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IN THE UNITED STATES BANKRUPTCY COURT FOR THE
DISTRICT OF DELAWARE
WILMINGTON DIVISION

IN THE MATTER OF:

CASE NO. 09-12074

BUILDING MATERIALS HOLDING CORPORATION, et al.,

CHAPTER 11

DEBTOR

Jointly Administered

OBJECTION TO INTERIM ORDER AND TO THE ENTRY OF FINAL
ORDER (I) AUTHORIZING THE DEBTORS TO (A) OBTAIN POSTPETITION
SECURED FINANCING AND (B) UTILIZE CASH COLLATERAL, (II) GRANTING
LIENS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS,
(III) GRANTING ADEQUATE PROTECTION TO PREPETITION LENDERS,
(IV) MODIFYING THE AUTOMATIC STAY...

TO THE HONORABLE BANKRUPTCY JUDGE:

NOW COME County of Comal, Texas, City of New Braunfels, Comal Independent School
District, County of Taylor, City of Abilene, Abilene Independent School District, County of
Williamson, Midland Central Appraisal District, City Of Coppell, Coppell Independent School
District, Dallas County, Tarrant County, Bexar County, Cypress-Fairbanks Independent School

District, Fort Bend County, And Harris County (hereinafter referred to as “Texas Tax Authorities”) and file their Objection to Interim Order and to Entry of Final Order (I) Authorizing the Debtors to (A) Obtain PostPetition Secured Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Status (III) Granting Adequate Protection to Prepetition Lenders...(hereinafter the “DIP Financing”) and in so doing would show the Court the following:

I.

The Texas Tax Authorities are political subdivisions of the State of Texas and hold secured tax claims for the 2009 tax year on real and business personal property owned by the Debtors.

II.

As of January 1, 2009, these ad valorem taxes accrued and were secured with a security interest that is superior to that of any other secured claim pursuant to the Texas Constitution, Article VIII, Section 15, and the Texas Property Tax Code, Section 32.01 and Section 32.05(b) see also *Stanford v. Butler*, 826 F.2d 353 (5th Cir. 1987); *Universal Seismic Associates, Inc.*, 288 F.3d 205 (5th Cir. 2002); *In Re Winn's Stores, Inc.* 177 B.R. 253 (Bkcty W.D. Tex 1995).

III.

Texas Tax Authorities specifically object to distribution of the proceeds of the sale of their collateral, as required in the sweep provisions of the Credit Agreement being authorized by this DIP Financing (paragraph 7.17 of the Credit Agreement).

1. The proceeds from the sale of the collateral of these Texas Tax Authorities constitute the cash collateral of these Texas Tax Authorities, and they object to the use of their collateral or the proceeds of the sale of their collateral to pay any other creditors of this estate.
2. Pursuant to 11 U.S.C. § 363(c)(4), absent consent by the Texas Tax Authorities or an order of the Court permitting use of its cash collateral, the Debtors “shall segregate and account for any cash collateral” in their possession.
3. The Debtors have not filed a motion seeking to use the cash collateral of these Texas Tax Authorities, nor has there been notice or a hearing on the use of these Texas Tax Authorities’ cash collateral.
4. Accordingly, absent their consent, these taxes as well as appropriate interest must either be paid prior to distribution of any proceeds of the sale of their collateral, or a segregated account must be established from any sale proceeds to comply with the requirements of § 363(c)(4).
5. These Texas Tax Authorities are only requesting the segregation of proceeds of the sale of their collateral upon the event of any non-ordinary course sale.

IV.

Further, the Texas Tax Authorities also seek clarification that no ad valorem tax lien of any Texas Tax Authority is being primed by any provision of the DIP Financing Motion, the Credit Agreement, or the Interim or Final DIP Orders.

V.

The following language, if included in the Final Order Authorizing the DIP Financing would be acceptable to resolve the objection of these Texas Tax Authorities:

In resolution of the Objection of the Texas Tax Authorities, in the event of a non-ordinary course sale, there shall be set aside by the debtors, from the proceeds of the sale of any of the debtors' assets located in the state of Texas, an amount equal to the claims of the Texas Tax Authorities, in a segregated account, as adequate protection for the secured claims of the Texas Tax Authorities, prior to the distribution of any proceeds to any other creditor. The liens of the Texas Tax Authorities shall attach to these proceeds to the same extent and with the same priority as the liens they now hold against the property of the debtors. These funds shall be on the order of adequate protection and shall constitute neither the allowance of the claims of the Texas Tax Authorities, nor a cap on the amounts they may be entitled to receive. Furthermore, the claims and liens of the Texas Tax Authorities shall remain subject to any objections any party would otherwise be entitled to raise as to the priority, validity or extent of such liens. These funds may not be distributed apart from agreement between the Texas Tax Authorities and the debtors, or by subsequent order of the Court, duly noticed to the Texas Tax Authorities. Furthermore, nothing contained in either the DIP Financing Motion, the Credit Agreement or the Interim or Final DIP Orders shall have the effect of priming any ad valorem tax lien(s) of the Texas Tax Authorities.

V.

WHEREFORE these Texas Tax Authorities object to the Interim Order and to the entry of any Final Order granting DIP Financing that fails to order appropriate provisions to protect the lien position and cash collateral of these secured tax creditors, and further request other and such relief as is just and proper.

Dated: June 26, 2009

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the above Objection Interim Order and to Entry of a Final Order (I) Authorizing Debtors to Obtain Post-Petition Financing...to the following parties via electronic notification, as well as to all other parties on the electronic matrix via electronic notification, on June 26, 2009:

<p>Proposed Counsel to the Debtors:</p> <p>Young, Conaway, Stargatt & Taylor, LLP The Brandywine Building 1000 West St., 17th Floor Wilmington, DE 19801 Facsimile: (302) 571-1253</p> <p>Attn: Sean M. Beach, Esq. and Robert F. Poppiti, Jr., Esq.</p> <p>and</p> <p>Gibson, Dunn & Crutcher LLP 200 Park Ave., 47th Floor New York, NY 10166-0193 Facsimile: (212) 351-4035</p> <p>Attn: Michael A. Rosenthal, Esq. and Matthew K. Kelsey, Esq.</p>	<p>Counsel to the Prepetition Administrative Agent and Agent:</p> <p>Richards, Layton & Finger, P.A. One Rodney Square 920 King Street Wilmington, DE 19801 Facsimile: (302) 498-7590</p> <p>Attn: Paul N. Heath, Esq.</p> <p>and</p> <p>Paul, Hastings, Janofsky & Walker, LLP 55 Second Street San Francisco, CA 94105-3441 Facsimile: (415) 856-7219</p> <p>Attn: Kevin B. Fisher, Esq.</p> <p>and</p> <p>Paul, Hastings, Janofsky & Walker, LLP 75 East 55th Street New York, NY 10022 Facsimile: (212) 230-7899</p> <p>Attn: Thomas L. Kent, Esq.</p>
<p>Office of the United States Trustee for the District of Delaware</p> <p>844 King Street Suite 2207, Lockbox 35 Wilmington, DE 19801 Facsimile: (302) 573-6497</p> <p>Attn: Joseph J. McMahon, Jr.</p>	

/s/ Michael Reed _____

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