

1 LEWIS AND ROCA LLP
Robert M. Charles, Jr. (Nevada Bar No. 6593)
2 3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169-5996
3 Telephone: 702.949.8320
Facsimile: 702.949.8321
4 E-mail: rcharles@LRLaw.com

5 MORRISON & FOERSTER LLP
G. Larry Engel (CA 53484)
6 425 Market Street
San Francisco, California 94105-2482
7 Telephone: 415.268.7000
Facsimile: 415.268.7522
8 E-mail: lengel@mofo.com

9 MORRISON & FOERSTER LLP
Norman S. Rosenbaum (NY 2371094)
10 Jordan A. Wishnew (NY 4106126)
1290 Avenue of the Americas
New York, New York 10104
11 Telephone: 212.468.8000
Facsimile: 212.468.7900
12 E-mail: nrosenbaum@mofo.com
13 E-mail: jwishnew@mofo.com

LAW OFFICES OF RICHARD
McKNIGHT
Richard McKnight (Nevada Bar No. 001313)
330 S. Third Street #900
Las Vegas, Nevada 89101
Telephone: 702.388.7185
Facsimile: 702.388.0108
E-mail: rmcknight@lawlasvegas.com

STUTMAN TREISTER & GLATT PC
K. John Shaffer (CA 153729)
Robert A. Greenfield (CA 39648)
Anthony Arnold (CA 251973)
1901 Avenue of the Stars, 12th Floor
Los Angeles, California 90067
Telephone: 310.228.5785
Facsimile: 310.228.5788
E-mail: jshaffer@stutman.com
rgreenfield@stutman.com
arnold@stutman.com

14 *Attorneys for JPMorgan Chase Bank, N.A.,
as Administrative Agent*

Attorneys for the Settling Builders

15 **UNITED STATES BANKRUPTCY COURT**
16 **FOR THE DISTRICT OF NEVADA**

17 In Re:
18 SOUTH EDGE, LLC,
19 Debtor.

Case No.: 10-32968 (BAM)

Chapter 11

Hearing Information

Date: September 7, 2011
Time: 9:30 A.M.
Courtroom: #3
Estimated Time for Hearing: 2 hours

23 **MOTION FOR ENTRY OF ORDER APPROVING (A) THE DISCLOSURE**
24 **STATEMENT, (B) THE PLAN PROPONENTS' LIMITED USE OF BMC GROUP,**
25 **INC.'S SERVICES, (C) THE FORM, SCOPE, AND NATURE OF SOLICITATION,**
26 **BALLOTING, TABULATION, AND NOTICES WITH RESPECT TO THE PLAN OF**
27 **REORGANIZATION FILED BY JPMORGAN CHASE BANK, N.A., AS**
28 **ADMINISTRATIVE AGENT UNDER THE PREPETITION CREDIT AGREEMENT,**
AND THE SETTLING BUILDERS, AND (D) RELATED CONFIRMATION
PROCEDURES, DEADLINES, AND NOTICES

1 JPMorgan Chase Bank, N.A., as administrative agent under the Prepetition Credit
2 Agreement¹ (the “Agent”) and the Settling Builders (together, the “Plan Proponents”), move this
3 Bankruptcy Court for entry of an order pursuant to sections 105 and 1125 of the Bankruptcy Code
4 and Bankruptcy Rules 2002, 3002, 3017, 3018, 9006, and 9007, (i) approving the *Disclosure*
5 *Statement for the Joint Plan Of Reorganization Proposed By JPMorgan Chase Bank, N.A., As*
6 *Administrative Agent Under The Prepetition Credit Agreement, and the Settling Builders* [D.E.
7 No. 843] (as may be further amended, modified, or supplemented, the “Disclosure Statement”),
8 (ii) approving the Plan Proponents’ limited use of BMC Group, Inc.’s services in connection with
9 solicitation of the Plan, (iii) approving certain deadlines and procedures relating to plan
10 solicitation, tabulation of ballots, and plan confirmation, and (iv) approving the form and scope of
11 notice of those deadlines and procedures, as proposed herein, with respect to the *Joint Plan Of*
12 *Reorganization Proposed By JPMorgan Chase Bank, N.A., As Administrative Agent Under The*
13 *Prepetition Credit Agreement, and the Settling Builders* [D.E. No. 844] (as may be further
14 amended, modified, or supplemented, the “Plan”) and the Disclosure Statement (the “Solicitation
15 Procedures Motion”).

16 I. BACKGROUND

17 On December 9, 2010, certain of the Prepetition Lenders filed an involuntary chapter 11
18 bankruptcy petition (the “Involuntary Petition”) against the Debtor. In connection with the
19 Involuntary Petition, the Agent filed the *Motion for Appointment of an Interim and Permanent*
20 *Chapter 11 Trustee for South Edge, LLC (I) During the “Gap” Period and (II) on a Permanent*
21 *Basis* [D.E. No. 7].

22 On February 3, 2011, following a contested trial on the Involuntary Petition, the
23 Bankruptcy Court entered an order for relief under chapter 11 of the Bankruptcy Code against the
24 Debtor [D.E. No. 400] and issued an order directing the appointment of a chapter 11 trustee [D.E.
25 No. 401]. On February 20, 2011, the Office of the United States Trustee designated Cynthia
26 Nelson (the “Trustee”) to serve as trustee for the estate of the Debtor (the “Estate”) [D.E. No.

27 ¹ Capitalized terms not otherwise defined herein have the meaning ascribed to them in the Plan (defined below).
28

1 441] and on February 23, 2011, the Bankruptcy Court entered an order approving the
2 appointment of the Trustee as chapter 11 trustee for the Debtor.

3 In recent weeks, the Settling Builders and the Agent, on behalf of itself and the Prepetition
4 Lenders, the key economic constituents of the Estate, negotiated a plan term sheet and plan
5 support agreement (the "Plan Support Agreement") so as to resolve their disputes and allow the
6 Debtor the opportunity to make a timely exit from this chapter 11 case. [see D.E 785, Exh. 2]
7 Although the Trustee is not a party to the Plan Support Agreement and will not be a proponent of
8 the Plan, the effectiveness of the Plan Support Agreement was conditioned upon the Trustee's
9 consenting to the provisions of the Plan Support Agreement. The Trustee provided her consent
10 (the "Consent") subject to certain terms and conditions on June 8, 2011. [see D.E 785, Exh. 3].
11 The Plan Support Agreement is the foundation of the Plan, and on August 1, 2011, the Plan
12 Proponents filed the Plan and Disclosure Statement.

13 **II. RELIEF REQUESTED**

14 **A. Approval of Disclosure Statement**

15 The Plan Proponents request that the Bankruptcy Court approve the Disclosure Statement.
16 The Plan Proponents are providing parties in interest with timely and adequate notice of the
17 hearing on the Disclosure Statement (the "Disclosure Statement Hearing"), as required by
18 Bankruptcy Rules 2002(b), 3017(a) and Local Rule 3017-1(a), and, as discussed in greater detail
19 herein, the Disclosure Statement satisfies the "adequate information" standard of section 1125(a)
20 of the Bankruptcy Code.

21 **B. Approval of BMC Group, Inc. as Voting and Solicitation Agent**

22 BMC Group, Inc., ("BMC") has been retained by the Trustee as the Claims and Noticing
23 Agent [D.E. No. 708] and continues to assist the Trustee in that capacity. The Plan Proponents
24 have separately retained BMC for the limited purpose of assisting the Plan Proponents with
25 serving the Solicitation Package (defined below) and other Plan-related documents, tabulating the
26 Ballots (defined below), and certifying those Ballots to the Bankruptcy Court (in such capacity,
27 the "Voting and Solicitation Agent") in connection with the anticipated confirmation of the Plan.
28 The fees and expenses of BMC, in its capacity as Voting and Solicitation Agent, will be paid

1 solely and directly by the Plan Proponents; further, the Plan Proponents will not ask the Estate to
2 reimburse any of these costs. In the event the Trustee's Consent to the Plan Support Agreement
3 is terminated and the Trustee either proposes a competing plan or supports confirmation of a
4 competing plan, the Plan Proponents will allow BMC to withdraw from its engagement. If that
5 occurs and the Plan Proponents decide to move forward with the Plan, the Plan Proponents will
6 retain and employ a different agent to perform these services. The Plan Proponents have
7 conferred with counsel for the Trustee regarding the engagement of BMC as Voting and
8 Solicitation Agent, and it is the Plan Proponents' understanding that, subject to the terms set forth
9 above, the Trustee does not object to the Plan Proponents utilizing BMC's services for these
10 limited purposes.

11 **C. Service of the Solicitation Package**

12 The Plan Proponents request that the Bankruptcy Court authorize the Plan Proponents to
13 disseminate the Plan, the Disclosure Statement, and the related notices and solicitation materials
14 described herein, and limit the required service of such materials, as follows: On or before
15 **September 13, 2011**, the Plan Proponents will serve (or cause to be served) a solicitation package
16 consisting of: (1) the Plan; (2) the Disclosure Statement; (3) a notice of (a) the Bankruptcy
17 Court's order approving the adequacy of the Disclosure Statement, (b) the scheduled hearing
18 regarding confirmation of the Plan (the "Confirmation Hearing"), and (c) the deadlines for voting,
19 filing objections, and submitting evidence in connection therewith, substantially in the form of the
20 proposed notice attached hereto as **Exhibit 1** (the "Confirmation Hearing Notice"); and (4) an
21 appropriate Ballot or Ballots (if the intended recipient is in an impaired Class that is entitled to
22 vote on the Plan) (collectively, the "Solicitation Package"), on the following entities:

- 23 1. Except with respect to holders of Claims in Class P1, Class S1, Class S2, Class U3
24 and Class E1, the Plan Proponents propose to send the Solicitation Package to all
25 creditors and equity security holders;
- 26 2. Each creditor that the Trustee scheduled as holding a claim in the Schedules of
27 Assets and Liabilities (the "Schedules"), which is neither listed in the immediately
28

1 preceding paragraph nor scheduled as a contingent, unliquidated, or disputed
2 claim;

3 3. All non-debtor parties to unexpired leases and executory contracts as of
4 **September 7, 2011;**

5 4. All parties who have requested special notice in this Chapter 11 case (the “Special
6 Notice Parties”); and

7 5. The Office of the United States Trustee (the “U.S. Trustee”) and the governmental
8 entities enumerated in Bankruptcy Rule 2002(j).

9 With respect to holders of Claims in Class P1, Class S1, and Class S2, who are not
10 entitled to vote because they are either unimpaired or are otherwise deemed to accept the Plan
11 under section 1126(f) of the Bankruptcy Code, the Plan Proponents propose to send only (a) the
12 Confirmation Hearing Notice, (b) the Plan and Disclosure Statement, and (c) a notice
13 substantially in the form of the proposed notice attached hereto as **Exhibit 2(a)** (the “Non-Voting
14 Status Notice-Deemed to Accept”).

15 With respect to holders of Claims or Interests in Class E1, who are equity security holders
16 and are deemed to reject the Plan under section 1126(g) of the Bankruptcy Code, the Plan
17 Proponents propose to send only (a) the Confirmation Hearing Notice, (b) the Plan and the
18 Disclosure Statement, and (c) a notice substantially in the form of the proposed notice attached
19 hereto as **Exhibit 2(b)** (the “Non-Voting Status Notice-Deemed to Reject”), which will instruct
20 such holders how they may obtain copies of the documents contained in the Solicitation Package
21 (excluding Ballots).

22 With respect to holders of Claims or Interests in Class U3, who are impaired creditors that
23 are not entitled to a recovery under the Plan and are therefore deemed to reject the Plan under
24 section 1126(g) of the Bankruptcy Code, the Plan Proponents propose to send (a) the
25 Confirmation Hearing Notice and (b) a Plan and Disclosure Statement and (c) a Non-Voting
26 Status Notice-Deemed to Reject.

27 For solicitation purposes, the Plan Proponents also request that the Bankruptcy Court
28 establish a record date for holders of claims entitled to vote on the Plan to which the Solicitation

1 Package should be sent. Upon information and belief, there has been trading of the Prepetition
2 Lender Claims in this Chapter 11 Case to date, and the Plan Proponents need a mechanism to
3 establish those persons and entities who have the right to vote on the Plan. The Plan Proponents
4 propose that **September 7, 2011**, be established as the record date (the "Record Date").
5 Accordingly, the Plan Proponents propose to send the Solicitation Package to (i) creditors whose
6 claims are identified in the Schedules as neither contingent, unliquidated, nor disputed, and that is
7 not the subject of an objection filed before the Ballot Deadline, (ii) creditors who filed timely
8 proofs of claims that were not disallowed, waived, or withdrawn as of the Record Date, based on
9 the claims register maintained as part of the Bankruptcy Court's docket and the Schedules and
10 (iii) the Prepetition Lenders based on the Agent's records as of the Record Date.

11 With respect to transferred claims, (i) if the notice of transfer required by Bankruptcy Rule
12 3001(e)(2) is filed on or before the Record Date, the Solicitation Package will be mailed to the
13 transferee in accordance with the notice of transfer, and the transferee will be entitled to vote to
14 accept or to reject the Plan, and (ii) if the notice of transfer is filed after the Record Date, then the
15 Solicitation Package will be mailed to the original holder of the claims, and the original holder of
16 the claim will be entitled to vote to accept or to reject the Plan.

17 **D. Approval of Form of Publication Notice**

18 The Plan Proponents further request that the Bankruptcy Court approve the form of, and
19 authorize the Plan Proponents to cause the one-time publication of, the abbreviated notice of the
20 Confirmation Hearing and related deadlines (the "Publication Notice"), substantially in the form
21 attached hereto as **Exhibit 3**, in the *Las Vegas Review-Journal* on or before **September 13, 2011**.

