

MEMORANDUM

To: Utah Residence Lien Recovery Fund Advisory Board
From: Lien Recovery Fund Staff
Date: July 26, 2016
Subject: Information Packet for Upcoming Board Meeting

Enclosed please find the application reports and other documents for the upcoming Board meeting. That meeting is scheduled to begin at **8:15 am** on **Wednesday, August 10, 2016** in **Room 210***, on the second floor of the Heber M. Wells Building - **160 East 300 South, Salt Lake City, Utah**. We anticipate the meeting will last until 9:30 a.m.

We appreciate your service on the Board - see you at the meeting.

**Please note the room change.*

MINUTES

**UTAH
RESIDENCE LIEN RECOVERY FUND
ADVISORY BOARD
MEETING
May 11, 2016**

**North Conference Room– 8:15 a.m.
Heber Wells Building
Salt Lake City, UT 84114**

CONVENED: 8:20

ADJOURNED: 8:40

Board Members Present:

Bradley Stevens, Chair
Calvin Bowen
DeAnna Leahy
Jeff Park
Wayne Jarvis

Board Members Absent:

Douglas Darrington

DOPL Staff Present:

Tracy Naff, Program Manager
Shelley Strauser, Board Secretary

Guests:

Thomas & Julie Hardman, Homeowner
Darron Davis, Homeowner

TOPICS FOR DISCUSSION

DECISIONS AND RECOMMENDATIONS

ADMINISTRATIVE BUSINESS:

Review and approve minutes from the April 13, 2016 Board meeting.

Ms. Leahy made a motion to approve the April 13, 2016 Board minutes. Mr. Jarvis seconded the motion. Motion passed by unanimous vote.

Homeowner Applications for Review

1. Recommended for Approval and Explanation Required

- a) CHRHR001 Thomas and Julie Hardman v Chris Jensen Landscaping Inc - Ms. Naff gave an explanation of the application. Mr. Hardman provided an overview. Mr. Bowen made a motion to approve the application. Mr. Park seconded the motion. Motion passed by unanimous vote.

Homeowner Applications for Review
(continued)

- b) KODDAV001 Darron and Jana Davis v Kodiak America, LLC - Ms. Naff provided an explanation of the application. Mr. Davis commented about his experience with the original contractor. Mr. Bowen made a motion to approve the application. Ms. Leahy seconded the motion. Motion passed by unanimous vote.

1. Recommended for Denial and Explanation Required

- a) CONNUT001 Steve Nuttall v Construction Pros LLC - Ms. Naff provided an overview of the application. Mr. Jarvis made a motion to deny the application. Mr. Park seconded the motion. Motion passed by unanimous vote.

Claims for Review

1. Recommended for Approval and Explanation Required

- a) LRF-2016-0321-01 Staker & Parson Companies dba Western Rock Products v Alpha-Crete Inc (Gray, Trustee) - Ms. Naff gave an explanation of the application. Mr. Park made a motion to approve the application. Ms. Leahy seconded the motion. Motion passed by unanimous vote.

Meeting adjourned 8:40

Note: These minutes are not intended to be a verbatim transcript but are intended to record the significant features of the business conducted in this meeting. Discussed items are not necessarily shown in the chronological order they occurred.

Date Approved

(ss) Brad Stevens
Chairperson, Residence Lien Recovery Fund
Advisory Board

Date Approved

(ss) Tracy Naff
Program Manager, Division of Occupational &
Professional Licensing

Applications for Certificate of Compliance Disposition Report

July 27, 2016

Processing Status	Active Pending Action By	Disposition	Number of Apps	
	test	test	1	0.1%
Active	Homeowner		2	0.1%
Active	LRF		59	3.1%
Closed			5	0.3%
Closed		Approved	1207	62.4%
Closed		Denied	568	29.4%
Closed		Withdrawn	88	4.6%
Prolonged			4	0.2%
Total Applications Filed			1,934	

Claim Disposition Report

July 26, 2016

Processing Status	Active Pending Action By	Disposition	Number of Claims	
Active	Board		8	0.3%
Active	LRF		2	0.1%
Closed		Denied	567	19.7%
Closed		Dismissed	244	8.5%
Closed		Paid	2,055	71.4%
Prolonged			2	0.1%
Total Claims Filed			2,878	

Summary of Payments

Sorted by Nonpaying Party Type

July 26, 2016

Nonpaying Party Type	Number of Paid Claims	Total Payments	
Home Builder	1226	7,902,327.88	60.5%
Other	25	179,357.47	1.4%
Real Estate Developer	72	462,183.51	3.5%
Specialty Contractor	732	4,509,133.42	34.5%
Total Payments	2055	\$13,053,002.28	100.0%

APPLICATION FOR PAYMENT

RECOMMENDED FOR DENIAL

- EXPLANATION REQUIRED-

Claim Report

Informal Claim

Claim Number: LRF-2013-1031-03

Claimant: ProBuild Company LLC

Contractor License # 7919125-5501 **Issue Date:** 02/24/2011 **Expiration Date:** 11/30/2017

Claimant Classification: Contractor with LRF

Claimant's Attorney: Jason Robinson

Nonpaying Party: SMA Enterprises Inc dba Elite Builder Group

Contractor License # 7806577-5501 **NPP Classification:** Contractor with LRF

Original Contractor: SMA Enterprises Inc dba Elite Builder Group

Type: Contractor with LRF **Contractor License #** 7806577-5501

License Issuance Date: 01/13/2011 **License End Date:** 12/12/2012 (surrendered)

Homeowner(s) Riley

Abstract and Recommendation

Division's recommended disposition: Deny

The Division has reviewed the evidence submitted by the Claimant. It is the Division's opinion that Claimant has failed to satisfy UTAH CODE ANN. § 38-11-204(4)(a) and (b). Further, Claimant's Prolonged Status has expired and Claimant has failed to respond to the "Expiration of Prolonged Status" notification.

