF EL PASO  
DAVID G AELVOET  
LINEBARGER GOGGAN BLAIR & SAMPSON LLP  
711 NANARRO SUITE 300  
SAN ANTONIO, TX 78205

DAL TILE DISTRIBUTION INC.  
7834 CF HAWN FRWY  
DALLAS, TX 75217

DE LAGE LANDEN FINANCIAL SERVICES INC  
1111 OLD EAGLE SCHOOL ROAD  
WAYNE, PA 19087

EAGLE FOREST PRODUCTS  
PO BOX 141823  
IRVING, TX 75014-1823

ESQUIVEL DIAZ  
56523 DESERT CACTUS  
APT 9  
THERMAL, CA 92274

EXPRESS FLEET SERVICE  
PO BOX 38492  
HOUSTON, TX 38492

FLORENCE MANUFACTURING CORP  
ATTN: DAVE PARKER, CREDIT MGR  
5935 CORPORATION DRIVE  
MANHATTAN, KS 66503

GSA HOME ENERGY SOLUTIONS LLC  
C/O JAMES V HOFFNER  
GRAVES DOUGHERTY HEARON & MOODY PC  
401 CONGRESS AVE STE 2200  
AUSTIN, TX 78701

MAC ARTHUR CO  
2400 WYCLIFF ST  
ST PAUL, MN 55114-1268

NORTH PARK LLC  
EJM DEVELOPMENT  
9061 SANTA MONICA BLVD  
LOS ANGELES, CA 90069

NORTHPARK, LLC  
9061 SANTA MONICA BOULEVARD  
LOS ANGELES, CA 90069

RAVELO, ALEJANDRO N  
245 S 45TH ST  
SAN DIEGO, CA 92113

SALAYANDIA, FERNANDO  
4264 N. 68TH LANE #4264  
PHOENIX, AZ 85033

SOUTHWEST MANAGEMENT INC  
DAVID I SUNKIN  
THEODORE A COHEN  
SHEPPARD MULLIN RICHTER & HAMPTON LLP  
333 S HOPE ST 43RD FL  
LOS ANGELES, CA 90071-1422

VERIZON WIRELESS  
PO BOX 3397  
BLOOMINGTON, IL 61702

VINCENT E RHYNES  
1514 W MANCHESTER AVE #5  
LOS ANGELES, CA 90047

# **EXHIBIT C**

BRANDON BAUGHMAN C/O BUXBAUM DAUE & FITZ  
JOHN FITZPATRICK BUXBAUM DAUE FITZPATRIC  
228 WEST MAIN SUITE A  
MISSOULA, MT 59807

GREAT AMERICA LEASING CORPORATION  
PO BOX 609  
CEDAR RAPIDS, IA 52406

GSA HOME ENERGY SOLUTIONS LLC  
C/O JAMES V HOFFNER  
GRAVES DOUGHERTY HEARON & MOODY PC  
401 CONGRESS AVE STE 2200  
AUSTIN, TX 78701

LEE, HERNANDEZ, BROOKS, GARAFALO & BLAKE  
EILEEN C LUTTRELL  
RE CRADDOCK/WHEELER/VISTA RIDGE  
7575 VEGAS DRIVE, STE. 150  
LAS VEGAS, NV 89128