22 **E. Approval of Forms of Ballots**

23 The Plan Proponents further request that the Bankruptcy Court approve and authorize the
24 Plan Proponents to disseminate the following general forms of ballots (each, a "Ballot") for
25 voting on the Plan: (i) the ballot for Class U2 Claims (General Unsecured Claims), substantially
26 in the form of the proposed ballot attached hereto as **Exhibit 4(a)** (the "Class U2 Ballot"); and
27 (ii) the ballot for Class S3 Claims (Prepetition Lender Secured Claims) and Class U1 Claims
28

1 (Prepetition Lender Deficiency Claims), substantially in the form of the proposed ballot attached
2 hereto as **Exhibit 4(b)** (the “Prepetition Lenders’ Ballot”).

3 **F. Approval of Procedures for Balloting and Tabulation of Ballots**

4 The Plan Proponents further request that the Bankruptcy Court approve and authorize the
5 Plan Proponents to employ the following procedures and standard assumptions for balloting and
6 for the tabulation of ballots with respect to the Plan:

- 7 1. With respect to a Claim in Class U2, the amount of a claim for the purposes of
8 Ballot tabulation will be:
 - 9 a. For a Claim identified in the Schedules as neither contingent, unliquidated,
10 nor disputed, and that is not the subject of an objection filed before the
11 Ballot Deadline (defined below), or that has not been disallowed, waived,
12 or withdrawn by order of the Bankruptcy Court, stipulation, or otherwise
13 prior to the Ballot Deadline, and for which no proof of claim has been
14 timely filed, the claim amount as identified in the Schedules (the
15 “Scheduled Amount”);
 - 16 b. For a timely proof of claim that is filed in a specified liquidated amount
17 and that is not the subject of an objection filed before the Ballot Deadline
18 or that has not been disallowed, waived, or withdrawn by order of the
19 Bankruptcy Court, stipulation, or otherwise prior to the Ballot Deadline,
20 the specified liquidated amount in such proof of claim;
 - 21 c. For a timely proof of claim that is filed in a contingent, unliquidated or
22 unknown amount and that is not the subject of an objection filed before the
23 Ballot Deadline or that has not been disallowed, waived, or withdrawn by
24 order of the Bankruptcy Court, stipulation, or otherwise prior to the Ballot
25 Deadline, such claim will count for satisfying the numerosity requirement
26 of section 1126(c) of the Bankruptcy Code and will count as a Ballot for
27 Claims in the amount of \$1.00 solely for the purposes of satisfying the
28 dollar amount provisions of section 1126(c) of the Bankruptcy Code; and

1 d. For a Claim that is the subject of an objection before the Ballot Deadline,
2 only the undisputed amount, if any, of such Claim, unless such claim is
3 temporarily allowed under Bankruptcy Rule 3018(a) at or prior to the
4 Confirmation Hearing. Any creditor whose claim is the subject of an
5 objection may nonetheless tender a Ballot, which shall only be counted as
6 it relates to the disputed amount of such Claim upon the temporary
7 allowance of such Claim for voting purposes.

8 2. With respect to a Claim in Class S3 or Class U1, the amount of such claim for the
9 purpose of Ballot tabulation will be the obligations due under the Prepetition
10 Credit Agreement as of the Petition Date to each Prepetition Lender as reflected in
11 the books and records of the Agent as of the Record Date (**September 7, 2011**),
12 without regard to whether a proof of claim has been filed and without regard to the
13 identities of the Prepetition Lenders listed on the Schedules.

14 3. With respect to a Claim in Class U2, if an entity submits a Ballot for a claim (i) for
15 which there is no timely proof of claim filed and for which there is no
16 corresponding Scheduled Amount, or (ii) which is the subject of an unresolved
17 objection filed prior to the Confirmation Hearing, such Ballot will not be counted
18 unless otherwise ordered by the Bankruptcy Court.

19 4. BMC, in its capacity as the Voting and Solicitation Agent, will tabulate the Class
20 U2 Ballots and the Prepetition Lenders' Ballots. Pursuant to Local Rule 3018(a),
21 the Voting and Solicitation Agent will prepare and file a ballot summary (the
22 "Ballot Summary") no later than one business day prior to the Confirmation
23 Hearing.

24 a. The Plan Proponents will provide notice of the Ballot Summary to the
25 Debtor, the Chapter 11 Trustee, the U.S. Trustee, all parties who have
26 requested notice pursuant to Bankruptcy Rule 2002, and all parties who
27 have timely filed an objection to the Plan by the Plan Objection Deadline.
28 The Plan Proponents will also deliver a copy of the Ballot Summary to the

1 chambers of the Honorable Bruce A. Markell at 300 Las Vegas Blvd. S.,
2 Las Vegas, NV 89101.

3 b. The Ballot Summary will, among other things, (a) describe each Class and
4 whether or not it is Impaired; (b) provide the number of votes received, the
5 number of votes voting to accept the Plan and their aggregate dollar
6 amount, and the number of votes voting to reject the Plan and their
7 aggregate dollar amount; (c) indicate whether the Plan has received
8 sufficient votes to be confirmed; and (d) delineate every irregular Ballot
9 including, without limitation, those Ballots that are late or (in whole or in
10 material part) illegible, unidentifiable, lack signatures or lack necessary
11 information, received via facsimile or electronic mail, or damaged. The
12 Ballot Summary will indicate the Plan Proponents' intentions with regard
13 to irregular Ballots.

14 5. Except as otherwise provided in the Solicitation Procedures, unless the Ballot
15 being furnished is timely submitted on or prior to the Ballot Deadline, the Plan
16 Proponents will reject such Ballot as invalid and, therefore, decline to count it in
17 connection with Confirmation of the Plan.

18 6. The Voting and Solicitation Agent will date all Ballots when received. The Voting
19 and Solicitation Agent will retain the original Ballots and an electronic copy of the
20 same for a period of one year after the Ballot Deadline, unless otherwise ordered
21 by the Bankruptcy Court.

22 7. An original executed Ballot is required to be submitted by the party submitting
23 such Ballot. Delivery of a Ballot to the Voting and Solicitation Agent by
24 facsimile, e-mail, or any other electronic means will not be valid.

25 8. The method of delivery of Ballots to the Voting and Solicitation Agent is at the
26 election and risk of each Holder of a Claim. Except as otherwise provided in the
27 Solicitation Procedures Order, delivery will be deemed made only when the
28 Voting and Solicitation Agent actually receives the originally executed Ballot.

- 1 9. No Ballot should be sent to the Bankruptcy Court, Clerk of the Bankruptcy Court,
2 the Debtor, the Trustee, the Plan Proponents or their agents (other than the Voting
3 and Solicitation Agent) or financial or legal advisors, and if so sent, will not be
4 counted.
- 5 10. If multiple Ballots are received from the same Holder of a Claim with respect to
6 the same Claim prior to the Ballot Deadline, the latest dated, validly executed
7 Ballot timely received will supersede and revoke any prior Ballot.
- 8 11. Holders must vote all of their Claims within a particular Class either to accept or
9 reject the Plan and may not split their votes. Accordingly, a Ballot that partially
10 rejects and partially accepts the Plan will not be counted. Further, if a Holder has
11 multiple Claims within the same Class, the Plan Proponents may, in their
12 discretion, aggregate the Claims of any particular Holder within a Class for the
13 purpose of counting votes.
- 14 12. Any creditor that requires additional copies of a Ballot may obtain an additional
15 Ballot pursuant to the instructions set forth in the Confirmation Hearing Notice
16 and the proposed Ballots.
- 17 13. A person signing a Ballot in its capacity as a trustee, executor, administrator,
18 guardian, attorney in fact, officer of a corporation, or otherwise acting in a
19 fiduciary or representative capacity must indicate such capacity when signing and,
20 if required or requested by the Voting and Solicitation Agent, the Plan Proponents,
21 or the Bankruptcy Court, must submit proper evidence to the requesting party to so
22 act on behalf of such Holder.
- 23 14. Subject to any contrary order of the Bankruptcy Court, the Plan Proponents reserve
24 the right to reject any and all Ballots not in proper form, the acceptance of which,
25 in the opinion of the Plan Proponents, would not be in accordance with the
26 provisions of the Bankruptcy Code, the Bankruptcy Rules, or the terms of the
27 Solicitation Procedures Order; provided, that any such rejections shall be
28 documented in the Ballot Summary.

- 1 15. The following Ballots shall not be counted in determining the acceptance or
2 rejection of the Plan: (a) any Ballot that is illegible or contains insufficient
3 information to permit the identification of the Holder of the Claim; (b) any Ballot
4 cast by a party that does not hold a Claim in a Class that is entitled to vote on the
5 Plan; (c) any Ballot cast for a Claim scheduled as contingent, disputed, or
6 unliquidated or for which the applicable Bar Date has passed and no Proof of
7 Claim was timely filed; (d) any unsigned Ballot; (e) any Ballot marked both to
8 accept and reject the Plan; (f) any Ballot sent by facsimile or other electronic
9 means; (g) any Ballot submitted by any party not entitled to vote pursuant to the
10 Solicitation Procedures; and (h) any Ballot that is incomplete; provided, however,
11 that any Ballot that is signed but that does not indicate an acceptance or rejection
12 of the Plan shall be deemed to be a Ballot accepting the Plan.
- 13 16. The Plan Proponents, subject to contrary order of the Bankruptcy Court, may
14 waive any defects or irregularities as to any particular Ballot at any time, either
15 before or after the close of voting; provided, that any such waivers will be
16 documented in the Ballot Summary.
- 17 17. Neither the Plan Proponents, nor any other party, will be under any duty to provide
18 notification of defects or irregularities with respect to delivered Ballots other than
19 as provided in the Ballot Summary, nor will any party incur any liability for failure
20 to provide such notification.
- 21 18. Unless waived by the Plan Proponents, subject to a contrary order of the
22 Bankruptcy Court, any defects or irregularities in connection with deliveries of
23 Ballots must be cured prior to the Ballot Deadline or such Ballots will not be
24 counted.
- 25 19. In the event a designation for lack of good faith is requested by a party in interest
26 under section 1126(e) of the Bankruptcy Code, the Bankruptcy Court will
27 determine whether any vote to accept and/or reject the Plan cast with respect to
28

1 that Claim will be counted for purposes of determining whether the Plan has been
2 accepted and/or rejected by such Claim.

- 3 20. If a Claim has been estimated or otherwise allowed for voting purposes by an
4 order of the Bankruptcy Court pursuant to Bankruptcy Rule 3018(a), such Claim
5 will be temporarily allowed in the amount so estimated or allowed by the
6 Bankruptcy Court for voting purposes only and not for purposes of allowance or
7 distribution.

8 **G. Fixing of Requisite Dates, Deadlines, Briefing Procedures, and Confirmation**
9 **Hearing**

10 The Plan Proponents further request that the Bankruptcy Court establish (i) a deadline for
11 receipt of Ballots to accept or reject the Plan; (ii) a deadline for filing the Ballot Summary with
12 the Bankruptcy Court; (iii) the last date for filing a memorandum in support of confirmation of
13 the Plan; (iv) the last date for filing objections to confirmation of the Plan and responses thereto;
14 and (v) related procedures, as follows:

- 15 1. The Plan Proponents request that Ballots to accept or reject the Plan must be
16 received by the Voting and Solicitation Agent by **October 7, 2011 at 4:00 p.m.**
17 **(PDT)** (the "Ballot Deadline"). All Ballots must be returned to and actually
18 received by the Voting and Solicitation Agent on or before the Ballot Deadline in
19 order to be counted.
- 20 2. The Plan Proponents further request that any party objecting to confirmation of the
21 Plan, including any objection by a non-debtor party to an executory contract or an
22 unexpired lease to be assumed under the Plan, including to the amount of its Cure
23 Amount under the Plan, must file and serve its objection and evidence in support
24 thereof on or before **October 7, 2011 at 4:00 p.m. (PDT)**. Any objection must be
25 in writing, specify the name of and address for service on the objecting party
26 ("Objecting Party"), set forth the amount of the Objecting Party's claims and any
27 other grounds giving the Objecting Party standing to object, set forth the basis for
28 the objection, and be accompanied by the Objecting Party's evidentiary support for

1 its objection, including declarations made under penalty of perjury and other
2 admissible evidence. The objection and evidence in support thereof must be
3 served on the Plan Proponents, counsel for the Plan Proponents, the Trustee,
4 counsel for the Trustee, the U.S. Trustee, and the Special Notice Parties. Any
5 objection not timely filed and served will be deemed to be waived and to be
6 consent to the Bankruptcy Court's entry of an order confirming the Plan.

7 3. The Plan Proponents further request that the deadline by which (i) the Plan
8 Proponents' memorandum and evidence (i.e., declarations and exhibits) in support
9 of confirmation of the Plan, together with the Plan Proponents' omnibus reply to
10 any objections to confirmation of the Plan be filed and served by **October 11,**
11 **2011**, (ii) objections to the Plan proponents' declarations and exhibits in support of
12 confirmation shall be filed and served by **October 13, 2011**, and (iii) the Ballot
13 Summary be submitted to the Bankruptcy Court and be filed and served by
14 **October 16, 2011**. The Ballot Summary, memorandum, evidence, and/or reply
15 shall be served on any Objecting Party, the Trustee, the U.S. Trustee, and the
16 Special Notice Parties.

17 4. The Plan Proponents further request that the Bankruptcy Court set a time on
18 **October 17, 2011** to commence the confirmation hearing on the Plan.