Detailed Analysis and Findings of Facts

On October 31, 2013 the Claimant submitted an application for payment (Exhibit A). On December 12, 2013, a "Notice of Incomplete or Insufficient Claim Application Conditional Denial of Claim" notification was sent to the Claimant which outlined the deficiencies in the claim application (Exhibit B).

UTAH CODE ANN. § 38-11-204(4) states:

To recover from the fund, regardless of whether the residence is occupied by the owner, a subsequent owner, or the owner or subsequent owner's tenant or lessee, a qualified beneficiary shall establish that:

- (a) (i) the owner of the owner-occupied residence or the owner's agent entered into a written contract with an original contractor licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act . . .
- (b) the owner has paid in full the original contractor licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, real estate developer, or

factory built housing retailer under Subsection (4)(a) with whom the owner has a written contract in accordance with the written contract and any amendments to the contract . . .

UTAH ADMIN. CODE § R156-38a-204b(1) provides:

The following supporting documents shall, at a minimum, accompany each nonlaborer claim for recovery from the fund:

- (1) one of the following:
 - (a) a copy of the certificate of compliance issued by the Division for the residence at issue in the claim;
 - (b) the documents required in Section R156-38a-204a; or
 - (c) a copy of a civil judgment containing findings of fact that:
 - (i) the homeowner entered a written contract in compliance with Subsection 38-11-204(4)(a)

On December 20, 2013, Claimant requested Prolonged Status (Exhibit C). On April 10, 2015, Claimant requested Prolonged Status be renewed, allowing until April 11, 2016 to complete the application (Exhibit D). On May 2, 2016, an "Expiration of Prolonged Status" letter was sent to Claimant, outlining the deficiencies in the application, and allowing until June 2, 2016 to respond (Exhibit E). As of June 7, 2016, the Division has not received a response. Therefore, because the claim application does not include the requested documents, and Claimant has failed to respond to the "Expiration of Prolonged Status" notification, the Division recommends the application be denied.

Exhibit A

Application

APPLICATION FOR PAYMENT

GENERAL INFORMATION

Claimant:

Company Name: ProBuild Company, LLC

Contact Person: Ryan Palmer

Mailing Address: 7380 South 700 West

City: Midvale State: UT Zip: 84047

Telephone: (801) 255-4201 LRF Registration Number: 7919125-5501

Email: ryan.palmer@probuild.com

Claiming as (*select one*):

- Contractor
- Supplier
- Other

Claimant's Legal Counsel:

Name: Jason H. Robinson

Firm: BABCOCK SCOTT & BABCOCK, P.C.

Address: 505 East 200 South, Suite 300

City: Salt Lake City State: UT Zip: 84102

Telephone: (801) 531-7000 Email: jason@babcockscott.com

RECEIVED

OCT 31 2013

**DIVISION OF OCCUPATIONAL
& PROFESSIONAL LICENSING**

Nonpaying Party (Original Contractor):

Company Name: SMA Enterprises Inc. d/b/a Elite Builders Group

Address: P.O. Box 628 Email:

City: Lehi State: UT Zip: 84043

Telephone: Contractor License Number: 7806577-5501

Owner-Occupied Residence:

Address: 591 West 650 South

City: Springville State: UT Zip: 84663

Legal Description (*required*):

LOT 59, PLAT A, CRYSTAL SPRINGS SUBDV.

Parcel/Serial No.: 65:175:0059

RESIDENCE AND QUALIFIED SERVICES:

Residence is a (*select one*):

- Detached, single-family dwelling
- Duplex residence
- Other, describe: _____

Please describe the qualified services performed by the claimant for the nonpaying party on this residence:

Claimant furnished labor, materials, and/or equipment for the improvement of the above-described property.

Qualified services can be described as: (*select one*)

- Work designated for the improvement of incidental residence only
- Work constituting improvement to multiple properties or subdivisions (*i.e. infrastructure work, installation of utilities, roadways, sewer lines, and irrigation systems on a subdivision or on multiple properties*)

Date(s) claimant provided qualified services for nonpaying party on this residence: September 15, 2011 – October 17, 2011

Has the homeowner provided the claimant with a copy of a Certificate of Compliance for the incident residence? Yes No

Amount nonpaying party owes claimant for qualified services on this residence: \$11,630.32

Date claimant recorded mechanics' lien on incident residence: N/A

Date of occupancy permit: 3/7/13

No occupancy permit, date of final inspection on residence: ____/____/____

If none of the above, date contract between owner and original contractor was substantially

complete: ____/____/____

CIVIL ACTION AGAINST NONPAYING PARTY:

Court, case number, and filing date of claimant’s civil action against the nonpaying party:

Fourth District Court of Utah County; Case No. 120401310; Filing date of the Complaint is 8/16/12

Date judgment was entered in civil action: 11/1/12

Date supplemental order was issued: 10/21/13 Date served: Defendants’ attorney accepted service of supplemental order

Date of Writ of Execution: ____/____/____ Date of Return of Execution: ____/____/____

Amount of judgment recovered through writ of execution (if any): \$ _____

NONPAYING PARTY’S BANKRUPTCY FILING:

Court, case number, and filing or conversion date for nonpaying party’s bankruptcy action:

ADDITIONAL SOURCES OF PAYMENT:

Is claimant likely to become entitled to reimbursement for this claim from any other source?