MARNELL W. RINGSAK  
411 N. 4TH STREET  
BISMARCK, ND 58502



# **EXHIBIT D**

AARON LOVE  
8273 PRESTON WAY  
SACRAMENTO, CA 95828

ALBERT BLANCO  
1739 N. WILBUR  
MESA, AZ 85204

ALEX FRASER  
20209 12TH DRIVE SE  
BOTHELL, WA 98012

ALICE QUINTERO  
4804 EL PORTAL  
EL PASO, TX 79903

AMANDA PALMER  
567 S HEATH LANE  
IDAHO FALLS, ID 83401

AMRON STAIR WORKS  
149 INDUSTRIAL DRIVE  
GIBLERTS, IL 60136

AMY KRISKO  
3330 W. PERSHING AVENUE  
PHOENIX, AZ 85029

ANTHONY BAILEY  
8913 W. LANE  
MAGNOLIA, TX 77354

ARCH RITE INC  
PO BOX 6207  
FULLERTON, CA 92834-6207

ARIZONA DEPARTMENT OF  
REVENUE  
PHOENIX, AZ 85038-9010

ARIZONA WATER EXTRACTION INC  
9746 E MONTEREY AVE  
MESA, AZ 85209

ARMANDO ALVAREZ  
5536 EMERALD VIEW  
EL PASO, TX 79932

ARMANDO VILLALPANDO  
101 BRANCH VIEW DRIVE  
KYLE, TX 78640

ART FULLER  
1906 NOGALUS  
CROSBY, TX 77532

ASHFORD HOMES  
8670 FM 1670  
SALADO, TX 76571-5920

ASHLEY VEIGEL  
374 E 5450 S #D5  
WASHINGTON TERRACE, UT 84405

ASKYBOOM CRANE SERVICE, INC.  
P.O. BOX 740147  
ARVADA, CO 80006-0147

AUSTIN DOOR SPECIALTIES  
3112 HUNT TRAIL  
AUSTIN, TX 78757

AVERY HOMES  
3066 PARR LANE  
GRAPEVINE, TX 76051

BARTLE HOMES  
20608 SOUTHWOOD OAKS DR  
KINGWOOD, TX 77365

BCT, INC.  
P.O. BOX 92328  
CHICAGO, IL 60675

BERCON LTD  
711 E 20TH ST  
HOUSTON, TX 77008

BILL JAMES  
221 OHANA COURT  
HELENA, MT 59602

BILL MARTINDALE  
10514 NW 23RD AVENUE  
VANCOUVER, WA 98685

BILL POULOS  
5405 LIVERNO DR  
SALIDA, CA 95368

BOB ANDERSON  
3422 NASSAU ST  
EVERETT, WA 98201

BOB PARISH  
245 NW 7TH AVENUE  
CANBY, OR 97013

BRAD SHEPPERD  
541 TIMBER HOLLOW  
NEW BRANFELS, TX 78132

BRANDON BLACKMON  
201 VALLEY DRIVE  
CONNER, TX 77303

BRENT SCHILER  
213 E 1000 N  
HARRISVILLE, UT 84404

BRIAN CODY (CA)  
639 ROBERT AVENUE  
RIPON, CA 95366

BRIAN GABLE  
1718 HOLDEN LANE  
BOISE, ID 83706

BRIAN JOCHEN  
4506 WESTIN DR  
FULSHEAR, TX 77441

CADDO SHREVEPORT SALES  
AND USE TAX COMMISSION  
SHREVEPORT, LA 71161

CAPITAL FREIGHT SERVICES, INC.  
9001 AIRPORT FREEWAY, SUITE 935  
NORTH RICHLANDS, TX 76180

CARRIE CAMPBELL  
6445 S. MAPLE AVE., APT #1103  
TEMPE, AZ 85253

CECIL LAUDERDALE  
8330 DAVIDSON ROAD  
SANGER, TX 76266

CG GOMEZ  
403 N ORANGEWOOD  
FRESNO, CA 93727

CHRIS ROUNTREE  
1605 SHADY HILLSIDE PASS  
ROUND ROCK, TX 78665

CHRIS SHARP  
C/O RANCHO CUCAMONGA 8830  
SANTA ANA, CA 92705

DAVE SIMAC  
P.O. BOX 176  
CLANCY, MT 59634

DAVID DAVIS  
P.O. BOX 176  
CLANCY, MT 59634

DAVID DIAL  
P.O. BOX 176  
CLANCY, MT 59634

DAVID KUNTZ  
8519 PINE SHORES DRIVE  
HUMBLE, TX 77346

DAVID ROMERO  
634 HOLLAND BRIDGE LANE  
HOUSTON, TX 77073

DAVID VEIT  
2711 HUWLAC TRAIL  
ROUND ROCK, TX 78681

DOUG PRYOR  
3460 KERWALD DR  
MISSOULA, MT 59804

DOUGLAS MOORE  
5920 66TH STREET, #7  
LUBBOCK, TX 79424

DUANE FARR  
89 S WILLOW ST  
GRANTSVILLE, UT 84029

EDGAR ALVAREZ  
12213 ROBERT DAHL  
EL PASO, TX 79938

ERIC KULP  
67 N. 3685 E.  
RIGBY, ID 83442

ESIS INC  
ASST VP-FIN REPORTING & CLIENT ACCNTNG  
436 WALNUT STREET  
PHILADELPHIA, PA 19106

ESIS INC  
MAGERY N REED ESQUIRE  
DUANE MORRIS LLP  
30 SOUTH 17TH STREET  
PHILADELPHIA, PA 19103-4196

FRANZ WATZAK  
1003 CALDERWOOD  
HOUSTON, TX 77073

GARY SINCLAIR  
13411 CHEROKEE ROSE CT.  
ROSHARON, TX 77583

GEORGINA BIEHL  
3515 W FALLEN LEAF LN  
GLENDALE, AZ 85310

GERALD STUART  
8881 AURORA LIGHT  
LAS VEGAS, NV 89123

GREGG MCLEOD  
C/O ONTARIO 8830  
SANTA ANA, CA 92705

HADLEY JAMES  
C/O CORP CTR DR 9992

JAMES KLEYPAS  
6106 GLENHILL  
SPRING, TX 77389

JAREN PATERJCK  
5144 EMMELINE DRIVE  
HERRIMAN, UT 84096

JASON BRENDEN  
3367 TRERISE  
EAST HELENA, MT 59635

JASON MARR  
C/O RANCHO CUCAMONGA 8830  
SANTA ANA, CA 92705

JASON STEWART  
10617 N 5TH E  
IDAHO FALLS, ID 83401

JEFFREY SIMS  
C/O RANCHO CUCAMONGA 8830  
SANTA ANA, CA 92705

JENNIFER FRYE  
2805 PERSIMMON DRIVE  
KILLEEN, TX 76543

JIM AUSTIN  
1660 GEKELER LANE  
BOISE, ID 83706

JOE SHANNON  
25 HIGHLIAND PK VILLAGE  
DALLAS, TX 75205

JOHN GULLORY  
1895 DARA LANE  
SAN MARCOS, TX 78666

JOHNNY CARROLL  
529 LONGSHORE DRIVE  
LITTLE ELM, TX 75068

JONATHON HOLT  
2204 VOYAGEURS LANE  
AUSTIN, TX 78747

JUDY NYLANDER  
C/O BASC  
SANTA ANA, CA 92705

KATHY SPRINGS  
2501 ELM CREST LANE  
BOISE, ID 83705

KEITH KOTCHE  
34W793 ARMY TRAIL ROAD  
WAYNE, IL 60184

KENDALL LANDCASTER  
1225 BLUE RIDGE DR  
IDAHO FALLS, ID 83402

KEVIN MENDENHALL  
705 E SHELDON ST  
PRESCOTT, AZ 86301

LEE, JAMES A.  
222 ALVERSON BLVD  
EVERETT, WA 98201

LESLIE SATHER  
1045 OAK SHADE LANE  
HENDERSON, NV 89015

LOUISE KERN  
1036 GARRATY ROAD  
SAN ANTONIO, TX 78209

MARIO SANDOVAL  
340 LEGEND OAKS DR  
DALE, TX 78616

MARK R KAILER  
245 HIGHLAND AVENUE  
SAN CARLOS, CA 94070

MATT ICKES  
17246 W. BANFF LANE  
SURPRISE, AZ 85379

MATT MCCARTER  
c/o UNITED STATES DEBT RECOVERY LLC  
940 SOUTHWOOD BLVD SUITE 101  
INCLINE VILLAGE, NV 89451

MATT RUSS  
100 CLYDESDALE CT  
LIBERTY HILL, TX 78642

MATTHEW RANKIN  
32443 N. 51ST STREET  
CAVE CREEK, AZ 85331

MICHAEL EINSPAHR  
C/O CHANDLER 8920

MICHAEL FORD  
719 VALLEY VIEW  
ALLEN, TX 75002

MICHAEL LAPOINT  
P.O. BOX 1636  
LAMARQUE, TX 77568

MICHELLE CASTILLO  
340 HART DRIVE 24  
EL CAJON, CA 92021

MIKE DEUBLER  
120 RINGLORE DRIVE  
HENDERSON, NV 89015

MIKE HELM  
600 DAKOTA LANE  
CANON CITY, CO 81212

MIKE HENNINGSON  
711 DOWNING PLACE  
GENEVA, IL 60134

MIKE KUNTZMAN  
10778 N. PRICE AVENUE  
FRESNO, CA 93730

MIKE LANDGREN  
4680 CLAY PEAK DRIVE  
LAS VEGAS, NV 89129

NAOMI CANLEY  
22512 SE 218TH STREET  
MAPLE VALLEY, WA 98038

NORMA SERNA  
3904 WILLIAM SCARBROUGH  
SCHERTZ, TX 78154

PAMELA ADAMS  
400 ASH  
HENDERSON, NV 89015

PAT STEFFAN  
3866 S 74TH ST  
TACOMA, WA 98409

PATTY FULLMER  
4592 ZUNI DRIVE  
RIVERTON, UT 84065

PETE BLAIR SR  
21105 HANDLEY LOOP  
CLINTON, MT 59825

PETE MORRIS  
12105 NE 450TH ST  
WOODLAND, WA 98674

RANDY RHOADES  
949 W. MYRTLE DRIVE  
CHANDLER, AZ 85248

RANDY THIESSENS  
P.O. BOX 646  
MERIDIAN, ID 83680

RICH CROWLEY  
108 OAK BEND CT.  
GEORGETOWN, TX 78628

RICH WALTERS  
4300 NE 39TH AVENUE  
VANCOUVER, WA 98661

RICHARD GUIDRY  
2559 LIVE OAK  
ROSENBERG, TX 77471

RICHARD STEVICK  
11898 WHITE OAK PASS  
CONROE, TX 77385

RICHARD WADE  
P.O. BOX 1265  
NORTH BEND, WA 98045

ROB WEST  
6296 WINSTON FALLS AVENUE  
LAS VEGAS, NV 89139

ROBERT HERZOG  
3923 HOLDER FOREST DRIVE  
HOUSTON, TX 77088

ROBERT ORR JR  
8554 KATY FWY, SUITE 100  
KATY, TX 77024

ROBERT SIMONSON  
21442 SE 35TH WAY  
SAMMAMISH, WA 98075

RON HACKETT  
17950 BLACKBIRD DRIVE  
RENO, NV 89506

RON SMITH  
C/O HOUSTON 6903

RYAN ROBINETT  
620 NORMANDY LANE  
SAGINAW, TX 76179

SCOTT MCKINLEY  
2781 S. GRANT  
POCATELLO, ID 83204

SEAN CAVANAUGH  
231 VENTANA VILLAGE LANE  
HENDERSON, NV 89074

SHARRION JENKINS  
1608 PECAN STREET  
GEORGETOWN, TX 78626

SHAWN MACKEY  
2000 RENFRO  
COLLEYVILLE, TX 76034

STACY BAILEY (EMP)  
1805 WEAVER WAY  
SNOHOMISH, WA 98290

STEPHEN MALLATT JR  
1481 SNAPDRAGON LANE  
ROSEVILLE, CA 95747

STEVE BROWN (7400)  
3735 EAGLE BAY DRIVE  
HELENA, MT 59601

STEVE KUNNARY (EMP)  
1160 PHILLIPS ROAD  
HELENA, MT 59602

STEVE SPEARS  
C/O CHICAGO 8750

STEVEN VAN MEETEREN  
309 BARRINGTON DRIVE  
LIBERTY HILL, TX 78642

TERESA BIGHAM  
C/O RANCHO CUCAMONGA 8830  
SANTA ANA, CA 92705

TODD GALLAHER  
107 HALL STREET EXT.  
BELMONT, NC 28012

TODD KOEPLIN  
9210 NE 82ND  
VANCOUVER, WA 98662

TOMMY BROWN  
757 VENUS COURT  
ROCKWALL, TX 75032

TRENT SESSIONS  
528 WEST 560 NORTH  
SANTAQUIN, UT 84655

TROY MADDEN  
C/O SAN ANTONIO DOOR 5783

WILLIAM J ROURE  
12 PARK WAY  
PIEDMONT, CA 94611

WILLIAM TEMPLETON  
8811A PINERIDGE DRIVE  
AUSTIN, TX 78729



**EXHIBIT C**

**Order Sustaining Non-Substantive Objection**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
BUILDING MATERIALS HOLDING	)	Case No. 09-12074 (KJC)
CORPORATION, <i>et al.</i> , <sup>1</sup>	)	Jointly Administered
Reorganized Debtors.	)	Ref. Docket Nos. 1480 and <u>1532</u>