19 **III. LEGAL AUTHORITIES**

20 **A. The Disclosure Statement Should Be Approved**

21 **1. The Plan Proponents Are Providing Timely and Adequate Notice of the** 22 **Disclosure Statement Hearing and the Disclosure Statement Objection** 23 **Deadline**

24 According to Bankruptcy Rule 3017(a):

25 [A]fter a disclosure statement is filed in accordance with
26 [Bankruptcy] Rule 3016(b), the court shall hold a hearing on at
27 least 28 days' notice to the debtor, creditors, equity security holders
28 and other parties in interest as provided in [Bankruptcy] Rule 2002
to consider the disclosure statement and any objections or
modifications thereto. The plan and the disclosure statement shall
be mailed with the notice of the hearing only to the debtor, any

1 trustee or committee appointed under the Code, the Securities and
2 Exchange Commission, and any party in interest who requests in
3 writing a copy of the statement or plan. Objections to the
4 disclosure statement shall be filed and served on the debtor, the
5 trustee, any committee appointed under the [Bankruptcy] Code, and
6 any other entity designated by the court, at any time before the
7 disclosure statement is approved or by an earlier date as the court
8 may fix....

9 FED. R. BANKR. P. 3017(a). In accordance with Local Rule 3017-1(a) and Bankruptcy Rule
10 3017(a), the Plan Proponents are providing at least 28 days' notice of the Disclosure Statement
11 Hearing to those parties required by Bankruptcy Rule 2002(b) to receive notice.

12 Specifically, the notice of this Motion identifies the date, time and place of the Disclosure
13 Statement Hearing and the deadline to file an objection to the Disclosure Statement. Pursuant to
14 Bankruptcy Rule 2002(b)(1), the notice of this Motion specifically provides that objections or
15 proposed modifications to the Disclosure Statement, if any, must (a) be in writing, (b) state the
16 name and address of the objecting party and the nature of the Claim or Interest of such party;
17 (c) state with particularity the basis and nature of any objection or response and include, where
18 appropriate, proposed language to be inserted in the Disclosure Statement to resolve any such
19 objection or response; and (d) be filed, together with proof of service, with the Bankruptcy Court
20 and served so as to be actually received on or before **August 29, 2011** at 4:00 p.m. (PDT) by the
21 Plan Proponents, the Trustee, and the U.S. Trustee, and their respective counsel. Accordingly, the
22 Plan Proponents are providing adequate notice of the Disclosure Statement objection deadline and
23 the Disclosure Statement Hearing.

24 **2. The Disclosure Statement Contains Adequate Information**

25 Bankruptcy Code section 1125(b) provides that an acceptance or rejection of a proposed
26 chapter 11 plan may not be solicited from a party unless and until there has been transmitted to
27 that party (1) either the plan or a summary of the plan and (2) a written disclosure statement that
28 the bankruptcy court has approved, after notice and a hearing, as containing adequate
information. The Bankruptcy Code defines adequate information that would enable a
hypothetical, reasonable investor to make an informed judgment about the proposed plan:

“[A]dequate information” means information of a kind, and in
sufficient detail, as far as is reasonably practical in light of the

1 nature and history of the debtor and the condition of the debtor's
2 books and records, including a discussion of the potential material
3 Federal tax consequences of the plan to the debtor, any successor to
4 the debtor, and a hypothetical investor typical of the holders of the
5 claims or interests in the case, that would enable such a
6 hypothetical investor of the relevant class to make an informed
7 judgment about the plan, but adequate information need not include
8 such information about any other possible or proposed plan and in
9 determining whether a disclosure statement contains adequate
10 information, the court shall consider the complexity of the case, the
11 benefit of additional information to creditors and other parties in
12 interest, and the cost of providing additional information....

13 11 U.S.C. § 1125(a). The reason that the Bankruptcy Code requires such "adequate information"
14 is to require a plan proponent to furnish to voting classes of claims and interests (if applicable)
15 sufficient financial and operating information to enable each voting party to make an "informed
16 judgment" whether to accept or reject a proposed plan of reorganization. *See, e.g., Duff v. U.S.*
17 *Trustee (In re Cal. Fid., Inc.)*, 198 B.R. 567, 571 (B.A.P. 9th Cir. 1996) ("The purpose of a
18 disclosure statement is to give all creditors a source of information which allows them to make an
19 informed choice regarding the approval or rejection of a plan."); *In re Valrico Square Ltd. P'ship*,
20 113 B.R. 794, 795 (Bankr. S.D. Fla. 1990); *In re Stanley Hotel, Inc.*, 13 B.R. 926 (Bankr. D.
21 Colo. 1981).

22 The determination of whether a particular disclosure statement provides adequate
23 information is subjective, made on a case-by-case basis, and is largely within the discretion of the
24 bankruptcy court. *See, e.g., Computer Task Grp., Inc. v. Brothby (In re Brothby)*, 303 B.R. 177, 193
25 (B.A.P. 9th Cir. 2003). In making this determination, depending on the circumstances of the
26 debtor and its case, courts may consider whether the disclosure statement provides the following
27 information:

- 28 1. A description of the events that led to the commencement of a bankruptcy case;
2. A description of the debtor's available assets and their actual or potential value;
3. A discussion of the anticipated future of the company;
4. A description of the source of information contained in the disclosure statement;
5. A disclaimer;
6. A discussion of the debtor's condition during its chapter 11 case;

- 1 7. A discussion of scheduled and filed claims against the debtor;
- 2 8. An analysis of the estimated return to creditors under a chapter 7 liquidation;
- 3 9. A discussion of the debtor's future management or successor(s);
- 4 10. Either the chapter 11 plan or a summary of the plan;
- 5 11. A discussion of estimated administrative expenses, including professionals' fees;
- 6 12. Financial information, data, or projections relevant to the creditors' decision to
- 7 accept or reject the chapter 11 plan;
- 8 13. Information relevant to the risks posed to creditors under the plan;
- 9 14. A discussion of preferential or otherwise voidable transfers;
- 10 15. A discussion of the litigation likely to arise; and
- 11 16. An analysis of tax implications of the plan.

12 *See, e.g., In re Metrocraft Publ'g Servcs., Inc.*, 39 B.R. 567, 568 (Bankr. N.D. Ga. 1984)

13 (identifying certain factors comprising "adequate information" including the foregoing or related

14 items and other potential factors); *In re Phx. Petroleum Co.*, 278 B.R. 385, 393 (Bankr. E.D. Pa.

15 2001) (same); *In re Reilly*, 71 B.R. 132 (Bankr. D. Mont. 1987) (same).

16 The Disclosure Statement provides information about the Estate's assets and the Debtor's

17 liabilities [*see* Article II], an extensive discussion of the events leading up to the commencement

18 of the bankruptcy case [*see* Article III], a detailed explanation of the proposed Plan [*see* Article

19 IV] and the underlying and related financial information and other data. In addition, the

20 Disclosure Statement sets forth certain bankruptcy considerations that could affect the Plan

21 Proponents' ability to confirm the Plan and achieve the Plan Effective Date [*see* Article VI], and

22 also discusses the tax implications of the Plan [*see* Article VII]. Based on all of the information

23 contained in the Disclosure Statement and exhibits thereto, including the financial and other

24 information to be filed as part of the Plan Distribution Analysis and Chapter 7 Liquidation

25 Analysis, which comprise *Exhibit C* to the Disclosure Statement, a hypothetical, reasonable

26 investor should have an adequate understanding of the claims currently asserted against the

27 Debtor as well as the estimated return to creditors, and thus, be able to make an informed

28 judgment about the proposed Plan. Therefore, the Disclosure Statement meets the adequate

1 information requirement of Bankruptcy Code section 1125 and should be approved for
2 distribution and for use in soliciting votes to accept or reject the proposed Plan.

3 **B. The Proposed Procedures for the Form, Scope, and Nature of Solicitation, Balloting,**
4 **Tabulation, and Notices Are Reasonable and Appropriate**

5 1. **Distribution of the Solicitation Package Is Appropriate Under Bankruptcy**
6 **Rule 3017(d)**

7 Bankruptcy Rule 3017(d) requires a plan proponent to mail copies of the plan, the
8 disclosure statement, and a notice regarding the deadlines for voting on the plan to all creditors
9 and equity security holders, except to the extent that the court orders otherwise with respect to
10 one or more unimpaired classes of creditors equity security holders. FED. R. BANKR. P. 3017(d).
11 In accordance with this rule, the Plan Proponents propose to send the Solicitation Packages to
12 substantially all creditors, which will include the Plan and Disclosure Statement, the
Confirmation Hearing Notice, and a Ballot (if applicable).

13 2. **The Proposed Forms of Confirmation Hearing Notice, Publication Notice,**
14 **and Ballots Are Appropriate Under Bankruptcy Rule 3017(d)**

15 Bankruptcy Rule 3017(d) also requires a plan proponent to send to all creditors and
16 interest holders a notice regarding the deadlines for voting on the plan. The rule states that “a
17 form of ballot conforming to the appropriate Official Form shall be mailed to creditors and equity
18 security holders entitled to vote on the plan.” FED. R. BANKR. P. 3017(d)(4); see also FED. R.
19 BANKR. P. 3018(c) (“An acceptance or rejection shall . . . conform to the appropriate Official
20 Form.”).

21 Both the Confirmation Hearing Notice and the Publication Notice provide information
22 about the relevant deadlines required by Bankruptcy Rule 3017(d). Accordingly, the Bankruptcy
23 Court should approve the form of those notices. See FED. R. BANKR. P. 9007 (“When notice is to
24 be given under these rules, the court shall designate . . . the form and manner in which the notice
25 shall be given.”).

26 The proposed forms of the Class U2 Ballot and the Prepetition Lenders’ Ballot, examples
27 of which are attached as Exhibits 4(a) and (b), respectively, conform in all material respects with
28 Official Bankruptcy Form 14, with modifications only to match the particular needs of the various

1 classes of creditors that are entitled to vote on the Plan. Therefore, the Bankruptcy Court also
2 should approve the form of the Class U2 Ballot and the Prepetition Lenders' Ballot.

3 **3. The Proposed Ballot Deadline Is Appropriate Under the Circumstances**

4 Bankruptcy Rule 3017(c) provides that “[o]n or before approval of the disclosure
5 statement, the court shall fix a time within which holders of claims and interests may accept or
6 reject the plan....” FED. R. BANKR. P. 3017(c). The Plan Proponents request that the Bankruptcy
7 Court set **October 7, 2011, at 4:00 p.m. (PDT)**, as the Ballot Deadline.

8 Bankruptcy Rule 3017(d) provides that notice regarding the deadlines for voting on the
9 plan is to be mailed to creditors “in accordance with [Bankruptcy] Rule 2002(b)” together with a
10 form of ballot. FED. R. BANKR. P. 3017(d)(4). Bankruptcy Rule 2002(b) provides that parties in
11 interest shall receive not less than 28 days’ notice. FED. R. BANKR. P. 2002(b). However,
12 Bankruptcy Rule 9006(c) permits the Bankruptcy Court to order that such notice period be
13 reduced “for cause.” FED. R. BANKR. P. 9006(c)(1).

14 As compared to chapter 11 cases of similar magnitude, the number of creditors in this
15 chapter 11 case is relatively limited, consisting of 53 discrete creditors excluding the Prepetition
16 Lenders. The Prepetition Lenders constitute the largest creditor constituency in this chapter 11
17 case, the vast majority of whom have conditionally agreed in principle to the terms of the Plan.
18 Furthermore, the Plan is premised on a Plan Support Agreement among the Agent, a vast majority
19 of the Prepetition Lenders and the Settling Builders that contains certain milestones, including
20 that the confirmation order will be entered no later than October 31, 2011. The Plan Proponents
21 assert that the proposed Ballot Deadline will provide creditors with sufficient time to consider
22 how to vote on the Plan, while at the same time allowing the Plan Proponents to satisfy the
23 milestone requirements of the Plan Support Agreement.

24 The Plan Proponents propose to serve the Solicitation Packages on or before
25 **September 13, 2011**, thereby providing creditors with more than three weeks to review the
26 solicitation materials and to cast ballots on the Plan. This period should be more than sufficient
27 in light of the limited constituencies involved and the relatively straightforward treatment
28 proposed under the Plan. The Plan Proponents respectfully submit that, under the circumstances,

1 the slightly truncated statutory notice period is both necessary and appropriate under the
2 circumstances and will not unduly prejudice parties in interest.

3 **4. The Proposed Procedures for Balloting and Tabulation of Votes Are**
4 **Appropriate Under the Circumstances**

5 Generally, only holders of potentially allowable claims (meaning at least subject to
6 temporary allowance) are entitled to vote to accept or reject a proposed plan of reorganization.
7 See 11 U.S.C. § 1126(a). The Plan Proponents proposed the procedures set forth in the Motion to
8 ensure that only the votes of holders of potentially allowable claims are counted in the tabulation
9 of ballots on the Plan. The Plan Proponents submit that the proposed balloting and tabulation
10 procedures described in Section II.F of this Motion are reasonable and appropriate under the
11 circumstances.

12 **C. The Proposed Procedures and Deadlines for Briefing Are Reasonable and**
13 **Appropriate Under the Circumstances**

14 Bankruptcy Rule 3020(b) provides that “[a]n objection to confirmation of the plan shall be
15 filed and served . . . within a time fixed by the court.” FED. R. BANKR. P. 3020(b)(1). Bankruptcy
16 Rule 2002(b) provides that a plan proponent must provide at least 28 days’ notice of the deadline
17 for filing such objections. FED. R. BANKR. P. 2002(b). However, Bankruptcy Rule 9006(c)
18 permits the Bankruptcy Court to order that such notice period be reduced “for cause.” FED. R.
19 BANKR. P. 9006(c).