- No Yes, identify the source(s) including name, address, telephone number, and amount of expected reimbursement. (*Attach additional sheets as necessary.*)

PAYMENT WORKSHEET

Attach evidence supporting all amounts claimed. Evidence could include civil judgment, invoices, documentation of costs, attorney fee affidavits (*see Rule 4-505 Utah Code of Judicial Administration*), billing notices, supplemental order issuance reports, etc.

SECTION 1—CIVIL JUDGMENT: Complete this section only if claimant has obtained a civil judgment against the nonpaying party. If the judgment relates to more than one property, complete this section and Section 2. If the judgment relates to only one property, complete only this section. If claimant has been precluded from obtaining a civil judgment because the nonpaying party filed for bankruptcy protection, go to Section 3.

- | | | |
|----|--------------|--|
| A. | \$138,445.28 | Qualified services amount awarded in civil judgment. |
| B. | 6,906.00 | Pre-judgment attorney fees (and pre-judgment costs)—may not exceed 15% of qualified services [Utah Code Ann. § 38-11-203(3)(f)] |
| C. | N/A | Pre-judgment costs (combined with pre-judgment attorney fees). |
| D. | 8,970.50 | Post-judgment attorney fees. <u>Total</u> attorney fees may not exceed 15% of qualified services [Utah Code Ann. § 38-11-203(3)(f)] |
| E. | 373.00 | Post-judgment costs for entire principal amount authorized by the civil judgment. [See Utah Admin. Code § R156-38-204d(3)(a) for limits] |
| F. | 4,487.14 | Interest. Calculate simple interest on the qualified services balance using the appropriate rate from the table in the instructions. |
| G. | \$159,181.92 | Total (<i>add lines A through F</i>). |

SECTION 2—ALLOCATION OF CIVIL JUDGMENT TO RESIDENCE: Complete this section only if the claimant has obtained a civil judgment that includes an award for more than one residence. The Fund can pay only the portion of the civil judgment that relates to the subject property. Please attach a separate sheet that identifies the residences included in the civil judgment and state the amounts awarded for each residence.

- H. \$11,630.32 Qualified services attributable to this residence.
- I. 8.41% Allocation ratio. Divide line H by line A above and enter the percentage here (*Please round to the nearest 1/100 of a percent; i.e. 1/3 = 33.33% and 3/7 = 42.86%*).
- J. 580.79 Pre-judgment attorney fees (and pre-judgment costs) allocated to this residence. Multiply line B by line I.
- K. N/A Pre-judgment costs (combined with pre-judgment attorney fees). Multiply line C by line I.
- L. 754.42 Post-judgment attorney fees allocable to this residence. Multiply line D by line I.
- M. 31.37 Post-judgment costs allocable to this residence. Multiply line E by line I.
- N. 377.37 Total interest allocable to this residence. Multiply line F by line I
- O. **\$13,374.27** Total amount claimed for this residence. Add line H and lines J through N. **Do not include line I in the total.**

SECTION 3—BANKRUPTCY FILING BY NONPAYING PARTY: Complete this section if claimant was precluded from obtaining a civil judgment because the nonpaying party filed for bankruptcy protection.

- P. _____ Amount of qualified services provided for this residence.
- Q. _____ Amount of attorney fees incurred to collect for qualified services on this residence. Total attorney fees may not exceed 15% of qualified services and the claimant's contract with the nonpaying party must authorize collection of attorney fees. [Utah Code Ann. § 38-11-203(3)(f)]
- R. _____ Amount of costs incurred to collect for qualified services on this residence. [See Utah Admin. § R156-38-204d(3)(b) for limits]
- S. _____ Interest. Calculate simple interest on the qualified services balance using the appropriate rate from the table in the instructions.
- R. _____ Total amount claimed. Add lines P through S.

AFFIDAVIT, CERTIFICATION and RELEASE AUTHORIZATION

I am authorized to sign this affidavit for the claimant described and identified in this Residence Lien Recovery Fund claim application.

To the best of my knowledge, the information contained in this application and the supporting documents is free from fraud, misrepresentation, or omission of material fact.

I will ensure that any information subsequently submitted to the Division of Occupational and Professional Licensing in conjunction with this claim application and/or its supporting documents will meet the same standard set forth above.

I understand that claimants who, in order to receive payment from the Lien Recovery Fund to which they are not entitled, report false information, withhold information, or present false or misleading documentation pertinent to a claim will be disqualified from receiving payment and may be subject to both criminal prosecution and civil penalties.

I understand that this application will be classified as a public record and will be available for inspection by the public except with regard to the release of information which is classified as controlled, private, or protected under the Government Records Access and Management Act or restricted by other law.

I certify that the claimant is not entitled to reimbursement from any other entity for this claim as of the date of this affidavit. Should the claimant become entitled to reimbursement from any other entity for this claim after this date, the claimant will immediately notify the Division of Occupational and Professional Licensing.

I hereby authorize all persons, institutions, governmental agencies, employers, or any others not specifically included in the preceding characterization, which are set forth directly or by reference in this application, to release to the Division of Occupational and Professional Licensing, State of Utah or the Residence Lien Recovery Fund Advisory Board, any files, records or information of any type reasonably required for the Division of Occupational and Professional Licensing or the Board to properly evaluate my claim.

Signature of Applicant:



Date of Signature:

10/31/13

Printed Name of Applicant:

Jason Robinson, Atty.