**ORDER SUSTAINING, IN PART, REORGANIZED DEBTORS' SIXTEENTH  
OMNIBUS (NON-SUBSTANTIVE) OBJECTION TO CLAIMS  
PURSUANT TO SECTION 502(b) OF THE BANKRUPTCY CODE,  
BANKRUPTCY RULES 3003 AND 3007 AND LOCAL RULE 3007-1**

Upon consideration of the sixteenth omnibus (non-substantive) objection (the "Objection")<sup>2</sup> of the above-captioned reorganized debtors (collectively, the "Reorganized Debtors") for the entry of an order, pursuant to section 502(b) of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code"), Rules 3003 and 3007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rule 3007-1 of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), reassigning, modifying or disallowing and expunging in full each of the Disputed Claims identified on Exhibits A1, A2, B, C, D and E attached hereto; and it appearing that due and sufficient notice of the Objection has been given under the circumstances;

<sup>1</sup> The Reorganized Debtors, along with the last four digits of each Reorganized Debtor's tax identification number, are as follows: Building Materials Holding Corporation (4269), BMC West Corporation (0454), SelectBuild Construction, Inc. (1340), SelectBuild Northern California, Inc. (7579), Illinois Framing, Inc. (4451), C Construction, Inc. (8206), TWF Construction, Inc. (3334), H.N.R. Framing Systems, Inc. (4329), SelectBuild Southern California, Inc. (9378), SelectBuild Nevada, Inc. (8912), SelectBuild Arizona, LLC (0036), and SelectBuild Illinois, LLC (0792). The mailing address for the Reorganized Debtors is 720 Park Boulevard, Suite 200, Boise, Idaho 83712.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Objection.

and after due deliberation and upon the Court's determination that the relief requested in the Objection is in the best interests of the Reorganized Debtors, their estates and creditors and other parties in interest; and sufficient cause appearing for the relief requested in the Objection, it is hereby:

**ORDERED, ADJUDGED AND DECREED that:**

1. The Objection is sustained to the extent provided for herein and on Exhibits A1, A2, B, C, D and E attached hereto.
2. Pursuant to section 502(b) of the Bankruptcy Code, Bankruptcy Rules 3003 and 3007 and Local Rule 3007-1, the Disputed Claims identified on the attached Exhibit A1 are hereby reassigned to the New Case Numbers as indicated on Exhibit A1.
3. Pursuant to section 502(b) of the Bankruptcy Code, Bankruptcy Rules 3003 and 3007 and Local Rule 3007-1, the Disputed Claims identified on the attached Exhibit A2 are hereby reassigned to the New Case Numbers in the specific amounts identified in the column titled "Case No. of Reassigned Claim" as indicated on Exhibit A2.
4. Pursuant to section 502(b) of the Bankruptcy Code, Bankruptcy Rules 3003 and 3007 and Local Rule 3007-1, the Disputed Claims identified on Exhibits B, C, D and E attached hereto are hereby disallowed and expunged in their entirety.
5. Claim No. 2904 (the "Empire Proof of Claim") filed by Empire Building Materials ("Empire") is hereby deemed timely filed and no other action needs to be taken by Empire with respect to the filing of the Empire Proof of Claim. Pursuant to section 502(b) of the Bankruptcy Code, Bankruptcy Rules 3003 and 3007 and Local Rule 3007-1, on account of the Empire Proof of Claim, Empire shall have an allowed general unsecured claim in the amount of \$21,202.04 (the "Empire General Unsecured Claim"). The Empire General Unsecured Claim

shall be treated in accordance with the provisions of that certain Joint Plan of Reorganization for the Debtors Under Chapter 11 of the Bankruptcy Code Amended December 14, 2009 (With Technical Modifications).

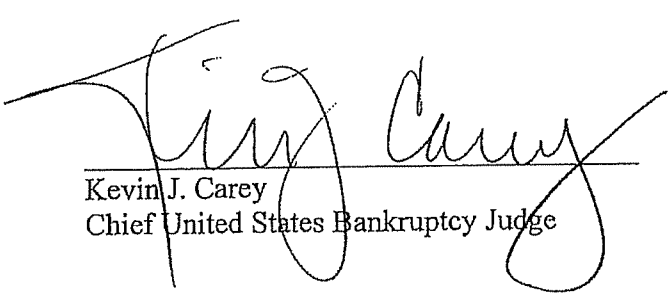
6. The Debtors' claims and noticing agent shall mark the Empire Proof of Claim in accordance with the provisions of this Order.

7. The Reorganized Debtors (and any successors or successors in interest) reserve any and all rights to amend, modify or supplement this Objection, and to file additional objections to any and all claims filed in these chapter 11 cases, including, without limitation, any and all claims that are the subject of the Objection, except for the Empire General Unsecured Claim.

8. The Reorganized Debtors (and any successors or successors in interest) reserve any and all rights to object to any and all of the Disputed Claims on any and all grounds in any and all additional objections to claims filed in these chapter 11 cases except for the Empire General Unsecured Claim.

9. This Court shall retain jurisdiction over any and all affected parties with respect to any and all matters, claims or rights arising from or related to the implementation or interpretation of this Order.

Dated: Wilmington, Delaware  
April 19, 2010



Kevin J. Carey  
Chief United States Bankruptcy Judge

**EXHIBIT A1**

Wrong Debtor Claims

IN RE: BUILDING MATERIALS HOLDING CORPORATION, ET AL., CASE NO. 09-12074  
CLAIMS TO BE REASSIGNED TO A NEW CASE NUMBER

OBJECTIONABLE CLAIM				REASSIGNED CLAIM	
NAME AND ADDRESS OF CLAIMANT	CLAIM NUMBER	DATE FILED	CASE NO.	AMOUNT AND CLASSIFICATION OF CLAIM	REASON FOR REASSIGNMENT
DAL TILE DISTRIBUTION INC. 7534 CF HAWN FRWY DALLAS, TX 75217	2412	8/31/2009	Blank	Unsecured: \$9,492.72	Based on review of the Debtors' books and records, claim should be against BMC West Corporation.
FLORENCE MANUFACTURING CORP ATTN: DAVE PARKER, CREDIT MGR 5935 CORPORATION DRIVE MANHATTAN, KS 66503	201	7/31/2009	Blank	Unsecured: \$9,673.84	Based on review of the Debtors' books and records, claim should be against BMC West Corporation.
GECITS DBA KON FINANCIAL SVCS AS AUTH SYNCH AGENT OF BANC OF AMERICA & LEASING CAPITAL LLC ATTN: BANKRUPTCY ADMIN PO BOX 13708 MACON, GA 31208	2729	10/9/2009	09-12074	Unsecured: \$8,482.76	Based on review of supporting documentation filed with the Claim, the claim should be against SelectBuild Arizona, LLC.
MAC ARTHUR CO 2500 WYCLIFF ST ST PAUL, MN 55114	33	7/1/2009	09-12074	Unsecured: \$33,475.81	Based on review of the Debtors' books and records, claim should be against BMC West Corporation.
MW LLC C/O JEFFER MANGELS BUTLER & MARMARO LLP ATTN: MARTY TAYLOR 695 TOWN CENTER DRIVE SUITE 230 COSTA MESA, CA 92626	633	8/4/2009	09-12092	Unsecured: \$263,259.49	Based on review of the Debtors' books and records, claim should be against SelectBuild Construction, Inc.