20 The Plan Proponents request that any party objecting to confirmation of the Plan,
21 including any objection by a non-debtor party to an executory contract or an unexpired lease to be
22 assumed under the Plan, must file and serve its objection and evidence in support thereof on or
23 before **October 7, 2011 at 4:00 p.m. (PDT)**, a date that is 24 days after the proposed service of
24 the Solicitation Packages by **September 13, 2011**. For the same reasons set forth in Section
25 III.B.3 above (namely, the limited size of the creditor pool, the overwhelming conditional support
26 embodied in the Plan Support Agreement on the part of the Debtor’s largest creditor constituency,
27
28

1 and the necessity for the Plan Proponents to meet their agreed upon milestones), the Plan
 2 Proponents submit that they have established cause to modify the deadlines for objecting to the
 3 Plan, and that the proposed dates for the deadlines for objecting to the Plan and for responding to
 4 such objections, and the related procedures set forth in the Motion, are reasonable and appropriate
 5 under the circumstances.

7 **IV. CONCLUSION**

8 For the convenience of the Bankruptcy Court and other readers, here is the timeline as
 9 envisioned by the Plan Proponents and described in this Motion:

10 Monday, August 1, 2011	File Plan, Disclosure Statement, and Solicitation Procedures Motion
11	
12 Monday, August 1, 2011	Serve the Solicitation Procedures Motion and file Notice of Hearing
13	
14 August 29, 2011	Deadline for objections to Solicitation Procedures Motion
15 September 2, 2011	Deadline for reply to objections to Solicitation Procedures Motion
16	
17 September 7, 2011 at 9:30 a.m. (PDT)	Hearing on Solicitation Procedures Motion
18 September 7, 2011	Record Date for voting
19 September [8], 2011	Order Approving Disclosure Statement And Setting Confirmation Hearing
20	
21 September 13, 2011	Solicitation Date
22 September 13, 2011	Deadline to publish Publication Notice
23 September 23, 2011	File and Serve Plan Supplement, including proposed amendment to Prepetition Credit Agreement
24	
25 October 7, 2011 at 4:00 p.m. (PDT)	Deadline for submitting Ballots and filing and serving objections to confirmation
26 October 11, 2011	Deadline for response to objections to confirmation
27	
28	

1	October 11, 2011	Deadline for declarations and exhibits for confirmation hearing
2		
3	October 13, 2011	Deadline for objections to declarations and exhibits for confirmation hearing
4	October 16, 2011	Ballot Summary must be filed and served
5	October 17, 2011 at 10:00 a.m. (PDT)	Confirmation Hearing
6	October 26, 2011 at 10:00 a.m. (PDT)	Continued Confirmation Hearing
7		

8 Based upon the foregoing, the Plan Proponents respectfully request that the Bankruptcy
9 Court enter an order approving (i) the Disclosure Statement, (ii) the form, scope, and nature of
10 solicitation, balloting, tabulation, and notices with respect to the Plan along with the related
11 confirmation procedures, deadlines, and notices, and (iii) for all such other and further relief to
12 which the Plan Proponents are justly entitled.

13 DATED this 1st day of August, 2011.

14
15 By: /s/ Robert M. Charles, Jr. (#6593)

16 LEWIS AND ROCA LLP
17 Robert M. Charles, Jr.
18 3993 Howard Hughes Parkway, Suite 600
19 Las Vegas, Nevada 89169-5996

MORRISON & FOERSTER LLP
Norman S. Rosenbaum (admitted *pro hac vice*)
Jordan A. Wishnew (admitted *pro hac vice*)
1290 Avenue of the Americas
New York, New York 10104

MORRISON & FOERSTER LLP
G. Larry Engel (admitted *pro hac vice*)
425 Market Street
San Francisco, California 94105-2482

*Attorneys for JPMorgan Chase Bank, N.A.,
as Administrative Agent*

22 LAW OFFICES OF RICHARD
23 McKNIGHT
24 Richard McKnight (Nevada Bar No. 001313)
25 330 S. Third Street #900
26 Las Vegas, Nevada 89101

STUTMAN TREISTER & GLATT PC
K. John Shaffer
Robert A. Greenfield
Anthony Arnold
1901 Avenue of the Stars, 12th Floor
Los Angeles, California 90067

Attorneys for the Settling Builders

EXHIBIT 1

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA

In Re:

SOUTH EDGE, LLC,

Debtor.

Case No.: 10-32968 (BAM)

Chapter 11

Hearing Information

Date: October 17, 2011

Time: []M.

Courtroom: #3

Voting & Response Deadline

October [7], 2011, at 4:00 p.m. (PDT)

**NOTICE OF CONFIRMATION HEARING ON JOINT PLAN OF REORGANIZATION
PROPOSED BY JPMORGAN CHASE BANK, N.A., AS ADMINISTRATIVE AGENT
UNDER THE PREPETITION CREDIT AGREEMENT, AND THE SETTLING
BUILDERS AND RELATED CONFIRMATION PROCEDURES AND DEADLINES**

PLEASE TAKE NOTICE that on September [], 2011, the United States Bankruptcy Court for the District of Nevada (the “Bankruptcy Court”) entered an order (the “Solicitation Procedures Order”) granting the *Motion for Entry of Order Approving (A) the Disclosure Statement, (B) Plan Proponents’ Limited Use of BMC Group, Inc.’s Services, (C) the Form, Scope, and Nature of Solicitation, Balloting, Tabulation, and Notices With Respect to the Joint Plan of Reorganization Filed by JPMorgan Chase Bank, N.A., as Administrative Agent under the Prepetition Credit Agreement, and the Settling Builders, and (D) Related Confirmation Procedures, Deadlines and Notices* [D.E. No. ____]. Pursuant to the Solicitation Procedures Order, the Bankruptcy Court approved that certain *Disclosure Statement For The Joint Plan Of Reorganization Proposed By JPMorgan Chase Bank, N.A., As Administrative Agent Under The Prepetition Credit Agreement, and the Settling Builders* [D.E. No. ____] (the “Disclosure Statement”), finding that it contains adequate information to enable creditors to make an informed judgment when determining whether to vote to accept or reject the *Joint Plan Of Reorganization*

1 *Proposed By JPMorgan Chase Bank, N.A., As Administrative Agent Under The Prepetition*
2 *Credit Agreement, and the Settling Builders [D.E. No. ___] (the “Plan”).*¹

3 In accordance with the Solicitation Procedures Order, **PLEASE TAKE FURTHER**
4 **NOTICE OF THE FOLLOWING:**

5 **DISTRIBUTION OF SOLICITATION MATERIALS**

6 1. The Bankruptcy Court has approved the Disclosure Statement as containing
7 adequate information within the meaning of Bankruptcy Code section 1125(a) and has authorized
8 transmittal of the Disclosure Statement and the Plan in the manner set forth in the Solicitation
9 Procedures Order.

10 2. If you have received this Notice without the Plan and Disclosure Statement, the
11 Plan Proponents believe that you are entitled to receive Notice, but that you do not hold a claim
12 against the Debtor or its estate and will not receive a distribution under the Plan. You
13 nevertheless may obtain a copy of the Plan and Disclosure Statement (along with Solicitation
14 Procedures Order) by accessing the website of the Voting and Solicitation Agent, BMC Group
15 Inc., at www.bmcgroup.com/southedge, or by sending a written request to counsel for either of
16 the Plan Proponents: Morrison & Foerster LLP, Attn: Jordan A. Wishnew, 1290 Avenue of the
17 Americas, New York, New York 10104, Telephone: (212) 336-4328, E-mail:
18 jwishnew@mofo.com; or Stutman Treister & Glatt PC, Attn: K. John Shaffer, 1901 Avenue of
19 the Stars, 12th Floor, Los Angeles, California 90067, Telephone: (310) 228-5785, E-mail:
20 jshaffer@stutman.com.

21 3. If you have received this Notice with the Plan and Disclosure Statement but you
22 have not received a Ballot, the Plan Proponents believe that you are not entitled to vote on the
23 Plan because: (a) you are a creditor who is not impaired by the Plan; (b) you are a creditor who is
24 deemed to reject the Plan; or (c) you are entitled to notice, but you are not a creditor. If you
25 nevertheless believe that you are entitled to vote on the Plan, you must file and serve a motion
26 requesting a determination that you are entitled to vote on the Plan and arrange for such motion to

27 ¹ Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Plan.
28

1 be heard by the Bankruptcy Court at or prior to the Ballot Deadline. Before doing so, however,
 2 you should first confirm that the absence of a Ballot was not inadvertent by contacting the Voting
 3 and Solicitation Agent: BMC Group, Inc., via e-mail at BMC-SouthEdge@bmcgroup.com or via
 4 telephone at 1-888-909-0100.

5 4. If you have received this Notice with the Plan, Disclosure Statement and a Ballot,
 6 the Plan Proponents believe you are a creditor in an impaired class and are entitled to vote on the
 7 Plan.

VOTING PROCEDURES AND DEADLINES

9 5. Creditors who wish to vote on the Plan must return their Ballots to accept or reject
 10 the Plan so that they are actually received by the Voting and Solicitation Agent, BMC, at the
 11 address below by no later than **October 7, 2011, at 4:00 p.m. (PDT)** (the "Ballot Deadline").
 12 Ballots may be transmitted by first-class mail, overnight delivery, or hand delivery. Ballots sent
 13 by email or facsimile will not be accepted. Any Ballots received after the Ballot Deadline will
 14 not be counted. Creditors should return their Ballots, in accordance with the instructions printed
 15 on the Ballots, to the following address:

<u>If Delivered by Mail:</u>	<u>If Delivered by Overnight or Hand Delivery:</u>
BMC Group, Inc. Attention: South Edge, LLC Ballot Processing PO Box 3020 Chanhasen, MN 55317-3020	BMC Group, Inc. Attention: South Edge, LLC Ballot Processing 18750 Lake Drive East Chanhasen, MN 55317

16
17
18
19
20
21 6. Pursuant to the Plan, the deadline for objecting to claims is after the hearing on
 22 confirmation of the Plan. Creditors should not rely on the absence of an objection to their proofs
 23 of claim in determining whether to vote to accept or reject the Plan or as any indication that the
 24 Trustee or the Estate Representative ultimately will not object to the amount, priority, secured
 25 status, or allowance of such claims; unless a claim is expressly allowed in the Plan, the Estate
 26 Representative retains the right to object to the claim after confirmation of the Plan.

1 **PLAN CONFIRMATION HEARING AND DEADLINES FOR OBJECTIONS**

2 7. The hearing on confirmation of the Plan (the “Confirmation Hearing”) will
3 commence on **October 17, 2011 at 10:00 a.m. (PDT)** before the Honorable Bruce A. Markell in
4 Courtroom 3 at 300 Las Vegas Blvd. South, Las Vegas, Nevada 89101 and will be continued if
5 necessary. The Confirmation Hearing may be further continued by announcement in open court
6 without further notice to parties in interest.

7 8. Any objection to confirmation of the Plan, including any objection by a non-debtor
8 party to an executory contract or an unexpired lease to be assumed under the Plan, including to
9 the amount of its Cure Amount pursuant to the Plan or that the non-debtor party is not being
10 furnished with adequate assurance of future performance, must be filed with the Bankruptcy
11 Court and served no later than **October 7, 2011 at 4:00 p.m. (PDT)**. Any such objection must be
12 in writing, specify the name of and address for service on the party objecting (“Objecting Party”),
13 set forth the amount of the Objecting Party’s claims and any other grounds giving the Objecting
14 Party standing to object, set forth the grounds for the objection, and be accompanied by the
15 Objecting Party’s evidentiary support for its objection, including declarations made under penalty
16 of perjury and other admissible evidence. The objection and evidence in support thereof must be
17 served on:

- 18 a. **Office of the United States Trustee:**
19 Attn: Athanasios E. Agelakopoulos, Esq.
20 300 Las Vegas Blvd. South, Suite 4300
21 Las Vegas, NV 89101
22 E-mail: athanasios.agelakopoulos@usdoj.gov
- 23 b. **Trustee:**
24 Attn: Cynthia Nelson
25 633 West Fifth Street, 16th Floor
26 Los Angeles, Ca 90071
27 E-mail: cynthia.nelson@fticonsulting.com
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

c. **Counsel for the Trustee:**
Milbank, Tweed, Hadley & McCloy LLP
Attn: Robert J. Moore and David B. Zolkin
601 South Figueroa Street, 30th Floor
Los Angeles, California 90017
E-mail: rmoore@milbank.com
E-mail: dzolkin@milbank.com

d. **Counsel for the Agent:**
Attn: Robert M. Charles, Jr.
Lewis and Roca LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169-5996
E-mail: RCharles@lrlaw.com

Attn: G. Larry Engel
Morrison & Foerster LLP
425 Market Street
San Francisco, California 94105
E-mail: lengel@mofocom

Attn: Norman S. Rosenbaum
Morrison & Foerster LLP
1290 Avenue of the Americas
New York, New York 10104
E-mail: nrosenbaum@mofocom

e. **Counsel for the Settling Builders:**
Attn: Richard McKnight
Law Offices of Richard McKnight
330 S. Third Street #900
Las Vegas, Nevada 89101
E-mail: rmcknight@lawlasvegas.com

Attn: K. John Shaffer
Stutman Treister & Glatt PC
1901 Avenue of the Stars, 12th Floor
Los Angeles, California 90067
E-mail: jshaffer@stutman.com

f. **All other parties who have requested special notice.**²

9. If you fail to comply with the requirements set forth in Paragraph 8, then the Bankruptcy Court may refuse to allow you to speak at the Confirmation Hearing.

² A service list listing these parties may be obtained by sending a written request to the Settling Builders' counsel, K. John Shaffer, Stutman Treister & Glatt PC, 1901 Avenue of the Stars, 12th Floor, Los Angeles, California 90067.