Exhibit B

Conditional Denial



Department of Commerce

Division of Occupational and Professional Licensing

GARY R. HERBERT
Governor

FRANCINE A. GIANI
Executive Director

MARK B. STEINAGEL
Division Director

December 12, 2013

JASON ROBINSON
BABCOCK SCOTT & BABCOCK
505 E 200 S STE 300
SALT LAKE CITY UT 84102

Subject: Notice of Incomplete or Insufficient Claim Application
Conditional Denial of Claim
Lien Recovery Fund Claim No. LRF-2013-1031-03
Claimant: ProBuild Company LLC
Original Contractor: SMA Enterprises Inc dba Elite Builders Group
Nonpaying Party: SMA Enterprises Inc dba Elite Builders Group
Homeowners: Riley, May and/or Stuflick

RESPONSE DUE DATE: January 13, 2014

Dear Claimant:

The Division has reviewed the application for payment of the above-referenced claim. Based upon that review, we find the claim documents are incomplete and do not meet the requirements of Utah Admin. Code § R156-38a-101 *et seq.* This notice sets forth the defects in the claim and specifies the date by which the claimant must respond to the notice.

Unless the claim is completed, it will be denied. The following defects must be corrected to complete the application:

Written Contract Missing - Utah Code Ann. § 38-11-204(4)(a) requires:

To recover from the fund, . . . a qualified beneficiary shall establish that

(i) the owner of the owner-occupied residence or the owner's agent entered into a written contract with an original contractor licensed or exempt from licensure under Title 58, Chapter 55, . . .

(ii) the owner of the owner-occupied residence or the owner's agent entered into a written contract with a real estate developer for the purchase of an owner-occupied residence; or

(iii) the owner of the owner-occupied residence or the owner's agent entered into a written contract with a factory built

housing retailer for the purchase of an owner-occupied residence
(emphasis added)

For claimants' benefit, Utah Admin. Code § R156-38a-204b(1) provides:

The following supporting documents shall, at a minimum, accompany each nonlaborer claim for recovery from the fund:

- (1) one of the following:
 - (a) a copy of the certificate of compliance issued by the Division for the residence at issue in the claim;
 - (b) the documents required in Section R156-38-204a; or
 - (c) a copy of a civil judgment containing findings of fact that:
 - (i) the homeowner entered a written contract in compliance with Subsection 38-11-204(4) (a)

Paid in Full Missing - To recover from the fund, . . . a qualified beneficiary shall establish that . . . the owner has paid in full the original contractor . . . , real estate developer, or factory built housing retailer . . . with whom the owner has a written contract in accordance with the written contract and any amendments to the contract.
(emphasis added)

To assist claimants with this requirement, Utah Admin. Code § R156-38a-204b(1) provides:

The following supporting documents shall, at a minimum, accompany each nonlaborer claim for recovery from the fund:

- (1) one of the following:
 - (a) a copy of the certificate of compliance issued by the Division for the residence at issue in the claim;
 - (b) the documents required in Section R156-38-204a; or
 - (c) a copy of a civil judgment containing findings of fact that
 - (iii) the homeowner paid the contracting entity in full in accordance with the written contract and any amendments to the contract.

Owner-Occupied Residence Missing - Utah Code Ann. §§ 38-11-102(18), 38-11-204(1)(ii), 38-11-204(4)(a), and 38-11-204(4)(d)(ii) all require that the residence at issue in the claim must be an owner-occupied residence for the claimant to receive payment. To facilitate compliance with this requirement Utah Admin. Code § R156-38a-204b(1) requires:

The following supporting documents shall, at a minimum, accompany each nonlaborer claim for recovery from the fund:

- (1) one of the following:

- (a) a copy of the certificate of compliance issued by the Division for the residence at issue in the claim;
- (b) the documents required in Section R156-38-204a; or
- (c) a copy of a civil judgment containing findings of fact that . . .
- (iv) the homeowner is an owner as defined in Subsection 38-11-102(17) and the residence is an owner-occupied residence as defined in Subsection 38-11-102(18);

Jurisdictional Flaw -- Failure to File Civil Action by Deadline: Utah Code Ann. § 38-11-204(4)(d)(i)(A) & (B) require:

To recover from the fund, . . . a qualified beneficiary shall establish that . . . the qualified beneficiary filed an action against the nonpaying party to recover monies owed to the qualified beneficiary with the earlier of:

- (A) 180 days from the date the qualified beneficiary filed a notice of claim under Section 38-1-7; or
- (B) 270 days from the completion of the original contract pursuant to Subsection 38-1-7(1);

While we received documentation demonstrating the date of completion of the original contract, we did not receive a copy of the notice of claim of lien specific to the residence at issue. Therefore, we are unable to determine if your claim complies with the above-referenced requirement.

Response Procedure: Please submit the required documentation and a copy of this letter to my attention at:

DOPL - LRF
PO BOX 146741
SALT LAKE CITY UT 84114-6741

Documents may also be hand-delivered to the Division of Occupational and Professional Licensing on the 1st floor of the Heber M. Wells Building – 160 East 300 South, Salt Lake City, Utah. Office hours are from 8:00 a.m. to 5:00 p.m. Monday through Friday.

Presumption a Response is Complete: The Division will review the claim application again upon receiving a written response from the claimant. The Division will treat any response received as the claimant's complete and final response. Therefore, once we receive your response the claim will be reviewed and a decision rendered.

To avoid confusion, you are advised to submit a single, complete response; DO NOT submit your response in a piece meal manner.

Claim Will Be Denied Unless Completed: As required by Utah Admin. Code § R156-38a-105b(1)(b), this Notice serves to advise the claimant that the above-referenced claim application is incomplete and will be denied unless the Division *receives* your written response and the information needed to complete it on or before the Response Due Date shown above.