**EXHIBIT A2**

Wrong Debtor Claims

IN RE: BUILDING MATERIALS HOLDING CORPORATION, ET AL, CASE NO. 09-12074  
CLAIMS TO BE REASSIGNED TO NEW CASE NUMBERS

OBJECTIONABLE CLAIM				REASSIGNED CLAIM	
NAME AND ADDRESS OF CLAIMANT	CLAIM NUMBER	DATE FILED	CASE NO.	AMOUNT AND CLASSIFICATION OF CLAIM	REASON FOR REASSIGNMENT
DE LAGE LANDEN FINANCIAL SERVICES INC 1111 OLD EAGLE SCHOOL ROAD WAYNE, PA 19087	2161	8/28/2009	09-12074	09-12074 \$1,990.56	Based on review of the Debtors' books and records, the claim should be against multiple debtors
				09-12075 \$6,998.46	
				09-12077 \$4,104.12	
				09-12084 \$25,753.5	
FEDEX CUSTOMER INFORMATION SERVICE ASSIGNEE OF FEDEX EXPRESS/ FEDEX GROUND ATTN REVENUE RECOVERY/BANKRUPTCY 3965 AIRWAYS BLVD, MODULE G, 3RD FLR MEMPHIS, TN 38116	2411	8/31/2009	09-12074	09-12074 \$11,840.98	Based on review of the Debtors' books and records, the claim should be against multiple debtors.
				09-12075 \$5,669.07	
				09-12084 \$142.85	
				09-12076 \$79.48	
				09-12078 \$25.48	
				09-12083 \$17.65	
				09-12085 \$9.64	
				09-12081 \$511.47	
VERIZON WIRELESS PO BOX 3357 BLOOMINGTON, IL 61702	1291	8/11/2009	09-12074	09-12077 \$773.27	Based on review of the Debtors' books and records, the claim should be against multiple debtors.
				09-12080 \$93.19	
				09-12074 \$69,948.86	
				09-12075 \$40,089.34	
				09-12084 \$3,907.44	
				09-12076 \$1,818.89	
				09-12079 \$1,739.70	
				09-12083 \$3,147.30	
				09-12085 \$1,582.74	
				09-12081 \$255.41	
				09-12077 \$3,440.88	
				09-12080 \$787.40	



**EXHIBIT B**

Amended Claims

IN RE: BUILDING MATERIALS HOLDING CORPORATION, ET AL., CASE NO. 09-12074  
CLAIMS TO BE EXTINGUISHED AS AMENDED AND SUPERSEDED

OBJECTIONABLE CLAIM					SURVIVING CLAIM		
NAME AND ADDRESS OF CLAIMANT	CLAIM NUMBER	DATE FILED	CASE NO.	AMOUNT AND CLASSIFICATION OF CLAIM	CLAIM NUMBER	DATE FILED	CASE NO. AMOUNT AND CLASSIFICATION OF CLAIM
BELLSOUTH TELECOMMUNICATIONS, INC C/O JAMES GRUDUS ESQ AT&T SERVICES INC ONE AT&T WAY ROOM 3A218 BEDMINSTER, NJ 07921	1001	8/11/2009	09-12074	Unsecured: \$2,744.21	2902	2/17/2010	09-12074 Unsecured: \$2,821.33
EAGLE FOREST PRODUCTS P.O. BOX 141823 IRVING, TX 75014	2874	1/14/2010	09-12075	Secured/Priority: \$38,879.48	2906	3/1/2010	09-12075 Priority: \$38,879.48
GSA HOME ENERGY SOLUTIONS LLC C/O JAMES V HOFFNER GRAVES DOUGHERTY HEARON & MOODY PC 401 CONGRESS AVE SUITE 2200 AUSTIN, TX 78701	2853	12/18/2009	09-12075	Unsecured: \$1,114,147.50	2899	1/26/2010	09-12075 Unsecured: \$1,114,147.50

EXHIBIT C

Duplicate Claims

IN RE: BUILDING MATERIALS HOLDING CORPORATION, ET AL., CASE NO. 09-12074  
CLAIMS TO BE EXPUNGED AS DUPLICATE

OBJECTIONABLE CLAIM				SURVIVING CLAIM			
NAME AND ADDRESS OF CLAIMANT	CLAIM NUMBER	DATE FILED	CASE NO.	AMOUNT AND CLASSIFICATION OF CLAIM	CLAIM NUMBER	DATE FILED	CASE NO. AMOUNT AND CLASSIFICATION OF CLAIM
EXPRESS FLEET SERVICE PO BOX 38492 HOUSTON, TX 77249	1478	8/24/2009	09-12075	Unsecured: \$574.15	1480	8/24/2009	09-12075 Unsecured: \$574.15
HELLGATE TOOL REPAIR 2006 NORTH AVE W MISSOULA, MT 59801	1120	8/14/2009	09-12075	Unsecured: \$718.00	351	8/3/2009	09-12075 Unsecured: \$718.00
NORTH-PARK LLC EJM DEVELOPMENT 9061 SANTA MONICA BLVD LOS ANGELES, CA 90069	2897	1/28/2010	09-12083	Unsecured: \$161,177.00	2592	8/31/2009	09-12083 Unsecured: \$91,448.00
VINCENT E RHYMES 1514 W MANCHESTER AVE #5 LOS ANGELES, CA 90047	2894	1/14/2010	09-12074	Black	109	7/17/2009	09-12074 Claim previously expunged pursuant to Court order

**EXHIBIT D**

Insufficient Documentation Claims

IN RE: BUILDING MATERIALS HOLDING CORPORATION, ET AL., CASE NO. 09-12074  
CLAIMS TO BE EXPUNGED AS INSUFFICIENT SUPPORTING DOCUMENTATION

NAME AND ADDRESS OF CLAIMANT	CLAIM NUMBER	DATE FILED	AMOUNT AND CLASSIFICATION OF CLAIM	CASE NO.	COMMENTS
DE YOUNG COMMUNITIES, INC. C/O PAMELA HELMER, ESQ. ROGER SCOTT & HELMER, LLP 1001 MARSHALL STREET, STE 400 REDWOOD CITY, CA 94063	2420	8/31/2009	Unsecured: \$1,561,454	09-12075	Based on review of the Debtors' books and records, there is no amount owing to this claimant and the claimant has provided insufficient documentation to support the claim. As such, the debtors object to this claim.

**EXHIBIT E**

Late Filed Claims

IN RE: BUILDING MATERIALS HOLDING CORPORATION, ET AL., CASE NO. 09-12074  
CLAIMS TO BE EXPUNGED AS LATE

NAME AND ADDRESS OF CLAIMANT	CLAIM NUMBER	DATE FILED	AMOUNT AND CLASSIFICATION OF CLAIM	CASE NO.
CITY OF EL PASO DAVID G AELVOET LINEBARGER GOGGAN BLAIR & SAMPSON LLP 711 NANARRO SUITE 300 SAN ANTONIO, TX 78205	2908	2/18/2010	Secured: \$28,829.43	09-12075
COMED BANKRUPTCY SECTION/REVENUE MANAGEMENT 2100 SWIFT DR OAKBROOK, IL 60523	2909	2/22/2010	Unsecured: \$905.07	09-12074
DAVID A BRADY 1416 SHUKAR CT IRVING, TX 75061	2907	2/23/2010	Priority: \$1,560	09-12074
ESQUIVEL DIAZ 56523 DESERT CACTUS APT 9 THERMAL, CA 92274	2905	2/23/2010	Blank	09-12076
RAVELO, ALEJANDRO N 245 S 45TH ST SAN DIEGO, CA 92113	2903	2/19/2010	Priority: \$12,816	09-12079
SALAYANDIA, FERNANDO 4264 N. 68TH LANE #4264 PHOENIX, AZ 85033	2901	2/13/2010	Secured/Priority: \$1,600	09-12084



**EXHIBIT D**

Order Sustaining Substantive Objection

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

BUILDING MATERIALS HOLDING  
CORPORATION, *et al.*,<sup>1</sup>

Reorganized Debtors.