1 10. Any objection not timely filed and served will be deemed to be waived and to be
2 consent to the Bankruptcy Court's entry of an order confirming the Plan.

3 **PLEASE TAKE FURTHER NOTICE** that if the Bankruptcy Court enters an order
4 confirming the Plan, Bankruptcy Code section 1141 shall become applicable with respect to the
5 Plan, and the Plan shall be binding on all parties to the fullest extent permitted by Section 1141 of
6 the Bankruptcy Code.

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 DATED this _____ day of September, 2011.

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

By: _____

LEWIS AND ROCA LLP
Robert M. Charles, Jr.
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169-5996

MORRISON & FOERSTER LLP
Norman S. Rosenbaum (admitted *pro hac vice*)
Jordan A. Wishnew (admitted *pro hac vice*)
1290 Avenue of the Americas
New York, New York 10104

MORRISON & FOERSTER LLP
G. Larry Engel (admitted *pro hac vice*)
425 Market Street
San Francisco, California 94105-2482

*Attorneys for JPMorgan Chase Bank, N.A.,
as Administrative Agent*

LAW OFFICES OF RICHARD
McKNIGHT
Richard McKnight (Nevada Bar No. 001313)
330 S. Third Street #900
Las Vegas, Nevada 89101

STUTMAN TREISTER & GLATT
K. John Shaffer (admitted *pro hac vice*)
Robert A. Greenfield (admitted *pro hac vice*)
Anthony Arnold (admitted *pro hac vice*)
1901 Avenue of the Stars, 12th Floor
Los Angeles, California 90067

Attorneys for the Settling Builders

EXHIBIT 2(a)

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA

In Re:

SOUTH EDGE, LLC,

Debtor.

Case No.: 10-32968 (BAM)

Chapter 11

Hearing Information

Date: October 17, 2011

Time: []M.

Courtroom: #3

NOTICE OF NON-VOTING STATUS - DEEMED TO ACCEPT

PLEASE TAKE NOTICE that on September [___], 2011, the United States Bankruptcy Court for the District of Nevada (the “Bankruptcy Court”) entered an order (the “Solicitation Procedures Order”) granting the *Motion for Entry of Order Approving (A) the Disclosure Statement, (B) Plan Proponents’ Limited Use of BMC Group, Inc.’s Services, (C) the Form, Scope, and Nature of Solicitation, Balloting, Tabulation, and Notices With Respect to the Joint Plan of Reorganization Filed by JPMorgan Chase Bank, N.A., as Administrative Agent under the Prepetition Credit Agreement, and the Settling Builders, and (D) Related Confirmation Procedures, Deadlines and Notices* [D.E. No. ___]. Pursuant to the Solicitation Procedures Order, the Bankruptcy Court approved that certain *Disclosure Statement for the Joint Plan Of Reorganization Proposed By JPMorgan Chase Bank, N.A., As Administrative Agent Under The Prepetition Credit Agreement, and the Settling Builders* [D.E. No. ___] (the “Disclosure Statement”), finding that it contains adequate information to enable creditors to make an informed judgment when determining whether to vote to accept or reject the *Joint Plan Of Reorganization Proposed By JPMorgan Chase Bank, N.A., As Administrative Agent Under The Prepetition Credit Agreement, and the Settling Builders* [D.E. No. ___] (the “Plan”).¹ Also pursuant to the

¹ Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Plan.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Solicitation Procedures Order, the Bankruptcy Court authorized the Plan Proponents to distribute the Plan and Disclosure Statement to creditors, and to solicit votes to approve or reject the Plan.

PLEASE TAKE FURTHER NOTICE that if you have received this Notice, then the Plan Proponents believe that you are not entitled to vote on the Plan because you are a creditor whose claim is unimpaired by the Plan. If you nevertheless believe that you are entitled to vote on the Plan, you must file and serve a motion requesting a determination that you are entitled to vote on the Plan and arrange for such motion to be heard by the Bankruptcy Court at or prior to the Ballot Deadline. Before doing so, however, you should first confirm that the absence of a ballot was not inadvertent by contacting the Voting and Solicitation Agent: BMC Group, Inc., via e-mail at BMC-SouthEdge@bmcgroup.com or via telephone at 1-888-909-0100.

DATED this _____ day of September, 2011.

By: _____

LEWIS AND ROCA LLP
Robert M. Charles, Jr.
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169-5996

MORRISON & FOERSTER LLP
Norman S. Rosenbaum (admitted *pro hac vice*)
Jordan A. Wishnew (admitted *pro hac vice*)
1290 Avenue of the Americas
New York, New York 10104

MORRISON & FOERSTER LLP
G. Larry Engel (admitted *pro hac vice*)
425 Market Street
San Francisco, California 94105-2482

*Attorneys for JPMorgan Chase Bank, N.A.,
as Administrative Agent*

LAW OFFICES OF RICHARD
McKNIGHT
Richard McKnight (Nevada Bar No. 001313)
330 S. Third Street #900
Las Vegas, Nevada 89101

STUTMAN TREISTER & GLATT PC
K. John Shaffer (admitted *pro hac vice*)
Robert A. Greenfield (admitted *pro hac vice*)
Anthony Arnold (admitted *pro hac vice*)
1901 Avenue of the Stars, 12th Floor
Los Angeles, California 90067

Attorneys for the Settling Builders

EXHIBIT 2(b)

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

In Re:

SOUTH EDGE, LLC,

Debtor.

Case No.: 10-32968 (BAM)

Chapter 11

Hearing Information

Date:

Time: []M.

Courtroom: #3

NOTICE OF NON-VOTING STATUS - DEEMED TO REJECT

PLEASE TAKE NOTICE that on September [__], 2011, the United States Bankruptcy Court for the District of Nevada (the “Bankruptcy Court”) entered an order (the “Solicitation Procedures Order”) granting the *Motion for Entry of Order Approving (A) the Disclosure Statement, (B) Plan Proponents’ Limited Use of BMC Group, Inc.’s Services, (C) the Form, Scope, and Nature of Solicitation, Balloting, Tabulation, and Notices With Respect to the Joint Plan of Reorganization Filed by JPMorgan Chase Bank, N.A., as Administrative Agent under the Prepetition Credit Agreement, and the Settling Builders, and (D) Related Confirmation Procedures, Deadlines and Notices* [D.E. No. ____]. Pursuant to the Solicitation Procedures Order, the Bankruptcy Court approved that certain *Disclosure Statement for the Joint Plan Of Reorganization Proposed By JPMorgan Chase Bank, N.A., As Administrative Agent Under The Prepetition Credit Agreement, and the Settling Builders* [D.E. No. __] (the “Disclosure Statement”), finding that it contains adequate information to enable creditors to make an informed judgment when determining whether to vote to accept or reject the *Joint Plan Of Reorganization Proposed By JPMorgan Chase Bank, N.A., As Administrative Agent Under The Prepetition Credit Agreement, and the Settling Builders* [D.E. No. __] (the “Plan”).¹ Also pursuant to the

¹ Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Plan.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Solicitation Procedures Order, the Bankruptcy Court authorized the Plan Proponents to distribute the Plan and Disclosure Statement to creditors, and to solicit votes to approve or reject the Plan.

PLEASE TAKE FURTHER NOTICE that if you have received this Notice, then the Plan Proponents believe that you are not entitled to vote on the Plan because you are a creditor or interest holder who will not receive or retain any property under the Plan on account of such claim or interest and, as such, are deemed to reject the Plan. If you nevertheless believe that you are entitled to vote on the Plan, you must file and serve a motion requesting a determination that you are entitled to vote on the Plan and arrange for such motion to be heard by the Bankruptcy Court at or prior to the Ballot Deadline. Before doing so, however, you should first confirm that the absence of a ballot was not inadvertent by contacting the Voting and Solicitation Agent: BMC Group, Inc., via e-mail at BMC-SouthEdge@bmcgroup.com or via telephone at 1-888-909-0100.

DATED this _____ day of September, 2011.

By: _____

LEWIS AND ROCA LLP
Robert M. Charles, Jr.
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169-5996

MORRISON & FOERSTER LLP
Norman S. Rosenbaum (admitted *pro hac vice*)
Jordan A. Wishnew (admitted *pro hac vice*)
1290 Avenue of the Americas
New York, New York 10104

MORRISON & FOERSTER LLP
G. Larry Engel (admitted *pro hac vice*)
425 Market Street
San Francisco, California 94105-2482

*Attorneys for JPMorgan Chase Bank, N.A.,
as Administrative Agent*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

LAW OFFICES OF RICHARD
McKNIGHT
Richard McKnight (Nevada Bar No. 001313)
330 S. Third Street #900
Las Vegas, Nevada 89101

STUTMAN TREISTER & GLATT PC
K. John Shaffer (admitted *pro hac vice*)
Robert A. Greenfield (admitted *pro hac vice*)
Anthony Arnold (admitted *pro hac vice*)
1901 Avenue of the Stars, 12th Floor
Los Angeles, California 90067

Attorneys for the Settling Builders

EXHIBIT 3

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

In Re:

SOUTH EDGE, LLC,

Debtor.

Case No.: 10-32968 (BAM)

Chapter 11

Hearing Information

Date: October 17, 2011

Time: []M.

Courtroom: #3

Voting & Response Deadline

October [7], 2011, at 4:00 p.m. (PDT)

**NOTICE OF HEARING ON JOINT PLAN OF REORGANIZATION PROPOSED BY
JPMORGAN CHASE BANK, N.A., AS ADMINISTRATIVE AGENT UNDER THE
PREPETITION CREDIT AGREEMENT, AND THE SETTLING BUILDERS**

On October 17, 2011 at 10:00 a.m. (Pacific Time), a hearing will be held before the Honorable Bruce A. Markell in Courtroom 3 at the United States Bankruptcy Court for the District of Nevada, 300 Las Vegas Blvd. South, Las Vegas, Nevada 89101 to consider confirmation of the *Joint Plan Of Reorganization Proposed By JPMorgan Chase Bank, N.A., As Administrative Agent Under The Prepetition Credit Agreement, And The Settling Builders* (the "Plan"), filed in the case of *In re South Edge, LLC*, Case No 10-32968 (BAM).

Any objection to confirmation of the Plan must be filed and served by 4:00 p.m. (Pacific time) on October 7, 2011. Creditors who wish to vote on the Plan must return their ballots to accept or reject the Plan so that they are actually received by no later than 4:00 p.m. (Pacific time) on October 7, 2011.

If the Bankruptcy Court enters an order confirming the Plan, Bankruptcy Code section 1141 shall become applicable with respect to the Plan and the Plan shall be binding on all parties to the fullest extent permitted by Bankruptcy Code section 1141.

If you have any questions regarding this notice or the Plan, please contact the Administrative Agent's counsel, Morrison & Foerster LLP, Attn: Jordan A. Wishnew, 1290 Avenue of the Americas, New York, New York 10104, Telephone: (212) 336-4328, or E-mail: jwishnew@mof.com.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED this _____ day of September, 2011.

By: _____

LEWIS AND ROCA LLP
Robert M. Charles, Jr.
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169-5996

MORRISON & FOERSTER LLP
Norman S. Rosenbaum (admitted *pro hac vice*)
Jordan A. Wishnew (admitted *pro hac vice*)
1290 Avenue of the Americas
New York, New York 10104

MORRISON & FOERSTER LLP
G. Larry Engel (admitted *pro hac vice*)
425 Market Street
San Francisco, California 94105-2482

*Attorneys for JPMorgan Chase Bank, N.A.,
as Administrative Agent*

LAW OFFICES OF RICHARD
McKNIGHT
Richard McKnight (Nevada Bar No. 001313)
330 S. Third Street #900
Las Vegas, Nevada 89101

STUTMAN TREISTER & GLATT PC
K. John Shaffer (admitted *pro hac vice*)
Robert A. Greenfield (admitted *pro hac vice*)
Anthony Arnold (admitted *pro hac vice*)
1901 Avenue of the Stars, 12th Floor
Los Angeles, California 90067

Attorneys for the Settling Builders

EXHIBIT 4(a)

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

In Re:

SOUTH EDGE, LLC,

Debtor.

Case No.: 10-32968 (BAM)

Chapter 11

**CLASS U2 BALLOT FOR ACCEPTING OR REJECTING
JOINT PLAN OF REORGANIZATION PROPOSED BY JPMORGAN CHASE BANK,
N.A., AS ADMINISTRATIVE AGENT UNDER THE PREPETITION CREDIT
AGREEMENT, AND THE SETTLING BUILDERS**

PLEASE READ AND FOLLOW THE ENCLOSED INSTRUCTIONS FOR COMPLETING THIS BALLOT CAREFULLY BEFORE COMPLETING THIS BALLOT.

JPMorgan Chase Bank, N.A., as Administrative Agent under the Prepetition Credit Agreement, and the Settling Builders (together, the “Plan Proponents”) filed the *Joint Plan Of Reorganization Proposed By JPMorgan Chase Bank, N.A., As Administrative Agent Under The Prepetition Credit Agreement, And The Settling Builders* on August 1, 2011 (as may be amended, modified, or supplemented, the “Plan”).¹ Pursuant to an order of the Bankruptcy Court dated September [], 2011 (the “Order”), the Bankruptcy Court has approved the *Disclosure Statement For The Joint Plan Of Reorganization Proposed By JPMorgan Chase Bank, N.A., As Administrative Agent Under The Prepetition Credit Agreement, And The Settling Builders* with respect to the Plan (the “Disclosure Statement”), which provides information to assist you in deciding how to vote your Ballot. Bankruptcy Court approval of the Disclosure Statement does not indicate approval of the Plan by the Bankruptcy Court. The Plan Proponents are soliciting the votes of Holders of Claims with respect to the Plan attached as Exhibit A to the Disclosure Statement.