Additional Requests for Information: Please be aware providing the documents requested above does not guarantee the application will be completed. If the requested documents are incomplete or create additional questions, you may be contacted for further information.

No Interest Accrual During Response Period: Granting an applicant time to correct an incomplete application is considered a "delay attributable to the claimant." Therefore, no interest will accrue during the period beginning with the date of this letter and ending when the required documentation is received (see Utah Code Ann. § 38-11-203(3)(c)).

Questions, Assistance, and Extensions: If you have any questions, need assistance, or wish to request an extension of time to respond, please call. Please note, Utah Admin. Code § R156-38a-105b(2) limits claimants to a single 30-day extension of time to respond to this notice. If you anticipate you will be unable to complete the claim within 30 days from the Response Deadline given above, we recommend you request the claim be prolonged pursuant to Utah Admin. Code § R156-38a-105b(3). However, you should consider that a claim may only be prolonged once unless certain narrowly defined criteria are met.

Respectfully,



Dane Ishihara

Program Manager

(801) 530-7632

dishihara@utah.gov

Exhibit C

Request for prolonged status

From: Jason Robinson
Sent: Thursday, December 19, 2013 4:37 PM
To: dishihara@utah.gov
Subject: Please place LRF applications on hold

Dane:

Given the holidays, I will need more time to respond to your letters dated December 12, 2013, for the following applications:

LRF-2013-1031-03 (Riley, May and/or Suflick)

LRF-2013-1031-04 (?)

LRF-2013-1031-05 (Trent & Brandy Hanna)

LRF-2013-1031-06 (Travis Thompson)

LRF-2013-1031-07 (Trent & Brandy Hanna)

LRF-2013-1031-08 (Wanda Oliverson)

Please place the foregoing applications on inactive, prolonged, hold status. Please confirm.

As to the following claims, they should not be placed on hold status; but please let me know if you need any additional information:

LRF Claim No. LRF-2013-1031-01 (Brian & Kari Anderson)

LRF Claim No. LRF-2013-1031-02 (Brett and Melanie Smith)

Final note; as to LRF-2013-1031-04 (?), I don't have a letter from you in my file. Did you send a letter?

Thanks.



Jason H. Robinson

Shareholder – Licensed in Utah & Wyoming
Washington Federal Plaza | 505 East 200 South, Suite 300

Salt Lake City, Utah 84102

T: 801.531.7000 | F: 801.531.7060

E: jason@babcockscott.com | www.babcockscott.com

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Exhibit D

Prolonged Status Granted



Tracy Naff <tnaff@utah.gov>

Fwd: Please place LRF applications on hold

1 message

Dane Ishihara <dishihara@utah.gov>

Fri, Apr 10, 2015 at 1:49 PM

To: Naffster <tnaff@utah.gov>

Will you place these on prolonged status.

----- Forwarded message -----

From: **Jason Robinson** <jason@babcockscott.com>

Date: Fri, Apr 10, 2015 at 12:38 PM

Subject: RE: Please place LRF applications on hold

To: Dane Ishihara <dishihara@utah.gov>

Dane:

I am still seeking supporting information from the contractor, Elite Builders Group. I am, therefore, requesting that the following applications be placed on prolonged status:

LRF-2013-1031-03 (Riley, May and/or Suflick)

LRF-2013-1031-04 (?)

LRF-2013-1031-05 (Trent & Brandy Hanna)

LRF-2013-1031-06 (Travis Thompson)

LRF-2013-1031-07 (Trent & Brandy Hanna)

LRF-2013-1031-08 (Wanda Oliverson)

Please confirm. Thank you.



Jason H. Robinson

Shareholder – Licensed in Utah & Wyoming

Washington Federal Plaza | 505 East 200 South, Suite 300

Salt Lake City, Utah 84102

T: 801.531.7000 | F: 801.531.7060

E: jason@babcockscott.com | www.babcockscott.com

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From: Dane Ishihara [mailto:dishihara@utah.gov]

Sent: Friday, December 20, 2013 1:12 PM

To: Jason Robinson

Subject: Re: Please place LRF applications on hold

Jason,

This email is to acknowledge your request to have the above referenced Lien Recovery Fund claims placed on prolonged status. The request has been reviewed and granted.

Claims are Inactive for **One Year**: Utah Admin. Code § R156-38a-105b (3) (c) provides "a claim extended prolonged status shall be inactive for a period of one year or until reactivated by the applicant, whichever comes first."

No Interest Accrual During Prolonged Status: Placing a claim on prolonged status is considered a "delay attributable to the claimant." Therefore, no interest will accrue during the period beginning with the date of this letter and ending when the claim is reactivated (see Utah Code Ann. § 38-11-203(3) (c)).

Dane

On Fri, Dec 20, 2013 at 12:12 PM, Jason Robinson <Jason@babcockscott.com> wrote:

Dane:

Following up. I found your letter for LRF-2013-1031-04 (Wayne Sei Lesa), which is one of the applications that we are placing on hold status.