) Chapter 11

) Case No. 09-12074 (KJC)

) Jointly Administered

) Ref. Docket No. 1481, 1531

**ORDER SUSTAINING REORGANIZED DEBTORS' SEVENTEENTH  
OMNIBUS (SUBSTANTIVE) OBJECTION TO CLAIMS  
PURSUANT TO SECTION 502(b) OF THE BANKRUPTCY CODE,  
BANKRUPTCY RULES 3003 AND 3007 AND LOCAL RULE 3007-1**

Upon consideration of the seventeenth omnibus (substantive) objection (the "Objection")<sup>2</sup> of the above-captioned reorganized debtors (each, a "Reorganized Debtor," and collectively, the "Reorganized Debtors") for the entry of an order, pursuant to section 502(b) of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code"), Rules 3003 and 3007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rule 3007-1 of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), disallowing and expunging, reclassifying and/or otherwise modifying the Disputed Claims, as provided for on Exhibits A and B attached hereto; and it appearing that due and sufficient notice of the Objection has been given

<sup>1</sup> The Reorganized Debtors, along with the last four digits of each Reorganized Debtor's tax identification number, are as follows: Building Materials Holding Corporation (4269), BMC West Corporation (0454), SelectBuild Construction, Inc. (1340), SelectBuild Northern California, Inc. (7579), Illinois Framing, Inc. (4451), C Construction, Inc. (8206), TWF Construction, Inc. (3334), H.N.R. Framing Systems, Inc. (4329), SelectBuild Southern California, Inc. (9378), SelectBuild Nevada, Inc. (8912), SelectBuild Arizona, LLC (0036), and SelectBuild Illinois, LLC (0792). The mailing address for the Reorganized Debtors is 720 Park Boulevard, Suite 200, Boise, Idaho 83712.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Objection.

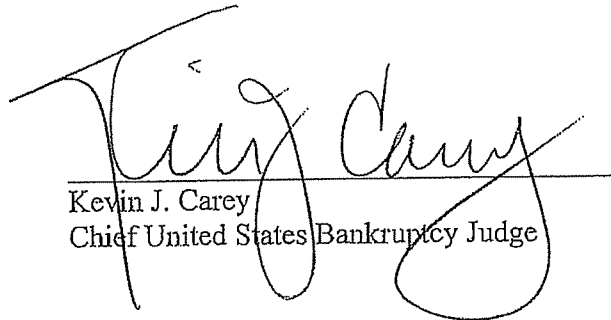
under the circumstances; and after due deliberation and upon the Court's determination that the relief requested in the Objection is in the best interests of the Reorganized Debtors, their estates and creditors and other parties in interest; and sufficient cause appearing for the relief requested in the Objection, it is hereby:

**ORDERED, ADJUDGED AND DECREED that:**

1. The Objection is sustained.
2. Pursuant to section 502(b) of the Bankruptcy Code, Bankruptcy Rules 3003 and 3007 and Local Rule 3007-1, the Disputed Claims identified on the attached Exhibit A are hereby disallowed and expunged in their entirety.
3. Pursuant to section 502(b) of the Bankruptcy Code, Bankruptcy Rules 3003 and 3007 and Local Rule 3007-1, the Disputed Claims identified on the attached Exhibit B are hereby (i) modified by reducing or fixing the amounts of such claims to the dollar values listed under the column titled "Amount and Classification of Modified/Reclassified Claim" on Exhibit B hereto and (ii) reclassified to the priority levels indicated under the column titled "Amount and Classification of Modified/Reclassified Claim" on the attached Exhibit B.
4. The Reorganized Debtors (and any successors or successors in interest) reserve any and all rights to amend, modify or supplement this Objection, and to file additional objections to any and all claims filed in these chapter 11 cases, including, without limitation, any and all claims that are the subject of the Objection.
5. The Reorganized Debtors (and any successors or successors in interest) reserve any and all rights to object to any and all of the Disputed Claims on any and all grounds in any and all additional objections to claims filed in these chapter 11 cases.

6. This Court shall retain jurisdiction over any and all affected parties with respect to any and all matters, claims or rights arising from or related to the implementation or interpretation of this Order.

Dated: Wilmington, Delaware  
April 19, 2010



Kevin J. Carey  
Chief United States Bankruptcy Judge

**EXHIBIT A**

No Liability Claims

IN RE: BUILDING MATERIALS HOLDING CORPORATION, ET AL., CASE NO. 09-12074  
CLAIMS TO BE EXPUNGED AS NO LIABILITY

NAME AND ADDRESS OF CLAIMANT	CLAIM NUMBER	DATE FILED	CASE NO.	AMOUNT AND CLASSIFICATION OF CLAIM	COMMENTS
BRANDON BAUGHMAN C/O JOHN FITZPATRICK 228 WEST MAIN SUITE A MISSOULA, MT 59807	635	8/4/2009	09-12075	Unsecured: \$1,584,552	Per order dated 3/4/2010, the action underlying the asserted claim was dismissed with prejudice and as such the Debtors object to this claim based on no liability.
GSA HOME ENERGY SOLUTIONS LLC C/O JAMES V HOFFNER GRAVES DOUGHERTY HEARON & MOODY PC 401 CONGRESS AVE SUITE 2200 AUSTIN, TX 78701	2898	1/26/2010	09-12074	Unsecured: \$1,114,147.60	The contract underlying the asserted claim is solely with BMC West Corporation and as such the claimant has no recourse against Building Materials Holding Corporation. The Debtors therefore object to this claim based on no liability.
GSA HOME ENERGY SOLUTIONS LLC C/O JAMES V HOFFNER GRAVES DOUGHERTY HEARON & MOODY PC 401 CONGRESS AVE SUITE 2200 AUSTIN, TX 78701	2899	1/26/2010	09-12075	Unsecured: \$1,114,147.60	The Debtors object to this claim based on no liability. Debtor BMW West Corporation ("BMW West") fully performed its obligations under the agreement underlying the asserted claim (the "Agreement"). Pursuant to the Agreement, BMC West guaranteed (the "Guarantee") certain payments to the claimant during the first 12 months of the Agreement (the "Guarantee Period"). However, subsequent to the Guarantee Period, among other things, BMC West is not obligated to make guaranteed payments to, or purchase any products from, the claimant under the Agreement. BMC West made payments of \$375,310 for the first 12 months of the Agreement, thereby satisfying, in full, the Guarantee. As such, the Debtors have no liability (i) remaining under the Agreement or (ii) on account of the rejection of the Agreement.
LEE, HERNANDEZ, BROOKS, GARAFALO & BLAKE	1765	8/27/2009	09-12083	Unknown	There is no lawsuit against the Debtors related to this claim. In addition, the claim asserted by the homeowner did not include work performed by the Debtors. As such, the Debtors object to this claim based on no liability.

IN RE: BUILDING MATERIALS HOLDING CORPORATION, ET AL., CASE NO. 09-12074  
CLAIMS TO BE EXPUNGED AS NO LIABILITY

NAME AND ADDRESS OF CLAIMANT	CLAIM NUMBER	DATE FILED	CASE NO.	AMOUNT AND CLASSIFICATION OF CLAIM	COMMENTS
MARNELL W. RINGSAK 411 N. 4TH STREET BISMARCK, ND 58502	431	8/3/2009	09-12075	Unsecured: \$6,764	Per order dated May 12, 2009, BMC Construction, Inc. was dismissed without prejudice from this case. As such, the Debtors object to this claim based on no liability.