The Plan Proponents recommend that you vote to accept the Plan.

If you do not have copies of the Disclosure Statement and the Plan or any of the other materials in the solicitation package, you may obtain a copy by contacting the Agent’s counsel, the law firm of Morrison & Foerster LLP, Attn: Jordan A. Wishnew, 1290 Avenue of the Americas, New York, New York 10104, Telephone: (212) 336-4328, or E-mail: jwishnew@mofo.com.

You should review the Disclosure Statement and the Plan. You may wish to seek legal advice concerning the Plan and the classification and treatment of your Claims under the Plan. Only holders of Claims in Class S3 (Prepetition Lender Secured Claims), Class U1 (Prepetition Lender Deficiency Claims), and Class U2 (General Unsecured Claims) are impaired and are entitled to vote on the Plan. **YOU MAY VOTE ONLY YOUR CLASS U2 CLAIM ON THIS BALLOT.**

¹ Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Plan.

If you hold a Claim in another Class, you will receive additional Ballots for such Classes in which you are entitled to vote.

If your Ballot is not received at or before 4:00 p.m. (PDT) on October 7, 2011, and such deadline is not extended, your vote will not count as either an acceptance or rejection of the Plan.

Instructions

1. Your completed Ballot must be delivered by U.S. mail, by hand delivery, or by overnight delivery to BMC Group, Inc., as follows:

<u>If Delivered by Mail:</u>	<u>If Delivered by Overnight or Hand Delivery:</u>
BMC Group, Inc. Attention: South Edge, LLC Ballot Processing PO Box 3020 Chanhassen, MN 55317-3020	BMC Group, Inc. Attention: South Edge, LLC Ballot Processing 18750 Lake Drive East Chanhassen, MN 55317

2. You must vote all of your Claim either to accept or to reject the Plan and you may not split your vote. If this Ballot is received but does not indicate either an acceptance or rejection of the Plan, you will be deemed to have accepted the Plan. If this Ballot is received and indicates both an acceptance and a rejection of the Plan, it will not be counted.
3. If this Ballot is received **after** the Ballot Deadline of **4:00 p.m. (PDT) on October 7, 2011**, it will not be counted, unless the Plan Proponents have granted an extension of the Ballot Deadline in writing.

Additionally, this Ballot will **NOT** be counted if:

- it is illegible or contains insufficient information to permit the identification of the claimant;
- it is cast by a person or entity that does not hold a Claim in a Class that is entitled to vote to accept or reject the Plan;
- it is properly completed, executed, and timely filed, but (a) indicates both an acceptance and rejection of the Plan, or (b) partially accepts and rejects the Plan;
- it is submitted by facsimile or electronic mail;
- it is not signed;

- it is delivered to the Debtor, the Trustee, the Plan Proponents, the Plan Proponents' agents or representatives (other than BMC) the Bankruptcy Court or the Clerk of Bankruptcy Court, or any person or entity other than BMC; and/or
 - it is not cast in accordance with the procedures approved in the Order.
4. This Ballot shall not be counted for purposes of accepting or rejecting the Plan until you properly complete and deliver this Ballot to BMC.
 5. The method of delivery of this Ballot to BMC is at your election and risk. Except as otherwise provided herein, such delivery will be deemed made only when BMC **actually receives** the originally executed Ballot. Instead of effecting delivery by first-class mail, it is recommended, though not required, that you use an overnight or hand delivery service. In all cases, you should allow sufficient time to ensure timely delivery.

Item 1: Vote on the Plan.

Pursuant to the Order, as of the Record Date (close of business on **September 7, 2011**), you are entitled to vote a Class U2 Claim in the amount of: \$ _____.

I VOTE TO **ACCEPT** THE PLAN, *or* I VOTE TO **REJECT** THE PLAN

DATED: _____
2011

Name of Creditor: _____

By: _____

**TO HAVE YOUR VOTE
COUNT, THIS BALLOT
MUST BE RECEIVED
BY 4:00 P.M. (PDT) ON
October [__], 2011.**

Title (if corporation or other entity): _____

Street Address: _____

City, State and Zip Code: _____

Telephone: (_____) _____

E-mail: _____

Signature: _____

Note: Ballot must be signed in order to be counted.

Please check here if the above address is a Change of Address that you would like reflected in the Master Mailing List for this Chapter 11 Case.

This Ballot is not a letter of transmittal and may not be used for any purpose other than to vote to accept or reject the Plan. No fees or commissions or remuneration will be payable to any broker, dealer, or other person for soliciting ballots accepting the Plan. Nothing contained herein or in the enclosed documents shall constitute an appointment of you or any other person as the

agent of the Plan Proponents, authorize you or any other person to use any document or make any statements on behalf of the Plan Proponents or with respect to the Plan, except for the statements contained in the documents enclosed herewith.

If you have any questions regarding this Ballot or the voting procedures, please contact the Agent's counsel, Morrison & Foerster LLP, Attn: Jordan A. Wishnew, 1290 Avenue of the Americas, New York, New York 10104, Telephone: (212) 336-4328, or E-mail: jwishnew@mof.com.

The Ballot is neither a proof of claim form, nor an admission by the Debtor or the Trustee of the nature, validity, or amount of any claim.

To have your vote count, you must complete, sign and timely return this Ballot. If the Plan is confirmed by the Bankruptcy Court, it will be binding on you whether or not you vote.

EXHIBIT 4(b)

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

In Re:

SOUTH EDGE, LLC,

Debtor.

Case No.: 10-32968 (BAM)

Chapter 11

**PREPETITION LENDERS' BALLOT FOR ACCEPTING OR REJECTING
JOINT PLAN OF REORGANIZATION PROPOSED BY JPMORGAN CHASE BANK,
N.A., AS ADMINISTRATIVE AGENT UNDER THE PREPETITION CREDIT
AGREEMENT, AND THE SETTLING BUILDERS**

PLEASE READ AND FOLLOW THE ENCLOSED INSTRUCTIONS FOR COMPLETING THIS BALLOT CAREFULLY BEFORE COMPLETING THIS BALLOT.

JPMorgan Chase Bank, N.A., as administrative agent under the Prepetition Credit Agreement (the "Agent"), and the Settling Builders (together, the "Plan Proponents") filed the *Joint Plan Of Reorganization Proposed By JPMorgan Chase Bank, N.A., As Administrative Agent Under The Prepetition Credit Agreement, And The Settling Builders* on August 1, 2011 (as may be amended, modified, or supplemented, the "Plan").¹ Pursuant to an order of the Bankruptcy Court dated September [], 2011 (the "Order"), the Bankruptcy Court has approved the *Disclosure Statement For The Joint Plan Of Reorganization Proposed By JPMorgan Chase Bank, N.A., As Administrative Agent Under The Prepetition Credit Agreement, And The Settling Builders* with respect to the Plan (the "Disclosure Statement"), which provides information to assist you in deciding how to vote your Ballot. Bankruptcy Court approval of the Disclosure Statement does not indicate approval of the Plan by the Bankruptcy Court. The Plan Proponents are soliciting the votes of Holders of Claims with respect to the Plan attached as Exhibit A to the Disclosure Statement.

If you do not have copies of the Disclosure Statement and the Plan or any of the other materials in the solicitation package, you may obtain a copy by contacting counsel for the Agent, the law firm of Morrison & Foerster LLP, Attn: Jordan A. Wishnew, 1290 Avenue of the Americas, New York, New York 10104, Telephone: (212) 336-4328, or E-mail: jwishnew@mof.com.

You are receiving this Prepetition Lenders' Ballot because the records of the Agent, JPMorgan Chase Bank, N.A., indicate that you are a Prepetition Lender and a holder of a Class S3 Claim (Prepetition Lender Secured Claim) and a Class U1 Claim (Prepetition Lender Deficiency Claim) under the Prepetition Credit Agreement as of the Record Date of the close of business on **September 7, 2011**. Accordingly, you have a right to vote to accept or reject the Plan. In

¹ Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Plan.

addition, the Plan Proponents are soliciting the acceptance and approval of a Prepetition Credit Agreement Amendment, which was filed with the Bankruptcy Court as a Plan Supplement.

The Plan Proponents recommend that you vote to accept the Plan.

You should review the Disclosure Statement and the Plan. You may wish to seek legal advice concerning the Plan and the classification and treatment of the Class S3 Claims and Class U1 Claims under the Plan. Only holders of Claims in Class S3 (Prepetition Lender Secured Claims), Class U1 (Prepetition Lender Deficiency Claims), and Class U2 (General Unsecured Claims) are impaired and are entitled to vote on the Plan.

YOU MAY VOTE ONLY YOUR CLASS S3 CLAIM and CLASS U1 CLAIM ON THIS BALLOT. If you hold a Claim in another Class, you will receive additional Ballots for such Classes in which you are entitled to vote.

Instructions

1. Your completed Ballot must be delivered by U.S. mail, by hand delivery, or by overnight delivery to BMC Group, Inc., as follows:

<u>If Delivered by Mail:</u>	<u>If Delivered by Overnight or Hand Delivery:</u>
BMC Group, Inc. Attention: South Edge, LLC Ballot Processing PO Box 3020 Chanhassen, MN 55317-3020	BMC Group, Inc. Attention: South Edge, LLC Ballot Processing 18750 Lake Drive East Chanhassen, MN 55317

2. You must vote your entire Claim within each Class either to accept or to reject the Plan and you may not split your vote. If this Ballot is received but does not indicate either an acceptance or rejection of the Plan, you will be deemed to have accepted the Plan. If this Ballot is received and indicates both an acceptance and a rejection of the Plan, it will not be counted.

3. If this Ballot is received **after** the Ballot Deadline of **4:00 p.m. (PDT)** on **October 7, 2011**, it will not be counted, unless the Plan Proponents have granted an extension of the Ballot Deadline in writing.

Additionally, this Ballot will **NOT** be counted if:

- it is illegible or contains insufficient information to permit the identification of the claimant;

- it is cast by a person or entity that does not hold a Claim in a Class that is entitled to vote to accept or reject the Plan;
- it is properly completed, executed and timely filed, but (a) indicates both an acceptance and rejection of the Plan, or (b) partially accepts and rejects the Plan;
- it is submitted by facsimile or electronic mail;
- it is not signed;
- it is delivered to the Debtor, the Debtor’s agents or representatives, the Plan Proponents, the Plan Proponents’ agents or representatives (other than BMC) the Bankruptcy Court or the Clerk of Bankruptcy Court, or any person or entity other than BMC; and/or
- it is not cast in accordance with the procedures approved in the Order.

4. **A vote to accept the Plan also constitutes approval of the form of Amended Prepetition Credit Agreement filed by the Plan Proponents with the Bankruptcy Court. Conversely, a vote to reject the Plan constitutes a rejection of the proposed amendments to the Prepetition Credit Agreement.**

5. This Ballot shall not be counted for purposes of accepting or rejecting the Plan until you properly complete and deliver this Ballot to BMC.

6. The method of delivery of this Ballot to BMC is at your election and risk. Except as otherwise provided herein, such delivery will be deemed made only when BMC **actually receives** the originally executed Ballot. Instead of effecting delivery by first-class mail, it is recommended, though not required, that you use an overnight or hand delivery service. In all cases, you should allow sufficient time to ensure timely delivery.

Item 1. Claim Amounts and Classes.

The undersigned hereby certifies that as of the applicable Record Date (the close of business on **September 7, 2011**), the undersigned was the Prepetition Lender with respect to a Class S3 Claim(s) (a Prepetition Lender Secured Claim) and a Class U1 Claim(s) (a Prepetition Lender Deficiency Claim) in the following aggregate unpaid principal amount:

Class S3	[BMC will insert claim amount based on Scenario 1 or 2 in the Plan]
Class U1	[BMC will insert claim amount based on Scenario 1 or 2 in the Plan]

Item 2. Vote on the Plan

The creditor holding the Claim(s) listed in Item 1 votes as follows (check one box only in each Part below—if you check both boxes in either Part, your vote will not be counted with respect to that Class):

PART I

Note: A vote to accept the Plan also constitutes approval of the form of Amended Prepetition Credit Agreement filed by the Plan Proponents with the Bankruptcy Court. Conversely, a vote to reject the Plan constitutes a rejection of the proposed amendments to the Prepetition Credit Agreement.

Please indicate your vote with respect to Class S3 (Prepetition Lender *Secured* Claims):

- I VOTE TO **ACCEPT** THE PLAN, *or*
- I VOTE TO **REJECT** THE PLAN

PART II

Please indicate your vote with respect to Class U1 (Prepetition Lender *Deficiency* Claims):

- I VOTE TO **ACCEPT** THE PLAN, *or*
- I VOTE TO **REJECT** THE PLAN

Item 3. Meritage Repayment Guaranty Escrow

Unless the box below is marked, by the signature below, the undersigned Prepetition Lender acknowledges that it wishes to assign its proportionate interest in the Meritage Repayment Guaranty to the Settling Builders pursuant to § 3.4(F) of the Plan.

- I do **NOT** wish to assign my proportionate interest in the Meritage Repayment Guaranty to the Settling Builders and understand that I will **not be eligible to receive** my pro rata interest in the Meritage Repayment Guaranty Escrow.

Item 4. Certifications.