Jason H. Robinson

Shareholder – Licensed in Utah & Wyoming
Washington Federal Plaza | 505 East 200 South, Suite 300

Salt Lake City, Utah 84102

T: 801.531.7000 | F: 801.531.7060

E: jason@babcockscott.com | www.babcockscott.com

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Exhibit E

Expiration of Prolonged Status



State of Utah
Department of Commerce

Division of Occupational and Professional Licensing

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

FRANCINE A. GIANI
Executive Director

MARK B. STEINAGEL
Division Director

May 2, 2016

JASON ROBINSON
BABCOCK SCOTT & BABCOCK
370 S TEMPLE
SALT LAKE CITY 84111

Subject: Expiration of Prolonged Status
Updated Notice of Incomplete or Insufficient Claim Application
Updated Conditional Denial of Claim
Opportunity to Request Renewal of Prolonged Status
Claim No. LRF-2013-1031-03,04,05,06,07,08
Claimant: ProBuild Company LLC
Original Contractor: SMA Enterprises Inc dba Elite Builder Group
Nonpaying Party: SMA Enterprises Inc dba Elite Builder Group

RESPONSE DUE DATE: June 2, 2016

Dear Claimant:

On April 10, 2015 the Division placed the above-cited claim on prolonged status for the second time. Utah Admin. Code § R156-38a-105b(3)(b) provides a claim may remain on prolonged status for one year. Therefore, the claim's period of prolonged status has expired.

Updated Conditional Denial of Claim: Utah Admin. Code § R156-38a-105b(3)(d) requires "upon expiration of the one-year prolonged status of a claim, the Division shall issue to the claimant an updated notice" as to why the claim application is incomplete. As of today, the following issues must be resolved to complete the claim application:

Please see attached "Conditional Denial of Claim" dated December 12, 2013

Response Procedure: Utah Admin. Code § R156-38-105b(3)(d) requires that the updated notice include a form that provides the claimant the opportunity to:

- Reactivate the claim and submit any documentation necessary to resolve any unresolved issues;
- Withdraw the claim; or

- Request the claim be granted another one-year prolonged status.

That form is attached. Please complete it and attach any required documentation. Note, if you request prolonged status be renewed, you must attach the documents mentioned in the instructions for the form. Please submit the form and documentation to my attention at:

DOPL - LRF
PO BOX 146741
SALT LAKE CITY UT 84114-6741

Documents may also be hand-delivered to the Division of Occupational and Professional Licensing on the 1st floor of the Heber M. Wells Building – 160 East 300 South, Salt Lake City, Utah. Office hours are from 7:00 a.m. to 6:00 p.m. Monday through Thursday.

Presumption a Response is Complete: The Division will review the claim application again upon receiving a written response from the claimant. The Division will treat any response received as the claimant's complete and final response. Therefore, once we receive your response the claim will be reviewed and a decision rendered.

To avoid confusion, you are advised to submit a single, complete response; **DO NOT** submit your response in a piece meal manner.

Claim Will Be Denied Unless Completed: As required by Utah Admin. Code § R156-38a-105b(1)(b), this Notice serves to advise the claimant that the above-referenced claim application is incomplete and will be denied unless the Division *receives* the information needed to complete it on or before the Response Due Date shown above.

Additional Requests for Information: Please be aware providing the documents requested above do not guarantee the application will be completed. If the requested documents are incomplete or create additional questions, you may be contacted for further information.

Adjudicative Hearing May be Required: If the claimant has been unable to obtain judgment against the nonpaying party due to the nonpaying party filing bankruptcy, a formal hearing before the Advisory Board and the Division may be required. If a hearing is required, you will be contacted by Steve Eklund, Administrative Law Judge of the Department of Commerce, regarding the exact date, time, and place for the hearing.

No Interest Accrual During Response Period: Granting an applicant time to correct an incomplete application is considered a “delay attributable to the claimant.” Therefore, no interest will accrue during the period beginning with the date of this letter and ending when the required documentation is received (see Utah Code Ann. § 38-11-203(3)(c)).

Questions, Assistance, and Extensions: If you have any questions or need assistance please call.

Pursuant to Utah Admin. Code § R156-38a-105b(2), **the deadline to respond to this notice cannot be extended by the Division.**

Respectfully,

A handwritten signature in black ink, appearing to be 'Tracy Naff', with a long horizontal line extending to the right.

Tracy Naff
Fund Manager
801-530-6225
tnaff@utah.gov

Declaration of Intent
Regarding Prolonged Lien Recovery Fund Claim

Read all instructions before completing this form

Part A. Statement of Intent. Check the appropriate box

Probuild Company LLC states its intent with respect to claims LRF-2013-1031-03,04,05,06,07, and 08 which has been on prolonged status for more than one year, is as follows.

ProBuild Company LLC:

- Requests the claim be reactivated and processed.
- Withdraws the claim.
- Requests the claim be granted another one-year prolonged status for the reason given in Part B.

Part B. Reason for Renewing Prolonged Status. Check the appropriate box and attach documentation as explained in the instructions.

- Ongoing litigation
- Ongoing bankruptcy
- Continuing compliance with payment arrangement
- Other

I certify that I have reviewed the information provided on this form and that the answers marked represent the desires of «Claimant» with respect to claims LRF-2013-1031-03,04,05,06,07, and 08

Signature of claimant or claimant's agent

Date

Printed name of signator

Title of signator

Instructions for Declaration of Intent
Regarding Prolonged Lien Recovery Fund Claim