**EXHIBIT B**

Modified Amount, Reclassified Claims



IN RE: BUILDING MATERIALS HOLDING CORPORATION, ET AL. CASE NO. 09-12074  
CLAIMS TO BE MODIFIED AND RECLASSIFIED

OBJECTIONABLE CLAIM			MODIFIED AND RECLASSIFIED CLAIM	
NAME AND ADDRESS OF CLAIMANT	CLAIM NUMBER	FILE DATE	CASE NO.	REASON FOR MODIFICATION AND RECLASSIFICATION
GREAT AMERICA LEASING CORPORATION PO BOX 609 CEDAR RAPIDS, IA 52406	71	7/22/2009	09-12075	<p>Amount and Classification of Claim: Secured: \$32,033.36 Unsecured: \$25,419.11</p> <p>Based on review of supporting documentation filed with the claim, the claimant is not entitled to a secured claim under the Bankruptcy Code or otherwise. In addition, the claim includes \$6,131.59 for a residual purchase option for the equipment which the debtors are not obligated to exercise and the Debtors are not otherwise obligated to purchase the equipment. Finally, the claim includes \$482.66 for accrued late charges which the Debtors do not pay in the ordinary course of business. As such, the Debtors object to \$6,614.25 of the claim and the remaining amount of the claim is reclassified to general unsecured.</p>

**EXHIBIT E**

Declaration of Paul S. Street

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

<b>In re:</b>	)	
	)	<b>Chapter 11</b>
	)	
<b>BUILDING MATERIALS HOLDING CORPORATION, <i>et al.</i>,<sup>1</sup></b>	)	<b>Case No. 09-12074 (KJC)</b>
	)	
<b>Reorganized Debtors.</b>	)	<b>Jointly Administered</b>
	)	

**DECLARATION OF PAUL S. STREET IN SUPPORT OF  
REORGANIZED DEBTORS' OBJECTION TO MOTION TO  
RECONSIDER CLAIM OF GSA HOME ENERGY SOLUTIONS**

I, PAUL S. STREET, pursuant to 28 U.S.C. § 1746, hereby declare:

1. I am the Chief Executive Officer of Building Materials Holding Corporation, a corporation organized under the laws of the State of Delaware and one of the above-captioned reorganized debtors (collectively, the "Reorganized Debtors"). In this capacity I am familiar with the Reorganized Debtors' day-to-day operations, businesses, financial affairs and books and records.

2. In this capacity, I am one of the individuals primarily responsible for overseeing the claims reconciliation and objection process in the Chapter 11 Cases. I have read the Reorganized Debtors' Objection to Motion to Reconsider Claim of GSA Home Energy Solutions (the "Objection"),<sup>2</sup> the Motion and the Claims, and am directly, or by and through my personnel or agents, familiar with the information contained in the Objection, and the facts

---

<sup>1</sup> The Reorganized Debtors, along with the last four digits of each Reorganized Debtor's tax identification number, are as follows: Building Materials Holding Corporation (4269), BMC West Corporation (0454), SelectBuild Construction, Inc. (1340), SelectBuild Northern California, Inc. (7579), Illinois Framing, Inc. (4451), C Construction, Inc. (8206), TWF Construction, Inc. (3334), H.N.R. Framing Systems, Inc. (4329), SelectBuild Southern California, Inc. (9378), SelectBuild Nevada, Inc. (8912), SelectBuild Arizona, LLC (0036), and SelectBuild Illinois, LLC (0792). The mailing address for the Reorganized Debtors is 720 Park Boulevard, Suite 200, Boise, Idaho 83712.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Objection.

alleged, and the relief requested, in the Motion and the Claims. I am authorized to execute this Declaration on behalf of the Reorganized Debtors.

3. Considerable resources and time have been expended in reviewing and reconciling the Claims. The Claims were carefully reviewed and analyzed in good faith utilizing due diligence by the appropriate personnel. As with the information contained in the Claims Objections, the information contained in the Objection is true and correct to the best of my knowledge, information and belief.

4. Subsequent to the filing of the Claims, the Reorganized Debtors reviewed their books and records and determined that they had no record of any liability on account of the Claims. To prevent GSA from receiving an unwarranted recovery against the Reorganized Debtors' estates, through the Substantive Objection, the Reorganized Debtors sought to expunge and disallow in full the Claims. On April 19, 2010, this Court entered an order sustaining the Substantive Objection [Docket No. 1539] (the "Substantive Objection Order").

5. Since the entry of the Substantive Objection Order, in connection with the Reorganized Debtors' review of the Motion and the preparation of the Objection, the Reorganized Debtors have again reviewed their books and records and confirmed that their estates have no liability on account of the Claims. Subsequent to the entry of the Rejection Order, the Reorganized Debtors have returned to GSA any Products and other materials to which it is entitled, and are not continuing to sell any products purchased from GSA under the HES Agreement.

6. Additionally, although the Reorganized Debtors' books and records reflect approximately \$6,648 of unpaid pre-petition invoices in connection with the HES Agreement, which the Reorganized Debtors scheduled as a contingent claim, GSA did not assert such

amounts in the Claims. Rather, as noted in the Objection, GSA only asserted a rejection damages claim on account of \$1,114,147.60 in purported lost profits.

7. Accordingly, I believe that the Reorganized Debtors' estates are without liability on account of the Claims, and to the extent this Court grants the relief requested in the Motion and GSA is entitled under applicable law to amend the Claims to assert the additional claims alleged therein, I believe that, at most, GSA would only potentially be entitled to a general unsecured claim in the amount of \$6,648 on account of the unpaid pre-petition invoices.

*Signature page follows*

I declare under penalty of perjury under the laws of the United States of America  
that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed on May 12, 2010

/s/ Paul S. Street  
Paul S. Street

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

BUILDING MATERIALS HOLDING  
CORPORATION, *et al.*,<sup>1</sup>

Reorganized Debtors.

Chapter 11

Case No. 09-12074 (KJC)

Jointly Administered

**AFFIDAVIT OF SERVICE**

STATE OF DELAWARE     )  
                                      ) SS  
NEW CASTLE COUNTY    )

Casey S. Cathcart, an employee of the law firm of Young Conaway Stargatt & Taylor, LLP, co-counsel to the Reorganized Debtors, being duly sworn according to law, deposes and says that on May 12, 2010, she caused a copy of the **Reorganized Debtors' Objection to Motion to Reconsider Claim of GSA Home Energy Solutions** to be served as indicated upon the parties identified on the attached service list and the following parties:

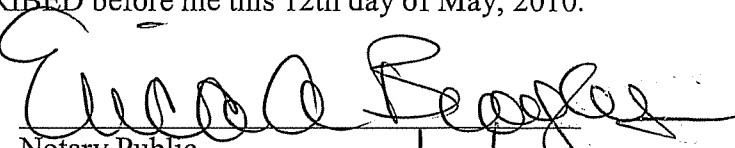
James V. Hoeffner, Esq.  
Graves Dougherty Hearon & Moody  
401 Congress Avenue, Suite 2200  
Austin, TX 78701  
(Counsel to GSA Home Energy Solutions)  
**Federal Express**

Patricia P. McGonigle, Esq.  
Seitz, Van Ogtrop & Green, P.A.  
222 Delaware Avenue, Suite 1500  
Wilmington, DE 19801  
(Counsel to GSA Home Energy Solutions)  
**Hand Delivery**

  
Casey S. Cathcart

SWORN TO AND SUBSCRIBED before me this 12th day of May, 2010.

**ERICA A. BROYLES**  
**NOTARY PUBLIC**  
**STATE OF DELAWARE**  
My commission expires Sept. 6, 2013

  
Notary Public  
My Commission Expires: 9/6/2013

<sup>1</sup> The Reorganized Debtors, along with the last four digits of each Reorganized Debtor's tax identification number, are as follows: Building Materials Holding Corporation (4269), BMC West Corporation (0454), SelectBuild Construction, Inc. (1340), SelectBuild Northern California, Inc. (7579), Illinois Framing, Inc. (4451), C Construction, Inc. (8206), TWF Construction, Inc. (3334), H.N.R. Framing Systems, Inc. (4329), SelectBuild Southern California, Inc. (9378), SelectBuild Nevada, Inc. (8912), SelectBuild Arizona, LLC (0036), and SelectBuild Illinois, LLC (0792). The mailing address for the Reorganized Debtors is 720 Park Boulevard, Suite 200, Boise, Idaho 83712.