By completing and returning this Prepetition Lenders' Ballot, the undersigned makes the following certifications:

1. this Ballot is the only Ballot submitted for the Claim(s), or such earlier Ballot is hereby revoked;
2. it was the Holder of Claims described in Item 1 as of September 7, 2011 and understands that the solicitation of votes for the Plan is subject to all the terms and conditions set forth in the Disclosure Statement and Plan;
3. it has full power and authority to vote to accept or reject the Plan with respect to the Claim(s) listed in Item 1;
4. it has received, read, and reviewed a copy of the Solicitation Package and acknowledges that the solicitation is being made pursuant to the terms and conditions set forth therein; and
5. all authority conferred or agreed to be conferred pursuant to this Ballot, and every obligation of the undersigned hereunder, shall be binding upon the transferees, successors, assigns, heirs, executors, administrators, trustees in bankruptcy, and legal representatives of the undersigned and shall not be affected by, and shall survive, the death or incapacity of the undersigned.

By signing this Prepetition Lenders' Ballot, the undersigned authorizes and instructs the Voting and Solicitation Agent to retain this Prepetition Lenders' Ballot and related information in its records for at least one year after the Effective Date of the Plan.

Name of Holder: _____ (Print or Type)
Social Security or Federal Tax Identification Number: _____
Name and Title of Signatory: _____ (Print or Type)
Title: _____
Address: _____ _____ _____
Date Completed: _____
Note: Ballot must be signed in order to be counted.

Please check here if the above address is a Change of Address.

This Ballot is not a letter of transmittal and may not be used for any purpose other than to vote to accept or reject the Plan. No fees or commissions or remuneration will be payable to any broker, dealer, or other person for soliciting ballots accepting the Plan. Nothing contained herein or in the enclosed documents shall constitute an appointment of you or any other person as the agent of the Plan Proponents, authorize you or any other person to use any document or make any statements on behalf of the Plan Proponents or with respect to the Plan, except for the statements contained in the documents enclosed herewith.

If you have any questions regarding this Ballot or the voting procedures, please contact the Agent's counsel, Morrison & Foerster LLP, Attn: Jordan A. Wishnew, 1290 Avenue of the Americas, New York, New York 10104, Telephone: (212) 336-4328, or E-mail: jwishnew@mofo.com.

The Ballot is neither a proof of claim form, nor an admission by the Debtor or the Trustee of the nature, validity, or amount of any claim.

To have your vote count, you must complete, sign, and timely return this Ballot. If the Plan is confirmed by the Bankruptcy Court, it will be binding on you whether or not you vote.

EXHIBIT 5

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

In Re:

SOUTH EDGE, LLC,

Debtor.

Case No.: 10-32968 (BAM)

Chapter 11

Hearing Date: October [17], 2011

Time: [10:00 a.m.] (PDT)

Estimated Time for Hearing: 4 hours

ORDER APPROVING (A) THE DISCLOSURE STATEMENT, (B) PLAN PROPONENTS' LIMITED USE OF BMC GROUP, INC.'S SERVICES, (C) THE FORM, SCOPE, AND NATURE OF SOLICITATION, BALLOTING, TABULATION, AND NOTICES WITH RESPECT TO THE JOINT PLAN OF REORGANIZATION FILED BY JPMORGAN CHASE BANK, N.A., AS ADMINISTRATIVE AGENT UNDER THE PREPETITION CREDIT AGREEMENT, AND THE SETTLING BUILDERS, AND (D) RELATED CONFIRMATION PROCEDURES, DEADLINES, AND NOTICES

JPMorgan Chase Bank, N.A., as administrative agent under the Prepetition Credit Agreement, and the Settling Builders (together, the "Plan Proponents"), filed their *Motion for Entry of Order Approving (A) The Disclosure Statement, (B) Plan Proponents' Limited Use of BMC Group, Inc.'s Services, (C) The Form, Scope, and Nature of Solicitation, Balloting, Tabulation, And Notices With Respect To The Joint Plan Of Reorganization Filed By JPMorgan Chase Bank, N.A., As Administrative Agent Under The Prepetition Credit*

1 *Agreement, And The Settling Builders, And (D) Related Confirmation Procedures,*
2 *Deadlines, and Notices* [D.E. No. ____] (the “Motion”),¹ which came on for hearing on
3 September 7 2011 at [9:00] [a.m.] (the “Hearing”). The Debtor appeared by and
4 through Cynthia Nelson as Chapter 11 Trustee for the estate, and all other appearances
5 were noted on the record at the time of the Hearing.

6 The Bankruptcy Court has the requisite jurisdiction to consider the Motion, the relief
7 requested in the Motion is a core proceeding pursuant to 28 U.S.C. §§ 157 and 1334, and
8 venue is proper before the Bankruptcy Court pursuant to 28 U.S.C. §§ 1408 and 1409.

9 The Bankruptcy Court stated its findings of fact and conclusions of law on the record
10 at the hearing, which are incorporated herein by reference in accordance with Fed. R. Civ.
11 P. 52, made applicable pursuant to Fed. R. Bankr. P. 9014. The Bankruptcy Court, having
12 determined that the relief requested in the Motion, as amended, is in the best interests of the
13 Debtor, its estate, and creditors, and good cause appearing therefor;

14 **IT IS HEREBY FOUND THAT:**

15 A. Notice of the Motion and the Hearing was good and sufficient notice to all
16 interested parties and no other or further notice need be provided. To the extent necessary, the
17 period of notice provided is approved notwithstanding requirements of the Bankruptcy Rules
18 and the Bankruptcy Court’s local rules.

19 B. The *Disclosure Statement For The Joint Plan Of Reorganization Filed By*
20 *JPMorgan Chase Bank, N.A., As Administrative Agent Under The Prepetition Credit*
21 *Agreement, And The Settling Builders* [D.E. No. ____] (“Disclosure Statement”) contains
22 “adequate information” as required by Section 1125(a) of the Bankruptcy Code.

23 C. The forms of the Ballots (the “Ballots”) to be distributed to the Creditors in the
24 Voting Classes as attached to this Order as **Exhibit “4a”** and **Exhibit “4b”** substantially

25 ¹ All references to “Chapter” and “Section” herein shall be to the Bankruptcy Code appearing in Title 11 of the U.S.
26 Code; all references to a “Bankruptcy Rule” shall be to the Federal Rules of Bankruptcy Procedure; and all
27 references to a “Local Rule” shall be to the Local Rules of Bankruptcy Practice of the U.S. District Court for the
28 District of Nevada. Unless otherwise defined herein, all capitalized terms used herein shall have the meaning
ascribed to them in the Plan or the Motion, as applicable.

1 conform to Official Form No. 14, modified as necessary to address the particular aspects of the
2 Chapter 11 Case.

3 D. Ballots need not be provided to the Holders of unclassified Claims and
4 unimpaired Claims in Class P1 (Priority Non-Tax Claims), Class S1 (Other Secured
5 Claims), and Class S2 (LID Claims) because the Plan provides that such classes are
6 unimpaired and, therefore, are deemed to accept the Plan pursuant to Section 1126(f) of the
7 Bankruptcy Code.

8 E. Ballots need not be provided to the Holders of impaired Claims and Interests
9 in Class U3 (Member Claims (including Claims of Member Affiliates)) and Class E1
10 (Equity Interests) because the Plan that provides that such classes will not receive a
11 distribution on account of such Claims and Interests and, therefore, are deemed to reject the
12 Plan pursuant to Section 1126(g) of the Bankruptcy Code.

13 F. The period, set forth below, during which the Plan Proponents may solicit
14 acceptances or rejections of the Plan is a reasonable and adequate period of time for creditors
15 to make an informed decision to accept or reject the Plan.

16 G. The procedures for the solicitation and tabulation of votes to accept or reject
17 the Plan provide for a fair and equitable voting process and are consistent with Section 1126 of the
18 Bankruptcy Code.

19 H. Service of a notice (the "Confirmation Hearing Notice"), pursuant to the
20 procedures set forth below, providing notice to all holders of Claims of the time, date, and place
21 of the hearing to consider confirmation of the Plan (the "Confirmation Hearing") and the
22 contents of the Solicitation Packages (as defined below) comply with Bankruptcy Rules 2002
23 and 3017 and constitute sufficient notice to all interested parties.

24 I. The Plan Proponents have the right to seek modifications or extensions of the
25 matters governed by this Order.

26 **NOW, THEREFORE, IT IS ORDERED THAT:**

27 1. The Motion is GRANTED.
28

1 2. The Plan Proponents' limited use of BMC Group, Inc. as their agent for the
2 limited purpose of soliciting votes on the Plan and tabulating the Ballots (in such capacity,
3 the "Voting and Solicitation Agent") on the terms set forth in the Motion is APPROVED.

4 3. **Exhibit "1"** (the Confirmation Hearing Notice), **Exhibit "2a"** (the Notice of
5 Non-Voting Status-Deemed to Accept), **Exhibit "2b"** (the Notice of Non-Voting Status-
6 Deemed to Reject), **Exhibit "3"** (the Publication Notice), and **Exhibits "4a,"** and **"4b,"** (the
7 Ballots) to this Order are hereby APPROVED.

8 4. The record date (the "Record Date") for purposes of soliciting votes in
9 connection with confirmation of the Plan pursuant to Fed. R. Bankr. P. 3017(d) shall be
10 **September [7], 2011.**

11 **A. Dissemination of Solicitation Packages.**

12 5. The Plan Proponents shall disseminate solicitation packages ("Solicitation
13 Packages") on or before **September [13], 2011**, as follows:

14 (a) Solicitation Package consisting of: (1) the Disclosure Statement, together
15 with all attachments thereto, including the Plan;² (2) this Order; (3) the Confirmation Hearing
16 Notice; and (4) an appropriate Ballot or Ballots, together with a pre-addressed return envelope,
17 collectively, the "Solicitation Package"), shall be disseminated to the following entities:

18 (i) Except with respect to holders of Claims in Class P1, Class S1, Class S2,
19 Class U3, and Class E1, the Plan Proponents shall serve or cause to be
20 served the Solicitation Package to all creditors and equity security holders;

21 (ii) Each creditor that the Trustee scheduled as holding a Claim in its
22 Schedules of Assets and Liabilities (the "Schedules"), which is not listed in
23 the immediately preceding paragraph nor scheduled as a contingent,
24 unliquidated, or disputed Claim;

25
26 _____
27 ² The Disclosure Statement and any other Solicitation Package materials may be disseminated in paper form or in
28 electronic date file on a CD or DVD.

1 (iii) All non-debtor parties to unexpired leases and executory contracts as of
2 **September [7], 2011;**

3 (iv) All parties who have requested special notice in this Chapter 11 Case (the
4 “Special Notice Parties”); and

5 (v) The Office of the United States Trustee (the “U.S. Trustee”) and the
6 governmental entities enumerated in Bankruptcy Rule 2002(j).

7 (b) Holders of Claims in Class P1, Class S1 and Class S2, will receive only
8 (i) the Confirmation Hearing Notice, (ii) the Plan and Disclosure Statement, and (iii) the Non-
9 Voting Status Notice-Deemed to Accept.

10 (c) Holders of Claims in Class U3 and Class E1 will receive only (i) the
11 Confirmation Hearing Notice, (ii) the Plan and Disclosure Statement, and (iii) the Non-Voting
12 Status Notice-Deemed to Reject.

13 (d) The Confirmation Hearing notice shall be distributed to all parties in
14 the creditor matrix maintained by the Trustee that do not fall within any of the categories
15 described in subparagraphs “(a)”, “(b)” or “(c)” of this paragraph.

16 6. With respect to addresses from which Notices of Commencement of the
17 Chapter 11 Case and/or notices of the Disclosure Statement Hearing have been returned by the
18 United States Postal Service as undeliverable, the Plan Proponents are excused from
19 distributing Solicitation Packages to those entities listed at such addresses unless the Plan
20 Proponents receive written notice of accurate addresses for such entities, or accurate
21 forwarding addresses from the United States Postal Service, before the Solicitation Date, and
22 the failure to distribute Solicitation Packages to such entities will not constitute inadequate
23 notice of the Confirmation Hearing, the Ballot Deadline (as defined below), or violation of
24 Bankruptcy Rule 3017(d).

25 7. With respect to transferred Claims, (a) if the notice of transfer required by
26 Bankruptcy Rule 3001(e)(2) is filed on or before the Record Date, the Solicitation Package
27 will be mailed to the transferee in accordance with the notice of transfer, and the transferee
28 will be entitled to vote to accept or to reject the Plan, and (b) if the notice of transfer is filed

1 after the Record Date, then the Solicitation Package will be mailed to the original Holder of
 2 the Claim, and the original Holder of the Claim will be entitled to vote to accept or to reject
 3 the Plan.

4 8. If a proof of claim clearly (a) is duplicative of another proof of claim filed by or
 5 on behalf of the same creditor, or (b) amends and supersedes a prior proof of claim filed by
 6 or on behalf of the same creditor, such proof of claim shall supersede the prior Claims for
 7 voting and tabulation purposes, and the Voting and Solicitation Agent shall be excused
 8 from issuing a Ballot in connection with the duplicative, amended or superseded Claim.

9 9. The Plan Proponents shall file and within one business day serve or cause to be
 10 served the Plan Supplement no later than **September [23], 2011**.