1. **Part A.** Check the box indicating how you want the claim processed at this point. Your choices are:
 - a. **Reactivate the Claim.** Selecting this option notifies the Division you want the claim processed based upon the current claim documents supplemented by whatever documentation you attach with this form. If you select this option you must submit all documentation necessary to complete the claim.
 - b. **Withdraw the Claim.** If you select this option your claim will be dismissed by the Division and the matter closed without payment being issued.
 - c. **Request Renewal of Prolonged Status.** Selecting this option notifies the Division you are requesting the claim be granted another one-year prolonged status. If you select this option you must complete Part B and provide the documentation requested therein.
2. **Part B.** If you are requesting renewal of prolonged status you must select one of the following reasons and provide the required documentation:
 - a. **Ongoing Litigation.** Utah Admin. Code § R156-38a-105a(9) provides a claim will be prolonged during the pendency of an appeal – judicial or administrative – if the outcome of the appeal directly affects adjudication of the claim. If you select this option you must attach a written explanation of why the appeal directly relates to adjudication of the claim and a copy of the court docket or similar administrative calendar showing the current status of the appeal.
 - b. **Ongoing Bankruptcy.** Bankruptcy by any claim party that precludes completion of the claim is adequate grounds for renewal of prolonged status. If you select this option you must attach a written explanation of why the bankruptcy is preventing completion of the claim and a copy of the bankruptcy court docket.
 - c. **Continuing Compliance with a Payment Plan.** If the nonpaying party is complying with a payment plan, the claim will remain on prolonged status. If you select this option no documentation need be attached.
 - d. **Other Reasons.** Other reasons may exist for renewing prolonged status. Utah Admin. Code § R156-38a-105b(3)(c)(iv) provides that the presiding officer of the claim may granted renewed prolonged status for other reasonable causes. If you wish to have the claim prolonged for some reason other than a, b, or c above select this option and provide a written explanation of the reason. The explanation must include a statement as to why it would be unreasonable for the Division to reactivate the claim considering the claimant has had a full year to complete the claim. The explanation must also include all supporting documents necessary to validate the claimant's reason for requesting prolonged status be renewed.
3. We must *receive* this form on or before the Response Due Date given in the attached Notice or the claim will be processed based on the existing file.

Claim Report

Informal Claim

Claim Number: LRF-2013-1031-04

Claimant: ProBuild Company LLC

Contractor License #7919125-5501 **Issue Date:** 02/24/2011 **Expiration Date:** 11/30/2017

Claimant Classification: Contractor with LRF

Claimant's Attorney: Jason Robinson

Nonpaying Party: SMA Enterprises Inc dba Elite Builder Group

Contractor License # 7806577-5501 **NPP Classification:** Contractor with LRF

Original Contractor: SMA Enterprises Inc dba Elite Builder Group

Type: Contractor with LRF **Contractor License #** 7806577-5501

License Issuance Date: 01/13/2011 **License End Date:** 12/12/2012 (surrendered)

Homeowner(s) Lesa

Abstract and Recommendation

Division's recommended disposition: Deny

The Division has reviewed the evidence submitted by the Claimant. It is the Division's opinion that Claimant has failed to satisfy UTAH CODE ANN. § 38-11-204(4)(a) and (b). Further, Claimant's Prolonged Status has expired and Claimant has failed to respond to the "Expiration of Prolonged Status" notification.

Detailed Analysis and Findings of Facts

On October 31, 2013 the Claimant submitted an application for payment (Exhibit A). On December 12, 2013, a "Notice of Incomplete or Insufficient Claim Application Conditional Denial of Claim" notification was sent to the Claimant which outlined the deficiencies in the claim application (Exhibit B).

UTAH CODE ANN. § 38-11-204(4) states:

To recover from the fund, regardless of whether the residence is occupied by the owner, a subsequent owner, or the owner or subsequent owner's tenant or lessee, a qualified beneficiary shall establish that:

(a) (i) the owner of the owner-occupied residence or the owner's agent entered into a written contract with an original contractor licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act . . .

(b) the owner has paid in full the original contractor licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, real estate developer, or

factory built housing retailer under Subsection (4)(a) with whom the owner has a written contract in accordance with the written contract and any amendments to the contract . . .

UTAH ADMIN. CODE § R156-38a-204b(1) provides:

The following supporting documents shall, at a minimum, accompany each nonlaborer claim for recovery from the fund:

- (1) one of the following:
 - (a) a copy of the certificate of compliance issued by the Division for the residence at issue in the claim;
 - (b) the documents required in Section R156-38a-204a; or
 - (c) a copy of a civil judgment containing findings of fact that:
 - (i) the homeowner entered a written contract in compliance with Subsection 38-11-204(4)(a)

On December 20, 2013, Claimant requested Prolonged Status (Exhibit C). On April 10, 2015, Claimant requested Prolonged Status be renewed, allowing until April 11, 2016 to complete the application (Exhibit D). On May 2, 2016, an "Expiration of Prolonged Status" letter was sent to Claimant, outlining the deficiencies in the application, and allowing until June 2, 2016 to respond (Exhibit E). As of June 7, 2016, the Division has not received a response. Therefore, because the claim application does not include the requested documents, and Claimant has failed to respond to the "Expiration of Prolonged Status" notification, the Division recommends the application be denied.

Exhibit A

Application

APPLICATION FOR PAYMENT

GENERAL INFORMATION

Claimant:

Company Name: ProBuild Company, LLC

Contact Person: Ryan Palmer

Mailing Address: 7380 South 700 West

City: Midvale State: UT Zip: 84047

Telephone: (801) 255-4201 LRF Registration Number: 7919125-5501

Email: ryan.palmer@probuild.com

Claiming as (*select one*):

- Contractor
- Supplier
- Other

Claimant's Legal Counsel:

Name: Jason H. Robinson

Firm: BABCOCK SCOTT & BABCOCK, P.C.

Address: 505 East 200 South, Suite 300

City: Salt Lake City State: UT Zip: 84102

Telephone: (801) 531-7000 Email: jason@babcockscott.com

RECEIVED
OCT 31 2013
 DIVISION OF OCCUPATIONAL
 & PROFESSIONAL LICENSING

Nonpaying Party (Original Contractor):

Company Name: SMA Enterprises Inc. d/b/a Elite Builders Group

Address: P.O. Box 628 Email:

City: Lehi State: UT Zip: 84043

Telephone: Contractor License Number: 7806577-5501

Nonpaying Party's Legal Counsel:

Name: Brian R. Barnhill

Firm: OSBORNE & BARNHILL, P.C.