**BUILDING MATERIALS HOLDING CORPORATION**  
**2002 SERVICE LIST**  
**5/12/2010**

David G. Aelvoet, Esq.  
Linebarger Goggan Blair & Sampson LLP  
Travis Building, 711 Navarro, Suite 300  
San Antonio, TX 78205  
(Counsel to Bexar County)  
***First Class Mail***

Christopher M. Alston, Esq.  
Foster Pepper PLLC  
1111 Third Avenue, Suite 3400  
Seattle, WA 98101  
(Counsel to JELD-WEN, inc.)  
***First Class Mail***

Sanjay Bhatnagar, Esq.  
Cole, Schotz, Meisel, Forman & Leonard, P.A.  
500 Delaware Avenue, Suite 1410  
Wilmington, DE 19801  
(Counsel to CNH Capital America, LLC)  
***Hand Delivery***

Brian W. Bisignani, Esq.  
Post & Schell, P.C.  
17 North 2nd Street, 12th Floor  
Harrisburg, PA 17101-1601  
(Counsel to Aon Consulting)  
***First Class Mail***

Robert McL. Boote, Esq.  
Ballard Spahr Andrews & Ingersoll, LLP  
1735 Market Street, 51st Floor  
Philadelphia, PA 19103-7599  
(Counsel to Westchester Fire Insurance  
Company and ACE USA)  
***First Class Mail***

David Boyle  
Airgas, Inc.  
259 Radnor-Chester Road, Suite 100  
P.O. Box 6675  
Radnor, PA 19087-8675  
***First Class Mail***

Barbara L. Caldwell, Esq.  
Aiken Schenk Hawkins & Ricciardi P.C.  
4742 North 24th Street, Suite 100  
Phoenix, AZ 85016  
(Counsel to Maricopa County)  
***First Class Mail***

Andrew Cardonick, Esq  
Greenberg Traurig, LLP  
77 West Wacker Drive, Suite 3100  
Chicago, IL 60601  
(Counsel to Grace Bay Holdings, II, LLC)  
***First Class Mail***

Craig W. Carlson, Esq.  
The Carlson Law Firm, P.C.  
P.O. Box 10520  
Killeen, TX 76547-0520  
(Counsel to Juanita Stace)  
***First Class Mail***

Scott T. Citek, Esq.  
Lamm & Smith, P.C.  
3730 Kirby Drive, Suite 650  
Houston, TX 77098  
(Counsel to Bay Oil Company)  
***First Class Mail***



**BUILDING MATERIALS HOLDING CORPORATION**  
**2002 SERVICE LIST**  
**5/12/2010**

Theodore A. Cohen, Esq.  
Sheppard, Mullin, Richter & Hampton, LLP  
333 South Hope Street, 48th Floor  
Los Angeles, CA 90071  
(Counsel to Southwest Management, Inc.)  
***First Class Mail***

David V. Cooke, Esq.  
Assistant City Attorney - Municipal Operations  
201 West Colfax Avenue, Dept. 1207  
Denver, CO 80202-5332  
(Counsel to the City and County of Denver)  
***First Class Mail***

Scott D. Cousins, Esq.  
Dennis A. Melero, Esq.  
Greenberg Traurig, LLP  
1007 North Orange Street, Suite 1200  
Wilmington, DE 19801  
(Counsel to Grace Bay Holdings, II, LLC)  
***Hand Delivery***

David N. Crapo, Esq.  
Gibbons P.C.  
One Gateway Center  
Newark, NJ 07102-5310  
(Counsel to Southwest Management, Inc.)  
***First Class Mail***

Raniero D. D'Aversa, Jr., Esq.  
Laura D. Metzger, Esq.  
Weston T. Eguchi, Esq.  
Orrick, Herrington & Sutcliffe LLP  
666 Fifth Avenue  
New York, NY 10103-0001  
(Counsel to Rabobank International)  
***First Class Mail***

Tobey M. Daluz, Esq.  
Joshua E. Zugerman, Esq.  
Ballard Spahr Andrews & Ingersoll, LLP  
919 North Market Street, 12th Floor  
Wilmington, DE 19801  
(Counsel to Westchester Fire Insurance  
Company and ACE USA)  
***Hand Delivery***

Robert J. Dehney, Esq.  
Morris Nichols Arsht & Tunnell LLP  
1201 North Market Street, 18th Floor  
P.O. Box 1347  
Wilmington, DE 19899-1347  
(Counsel to D.R. Horton, Inc.)  
***Hand Delivery***

John P. Dillman, Esq.  
Linebarger Goggan Blair & Sampson LLP  
P.O. Box 3064  
Houston, TX 77253-3064  
(Counsel to Cypress-Fairbanks ISD, Fort Bend  
County, and Harris County)  
***First Class Mail***

Mark W. Eckard, Esq.  
Reed Smith LLP  
1201 North Market Street, Suite 1500  
Wilmington, DE 19801  
(Counsel to CIT Technology Financing  
Services, Inc.)  
***Hand Delivery***

William R. Firth, III, Esq.  
Gibbons P.C.  
1000 North West Street, Suite 1200  
Wilmington, DE 19801  
(Counsel to Southwest Management, Inc.)  
***Hand Delivery***

**BUILDING MATERIALS HOLDING CORPORATION**  
**2002 SERVICE LIST**  
**5/12/2010**

Kevin B. Fisher, Esq.  
Seth Mennillo, Esq.  
Paul, Hastings, Janofsky & Walker LLP  
55 Second Street, 24th Floor  
San Francisco, CA 94105  
(Counsel to Wells Fargo Bank, N.A.)  
***First Class Mail***

John M. Flynn, Esq.  
Carruthers & Roth, P.A.  
235 North Edgeworth Street  
P.O. Box 540  
Greensboro, NC 27401  
(Counsel to Arrowood Indemnity Company)  
***First Class Mail***

Christopher J. Giaimo, Jr., Esq.  
Katie A. Lane, Esq.  
Arent Fox LLP  
1050 Connecticut Avenue, NW  
Washington, DC 20036-5339  
(Counsel to the Official Committee of  
Unsecured Creditors)  
***First Class Mail***

Adam C. Harris, Esq.  
David J. Karp, Esq.  
Schulte Roth & Zabel LLP  
919 Third Avenue  
New York, NY 10022  
(Counsel to DK Acquisition Partners, L.P.)  
***First Class Mail***

Paul N. Heath, Esq.  
Richards, Layton & Finger, P.A.  
One Rodney Square  
920 North King Street  
Wilmington, DE 19801  
(Counsel to Wells Fargo Bank, N.A.)  
***Hand Delivery***

David G. Hellmuth, Esq.  
Hellmuth & Johnson, PLLC  
10400 Viking Drive, Suite 500  
Eden Prairie, MN 55344  
(Counsel to FCA Construction Company, LLC)  
***First Class Mail***

Melody C. Hogston  
Royal Mouldings Limited  
P.O. Box 610  
Marion, VA 24354  
***First Class Mail***

Eric H. Holder, Jr., Esq.  
U. S. Attorney General  
Department of Justice –  
Commercial Litigation Branch  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530-0001  
***First Class Mail***

James E. Huggett, Esq.  
Amy D. Brown, Esq.  
Margolis Edelstein  
750 Shipyard Drive, Suite 102  
Wilmington, DE 19801  
(Counsel to Eduardo Acevedo, et al.)  
***First Class Mail***

IKON Financial Services  
Attn: Bankruptcy Administration  
1738 Bass Road  
P.O. Box 13708  
Macon, GA 31208-3708  
***First Class Mail***

**BUILDING MATERIALS HOLDING CORPORATION**  
**2002 SERVICE LIST**  
**5/12/2010**

Internal Revenue Service  
Attn: Insolvency Section  
11601 Roosevelt Blvd., Mail Drop N781  
P.O. Box 21126  
Philadelphia, PA 19114  
***First Class Mail***

Thomas W. Isaac, Esq.  
Dietrich, Glasrud, Mallek & Aune  
5250 North Palm Avenue, Suite 402  
Fresno, CA 93704  
(Counsel to Wilson Homes, Inc.)  
***First Class Mail***

Neal Jacobson, Esq.  
Senior Trial Counsel  
Securities and Exchange Commission  
3 World Financial Center, Suite 400  
New York, NY 10281  
***First Class Mail***

Michael J. Joyce, Esq.  
Cross & Simon, LLC  
913 North Market Street, 11th Floor  
Wilmington, DE 19801  
(Counsel to Arrowood Indemnity Company)  
***Hand Delivery***