11 **B. Voting and Tabulation of Ballots.**

12 10. All Ballots must be properly executed, completed, and the original thereof
 13 shall be delivered to the Voting and Solicitation Agent, so as to be received on or before
 14 **October [7], 2011 at 4:00 p.m. (PDT)** (the "Ballot Deadline"). The address of the Voting and
 15 Solicitation Agent is as follows:

<u>If Delivered by Mail:</u>	<u>If Delivered by Overnight or Hand Delivery:</u>
BMC Group, Inc. Attention: South Edge, LLC Ballot Processing PO Box 3020 Chanhassen, MN 55317-3020	BMC Group, Inc. Attention: South Edge, LLC Ballot Processing 18750 Lake Drive East Chanhassen, MN 55317

16
 17
 18
 19
 20
 21 11. With respect to a Claim in Class U2, the amount of a Claim for the purposes of
 22 Ballot tabulation will be:

- 23 a. For a Claim identified in the Schedules as neither contingent, unliquidated,
 24 nor disputed, and that is not the subject of an objection filed before the
 25 Ballot Deadline, or that has not been disallowed, waived, or withdrawn by
 26 order of the Bankruptcy Court, stipulation, or otherwise prior to the Ballot
 27 Deadline, and for which no proof of Claim has been timely filed, the
 28 Claim amount as identified in the Schedules (the "Scheduled Amount");

- 1 b. For a timely proof of Claim that is filed in a specified liquidated amount
2 and that is not the subject of an objection filed before the Ballot Deadline or
3 that has not been disallowed, waived, or withdrawn by order of the
4 Bankruptcy Court, stipulation, or otherwise prior to the Ballot Deadline,
5 the specified liquidated amount in such proof of Claim (the “Proof of
6 Claim Amount”);
- 7 c. For a timely proof of claim that is filed in a contingent, unliquidated or
8 unknown amount and that is not the subject of an objection filed before the
9 Ballot Deadline or that has not been disallowed, waived, or withdrawn by
10 order of the Bankruptcy Court, stipulation, or otherwise prior to the Ballot
11 Deadline, such claim will count for satisfying the numerosity requirement
12 of section 1126(c) of the Bankruptcy Code and will count as a Ballot for
13 Claims in the amount of \$1.00 solely for the purposes of satisfying the
14 dollar amount provisions of section 1126(c) of the Bankruptcy Code; and
- 15 d. For a Claim that is the subject of an objection before the Ballot
16 Deadline, only the undisputed amount, if any, of such Claim, unless such
17 Claim is temporarily allowed under Bankruptcy Rule 3018(a) at or prior
18 to the Confirmation Hearing. Any Creditor whose Claim is the subject
19 of an objection may nonetheless tender a Ballot, which shall only be
20 counted as it relates to the disputed amount of such Claim upon the
21 temporary allowance of such Claim for voting purposes.

22 12. With respect to a Claim in Class S3 or Class U1, the amount of each Claim for
23 the purposes of Ballot tabulation will be the obligations due under the Prepetition Credit
24 Agreement as of the Petition Date to each Prepetition Lender as reflected in the books and
25 records of the Agent as of the Record Date without regard to whether a proof of claim has
26 been filed and without regard to the identities of the Prepetition Lenders listed on the
27 Schedules.

28

1 13. With respect to a Claim in Class U2, if an entity submits a Ballot for a Claim
2 (a) for which there is no timely proof of claim filed and for which there is no corresponding
3 Scheduled Amount, or (b) which is the subject of an unresolved objection filed prior to the
4 Confirmation Hearing, such ballot will not be counted unless otherwise ordered by the
5 Bankruptcy Court.

6 14. The Voting and Solicitation Agent will tabulate the Ballots. Pursuant to Local
7 Rule 3018(a), the Voting and Solicitation Agent will prepare and file a ballot summary (the
8 “Ballot Summary”) no later than one business day prior to the Confirmation Hearing.

9 a. The Plan Proponents will provide notice of the Ballot Summary to the
10 Debtor, the Chapter 11 Trustee, the U.S. Trustee, all parties who have
11 requested notice pursuant to Bankruptcy Rule 2002, and all parties who
12 have timely filed an objection to the Plan by the Plan Objection Deadline.
13 The Plan Proponents will also deliver a copy of the Ballot Summary to the
14 chambers of the Honorable Bruce A. Markell at 300 Las Vegas Blvd. S.,
15 Las Vegas, NV 89101.

16 b. The Ballot Summary will, among other things, (a) describe each Class and
17 whether or not it is Impaired; (b) provide the number of votes received, the
18 number of votes voting to accept the Plan and their aggregate dollar
19 amount, and the number of votes voting to reject the Plan and their
20 aggregate dollar amount; (c) indicate whether the Plan has received
21 sufficient votes to be confirmed; (d) delineate every irregular Ballot
22 including, without limitation, those Ballots that are late or (in whole or in
23 material part) illegible, unidentifiable, lack signatures or lack necessary
24 information, received via facsimile or electronic mail, or damaged. The
25 Ballot Summary will indicate the Plan Proponents’ intentions with regard
26 to irregular Ballots.

27 15. Except as otherwise provided in the Solicitation Procedures, unless the Ballot
28 being furnished is timely submitted on or prior to the Ballot Deadline, the Plan Proponents will

1 reject such Ballot as invalid and, therefore, decline to count it in connection with Confirmation of
2 the Plan.

3 16. The Voting and Solicitation Agent will date all Ballots when received. The Voting
4 and Solicitation Agent will retain the original Ballots and an electronic copy of the same for a
5 period of one year after the Ballot Deadline.

6 17. An original executed Ballot is required to be submitted by the party submitting
7 such Ballot. Delivery of a Ballot to the Voting and Solicitation Agent by facsimile, email, or any
8 other electronic means will not be valid.

9 18. The method of delivery of Ballots to the Voting and Solicitation Agent is at the
10 election and risk of each Holder of a Claim. Except as otherwise provided herein, delivery will
11 be deemed made only when the Voting and Solicitation Agent actually receives the originally
12 executed Ballot.

13 19. No Ballot should be sent to the Bankruptcy Court, the Clerk of the Bankruptcy
14 Court, the Debtor, the Trustee, the Plan Proponents or their agents (other than the Voting and
15 Solicitation Agent) or financial or legal advisors, and if so sent, will not be counted.

16 20. If multiple Ballots are received from the same Holder of a Claim with respect to
17 the same Claim prior to the Ballot Deadline, the latest dated, validly executed Ballot timely
18 received will supersede and revoke any prior Ballot.

19 21. Holders must vote all of their Claims within a particular Class either to accept or
20 reject the Plan and may not split their votes. Accordingly, a Ballot that partially rejects and
21 partially accepts the Plan will not be counted. Further, if a Holder has multiple Claims within the
22 same Class, the Plan Proponents may, in their discretion, aggregate the Claims of any particular
23 Holder within a Class for the purpose of counting votes.

24 22. Any creditor that requires additional copies of a Ballot may obtain an additional
25 Ballot pursuant to the instructions set forth in the Confirmation Hearing Notice and the proposed
26 Ballots.

27 23. A person signing a Ballot in its capacity as a trustee, executor, administrator,
28 guardian, attorney in fact, officer of a corporation, or otherwise acting in a fiduciary or

1 representative capacity must indicate such capacity when signing and, if reasonably required or
2 requested by the Voting and Solicitation Agent, the Plan Proponents, or the Bankruptcy Court,
3 must submit proper evidence to the requesting party to so act on behalf of such Holder.

4 24. Subject to any contrary order of the Bankruptcy Court, the Plan Proponents reserve
5 the right to reject any and all Ballots not in proper form, the acceptance of which, in the opinion
6 of the Plan Proponents, would not be in accordance with the provisions of the Bankruptcy Code
7 or the Bankruptcy Rules; provided, that any such rejections shall be documented in the Ballot
8 Summary.

9 25. The following Ballots shall not be counted in determining the acceptance or
10 rejection of the Plan: (a) any Ballot that is illegible or contains insufficient information to permit
11 the identification of the Holder of the Claim; (b) any Ballot cast by a party that does not hold a
12 Claim in a Class that is entitled to vote on the Plan; (c) any Ballot cast for a Claim scheduled as
13 contingent, disputed, or unliquidated or for which the applicable Bar Date has passed and no
14 Proof of Claim was timely filed; (d) any unsigned Ballot; (e) any Ballot marked both to accept
15 and reject the Plan; (f) any Ballot sent by facsimile or other electronic means; (g) any Ballot
16 submitted by any party not entitled to vote pursuant to the Solicitation Procedures; and (h) any
17 Ballot that is incomplete; provided, however, that any Ballot that is signed but that does not
18 indicate an acceptance or rejection of the Plan shall be deemed to be a Ballot accepting the Plan.

19 26. The Plan Proponents, subject to contrary order of the Bankruptcy Court, may
20 waive any defects or irregularities as to any particular Ballot at any time, either before or after the
21 close of voting; provided, that any such waivers will be documented in the Ballot Summary.

22 27. Neither the Plan Proponents, nor any other party, will be under any duty to provide
23 notification of defects or irregularities with respect to delivered Ballots other than as provided in
24 the Ballot Summary, nor will any party incur any liability for failure to provide such notification.

25 28. Unless waived by the Plan Proponents, subject to contrary order of the Bankruptcy
26 Court, any defects or irregularities in connection with deliveries of Ballots must be cured prior to
27 the Ballot Deadline or such Ballots will not be counted.
28

1 29. In the event a designation for lack of good faith is requested by a party in interest
2 under section 1126(e) of the Bankruptcy Code, the Bankruptcy Court will determine whether any
3 vote to accept and/or reject the Plan cast with respect to that Claim will be counted for purposes
4 of determining whether the Plan has been accepted and/or rejected by such Claim.

5 30. If a Claim has been estimated or otherwise allowed for voting purposes by an
6 order of the Bankruptcy Court pursuant to Bankruptcy Rule 3018(a), such Claim will be
7 temporarily allowed in the amount so estimated or allowed by the Bankruptcy Court for voting
8 purposes only and not for purposes of allowance or distribution.

9 **C. Confirmation Hearing and Related Deadlines.**

10 31. The hearing on confirmation (the "Confirmation Hearing") of the Plan will be held
11 on **October [17], 2011**, at 10:00 a.m. (PDT); *provided, however*, that the Confirmation Hearing
12 may be adjourned from time to time by the Bankruptcy Court or the Plan Proponents
13 without further notice to parties other than an announcement in Bankruptcy Court at the
14 Confirmation Hearing or any adjourned subsequent Confirmation Hearing and the Plan may be
15 modified pursuant to the Section 1127 of the Bankruptcy Code prior to, during, or as a result
16 of the Confirmation Hearing, pursuant to the terms of the Plan.

17 32. Objections to confirmation of the Plan, if any, including any objection by a
18 non-debtor party to an executory contract or an unexpired lease to be assumed or rejected
19 under the Plan, including to the proposed Cure Amount under the Plan or that such party is not
20 being furnished with adequate assurance of future performance, must be in writing; state the
21 name and address of the objecting party and the amount and nature of the Claim or interest of
22 such party; state with particularity the basis and nature of any objection; and be filed,
23 together with proof of service, with the Bankruptcy Court no later than **4:00 p.m. (PDT) on**
24 **October [7], 2011**. Objections to confirmation of the Plan not timely filed and served in the
25 manner set forth herein shall not be considered and shall be overruled.

26 33. The Plan Proponents' memorandum and evidence (i.e., declarations and exhibits)
27 in support of confirmation of the Plan, together with the Plan Proponents' omnibus reply to any
28 objections to confirmation of the Plan be filed and served by **October [11], 2011**, and objections

1 to the Plan Proponents' declarations and exhibits in support of confirmation shall be filed and
2 served by **October [13], 2011.**

3 34. The Ballot Summary shall be submitted to the Bankruptcy Court and filed and
4 served by **October [16], 2011.**

5 35. The Plan Proponents shall cause the one-time publication of the abbreviated
6 notice of the Confirmation Hearing and related deadlines (the "Publication Notice"), substantially
7 in the form attached to this Order as **Exhibit "3"**, in the *Las Vegas Review-Journal* on or
8 before **September [13], 2011.**

9 36. The Plan Proponents are authorized to take all actions necessary to effectuate
10 the relief granted pursuant to this Order in accordance with the Motion, including, but not
11 limited to, making nonsubstantive changes to the Disclosure Statement, Plan, and related
12 documents, without further order of the Bankruptcy Court, to correct typographical and
13 grammatical errors or omissions prior to their distribution.

14 **IT IS SO ORDERED.**

15 PREPARED AND RESPECTFULLY
16 SUBMITTED BY:

17 /s/ Robert M. Charles, Jr. (#6593)

18 LEWIS AND ROCA LLP
19 Robert M. Charles, Jr.
20 3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169-5996

MORRISON & FOERSTER LLP
Norman S. Rosenbaum (admitted *pro hac vice*)
Jordan A. Wishnew (admitted *pro hac vice*)
1290 Avenue of the Americas
New York, New York 10104

21 MORRISON & FOERSTER LLP
22 G. Larry Engel (admitted *pro hac vice*)
425 Market Street
San Francisco, California 94105-2482

23
24 *Attorneys for JPMorgan Chase Bank, N.A.,*
25 *as Administrative Agent*
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

LAW OFFICES OF RICHARD
McKNIGHT
Richard McKnight (Nevada Bar No. 001313)
330 S. Third Street #900
Las Vegas, Nevada 89101

STUTMAN TREISTER & GLATT PC
K. John Shaffer
Robert A. Greenfield
Anthony Arnold
1901 Avenue of the Stars, 12th Floor
Los Angeles, California 90067

Attorneys for the Settling Builders

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

LR 9021 CERTIFICATION

In accordance with LR 9021, counsel submitting this document certifies that the order accurately reflects the court’s ruling and that (check one):

_____ This Court has waived the requirement set forth in LR 9021(b)(1).

_____ No party appeared at the hearing or filed an objection to the motion.

_____ I have delivered a copy of this proposed order to all counsel who appeared at the hearing, and any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below [list each party and whether the party has approved, disapproved, or failed to respond to the document]:

Counsel appearing: _____

_____ I certify that this is a case under Chapter 7 or 13, that I have served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objected to the form or content of the order.

Submitted by:
LEWIS AND ROCA LLP

By: /s/ Robert M. Charles, Jr., (6593)
Attorneys for JPMorgan Chase Bank N.A. as
Administrative Agent

###