Thomas L. Kent, Esq.  
Paul, Hastings, Janofsky & Walker LLP  
75 East 55th Street, 1st Floor  
New York, NY 10022  
(Counsel to Wells Fargo Bank)  
***First Class Mail***

Gary H. Leibowitz, Esq.  
Cole, Schotz, Meisel, Forman & Leonard, P.A.  
300 East Lombard Street, Suite 2600  
Baltimore, MD 21202  
(Counsel to CNH Capital America, LLC)  
***First Class Mail***

Louisiana-Pacific Corporation  
Attn: Bruce J. Iddings  
P.O. Box 4000-98  
Hayden Lake, ID 83835-4000  
(Top 50)  
***First Class Mail***

Cliff W. Marcek, Esq.  
Cliff W. Marcek, P.C.  
700 South Third Street  
Las Vegas, NV 89101  
(Counsel to Edward and Gladys Weisgerber)  
***First Class Mail***

Dan McAllister  
San Diego County Treasurer-Tax Collector,  
Bankruptcy Desk  
1600 Pacific Highway, Room 162  
San Diego, CA 92101  
***First Class Mail***

David B. McCall, Esq.  
Gay, McCall, Issacks, Gordon & Roberts, P.C.  
777 East 15th Street  
Plano, TX 75074  
(Counsel to the Collin County Tax  
Assessor/Collector)  
***First Class Mail***

**BUILDING MATERIALS HOLDING CORPORATION**  
**2002 SERVICE LIST**  
**5/12/2010**

Frank F. McGinn, Esq.  
Bartlett Hackett Feinberg, P.C.  
155 Federal Street, 9th Floor  
Boston, MA 02110  
(Counsel to Iron Mountain Information  
Management, Inc.)  
***First Class Mail***

Joseph J. McMahon, Jr., Esq.  
Office of the United States Trustee  
844 King Street, Suite 2207  
Lock Box 35  
Wilmington, DE 19801  
***Hand Delivery***

Joseph McMillen  
Midlands Claim Administrators, Inc.  
3503 N.W. 63rd Street, Suite 204  
P.O. Box 23198  
Oklahoma, OK 73123  
***First Class Mail***

Kathleen M. Miller, Esq.  
Smith, Katzenstein & Furlow LLP  
800 Delaware Avenue, 7th Floor  
P.O. Box 410  
Wilmington, DE 19801  
(Counsel to Airgas, Inc.)  
***Hand Delivery***

Sheryl L. Moreau, Esq.  
Missouri Department of Revenue –  
Bankruptcy Unit  
P.O. Box 475  
Jefferson City, MO 65105-0475  
***First Class Mail***

Charles J. Pignuolo, Esq.  
Devlin & Pignuolo, P.C.  
1800 Bering Drive, Suite 310  
Houston, TX 77057  
(Counsel to Partners in Building, L.P.)  
***First Class Mail***

Margery N. Reed, Esq.  
Wendy M. Simkulak, Esq.  
Duane Morris LLP  
30 South 17th Street  
Philadelphia, PA 19103-4196  
(Counsel to ACE Companies)  
***First Class Mail***

Michael Reed, Esq.  
McCreary, Veselka, Bragg & Allen, P.C.  
P.O. Box 1269  
Round Rock, TX 78680  
(Counsel to Local Texas Taxing Authorities)  
***First Class Mail***

Jonathan Lee Riches  
Federal Medical Center  
P.O. Box 14500  
Lexington, KY 40512  
***First Class Mail***

Debra A. Riley, Esq.  
Allen Matkins Leck Gamble  
Mallory & Natsis LLP  
501 West Broadway, 15th Floor  
San Diego, CA 92101  
(Counsel to D.R. Horton, Inc.)  
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**BUILDING MATERIALS HOLDING CORPORATION**  
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**5/12/2010**

Randall A. Rios, Esq.  
Timothy A. Million, Esq.  
Munsch Hardt Kopf & Harr, PC  
700 Louisiana, 46th Floor  
Houston, TX 77002  
(Counsel to Cedar Creek Lumber, Inc.)  
***First Class Mail***

Martha E. Romero, Esq.  
Romero Law Firm  
6516 Bright Avenue  
Whittier, CA 90601  
(Counsel to Yuba County and  
San Bernardino County)  
***First Class Mail***

George Rosenberg, Esq.  
Assistant Arapahoe County Attorney  
5334 South Prince Street  
Littleton, CO 80166  
(Counsel to Arapahoe County Treasurer)  
***First Class Mail***

Howard C. Rubin, Esq.  
Kessler & Collins, P.C.  
2100 Ross Avenue, Suite 750  
Dallas, TX 75201  
(Counsel to CRP Holdings B, L.P.)  
***First Class Mail***

Bradford J. Sandler, Esq.  
Jennifer R. Hoover, Esq.  
Jennifer E. Smith, Esq.  
Benesch, Friedlander, Coplan & Aronoff LLP  
222 Delaware Avenue, Suite 801  
Wilmington, DE 19801  
(Counsel to the Official Committee of  
Unsecured Creditors)  
***Hand Delivery***

Secretary of State  
Franchise Tax  
Division of Corporations  
P.O. Box 7040  
Dover, DE 19903  
***First Class Mail***

Secretary of Treasury  
Attn: Officer, Managing Agent or General  
Agent  
P.O. Box 7040  
Dover, DE 19903  
***First Class Mail***

Securities & Exchange Commission  
Attn: Christopher Cox  
100 F Street, NE  
Washington, DC 20549  
***First Class Mail***

Securities & Exchange Commission  
Bankruptcy Unit  
Attn: Michael A. Berman, Esq.  
450 Fifth Street NW  
Washington, DC 20549  
***First Class Mail***

Ellen W. Slights, Esq.  
Assistant United States Attorney  
U.S. Attorney's Office  
1007 Orange Street, Suite 700  
P.O. Box 2046  
Wilmington, DE 19899  
***Hand Delivery***

**BUILDING MATERIALS HOLDING CORPORATION**  
**2002 SERVICE LIST**  
**5/12/2010**

Tennessee Department of Revenue  
c/o Tennessee Attorney General's Office,  
Bankruptcy Division  
P.O. Box 20207  
Nashville, TN 37202-0207  
***First Class Mail***

Kimberly Walsh, Esq.  
Assistant Attorney General  
Texas Comptroller of Public Accounts,  
Bankruptcy & Collections Division  
P.O. Box 12548  
Austin, TX 78711-2548  
***First Class Mail***

Christopher A. Ward, Esq.  
Shanti M. Katona, Esq.  
Polsinelli Shughart PC  
222 Delaware Avenue, Suite 1101  
Wilmington, DE 19801  
(Counsel to SunTrust Bank)  
***Hand Delivery***

Paul M. Weiser, Esq.  
Buchalter Nemer  
16435 North Scottsdale Road, Suite 440  
Scottsdale, AZ 85254-1754  
(Counsel to Elwood HA, L.L.C.)  
***First Class Mail***

Elizabeth Weller, Esq.  
Linebarger Goggan Blair & Sampson LLP  
2323 Bryan Street, Suite 1600  
Dallas, TX 75201  
(Counsel to Dallas County  
and Tarrant County)  
***First Class Mail***

Duane D. Werb, Esq.  
Julia B. Klein, Esq.  
Werb & Sullivan  
300 Delaware Avenue, Suite 1300  
Wilmington, DE 19801  
(Counsel to CRP Holdings B, L.P.)  
***Hand Delivery***

Joanne B. Wills, Esq.  
Sally E. Veghte, Esq.  
Klehr, Harrison, Harvey,  
Branzburg & Ellers LLP  
919 Market Street, Suite 1000  
Wilmington, DE 19801  
(Counsel to Rabobank International)  
***Hand Delivery***

Jennifer St. John Yount, Esq.  
Jennifer B. Hildebrandt, Esq.  
Paul, Hastings, Janofsky & Walker, LLP  
515 South Flower Street, Twenty-Fifth Floor  
Los Angeles, CA 90071  
(Counsel to Wells Fargo Foothill, LLC)  
***First Class Mail***