Address: 11576 South State Street, #204

City: Draper State: Utah Zip: 84020

Telephone: (801) 571-2555 Email: brian@oblawpc.com

Original Contractor/Factory Built Housing Retailer/Real Estate Developer

(Please circle applicable designation. See Definitions Section for additional information.)

Company Name: SMA Enterprises Inc. d/b/a Elite Builders Group

Address: P.O. Box 628 Email:

City: Lehi State: UT Zip: 84043

Contractor License Number: 7806577-5501

Telephone: () Email: _____

Homeowner:

Name: Wayne Sei Lesa

Address: 1987 South 50 West

City: Orem State: UT Zip: 84058

Telephone: () Email: _____

Subsequent Homeowner (if applicable):

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: () Email: _____

Owner-Occupied Residence:

Address: 1987 South 50 West

City: Orem State: UT Zip: 84058

Legal Description (*required*):

LOT 17, CHELSEA SUBDV.

Parcel/Serial No.: 65:249:0017

RESIDENCE AND QUALIFIED SERVICES:

Residence is a (*select one*):

- Detached, single-family dwelling
- Duplex residence
- Other, describe: _____

Please describe the qualified services performed by the claimant for the nonpaying party on this residence:

Claimant furnished labor, materials, and/or equipment for the improvement of the above-described property.

Qualified services can be described as: (*select one*)

- Work designated for the improvement of incidental residence only
- Work constituting improvement to multiple properties or subdivisions (*i.e. infrastructure work, installation of utilities, roadways, sewer lines, and irrigation systems on a subdivision or on multiple properties*)

Date(s) claimant provided qualified services for nonpaying party on this residence: September 29, 2011 – November 9, 2011

Has the homeowner provided the claimant with a copy of a Certificate of Compliance for the incident residence? Yes No

Amount nonpaying party owes claimant for qualified services on this residence: \$9,919.43

Date claimant recorded mechanics' lien on incident residence: N/A

Date of occupancy permit: 12/28/11

No occupancy permit, date of final inspection on residence: ____/____/____

If none of the above, date contract between owner and original contractor was substantially

complete: ____/____/____

CIVIL ACTION AGAINST NONPAYING PARTY:

Court, case number, and filing date of claimant's civil action against the nonpaying party:

Fourth District Court of Utah County; Case No. 120401310; Filing date of the Complaint is 8/16/12

Date judgment was entered in civil action: 11/1/12

Date supplemental order was issued: 10/21/13 Date served: Defendants' attorney accepted service of supplemental order

Date of Writ of Execution: ____/____/____ Date of Return of Execution: ____/____/____

Amount of judgment recovered through writ of execution (if any): \$ _____

NONPAYING PARTY'S BANKRUPTCY FILING:

Court, case number, and filing or conversion date for nonpaying party's bankruptcy action:

ADDITIONAL SOURCES OF PAYMENT:

Is claimant likely to become entitled to reimbursement for this claim from any other source?

- No Yes, identify the source(s) including name, address, telephone number, and amount of expected reimbursement. (*Attach additional sheets as necessary.*)

PAYMENT WORKSHEET

Attach evidence supporting all amounts claimed. Evidence could include civil judgment, invoices, documentation of costs, attorney fee affidavits (*see Rule 4-505 Utah Code of Judicial Administration*), billing notices, supplemental order issuance reports, etc.

SECTION 1—CIVIL JUDGMENT: Complete this section only if claimant has obtained a civil judgment against the nonpaying party. If the judgment relates to more than one property, complete this section and Section 2. If the judgment relates to only one property, complete only this section. If claimant has been precluded from obtaining a civil judgment because the nonpaying party filed for bankruptcy protection, go to Section 3.

- | | | |
|----|--------------|--|
| A. | \$138,445.28 | Qualified services amount awarded in civil judgment. |
| B. | 6,906.00 | Pre-judgment attorney fees (and pre-judgment costs)—may not exceed 15% of qualified services [Utah Code Ann. § 38-11-203(3)(f)] |
| C. | N/A | Pre-judgment costs (combined with pre-judgment attorney fees). |
| D. | 8,970.50 | Post-judgment attorney fees. <u>Total</u> attorney fees may not exceed 15% of qualified services [Utah Code Ann. § 38-11-203(3)(f)] |
| E. | 373.00 | Post-judgment costs for entire principal amount authorized by the civil judgment. [See Utah Admin. Code § R156-38-204d(3)(a) for limits] |
| F. | 4,487.14 | Interest. Calculate simple interest on the qualified services balance using the appropriate rate from the table in the instructions. |
| G. | \$159,181.92 | Total (<i>add lines A through F</i>). |

SECTION 2—ALLOCATION OF CIVIL JUDGMENT TO RESIDENCE: Complete this section only if the claimant has obtained a civil judgment that includes an award for more than one residence. The Fund can pay only the portion of the civil judgment that relates to the subject property. Please attach a separate sheet that identifies the residences included in the civil judgment and state the amounts awarded for each residence.

- H. \$ 9,919.43 Qualified services attributable to this residence.
- I. 7.16% Allocation ratio. Divide line H by line A above and enter the percentage here (*Please round to the nearest 1/100 of a percent; i.e. 1/3 = 33.33% and 3/7 = 42.86%*).
- J. 494.47 Pre-judgment attorney fees (and pre-judgment costs) allocated to this residence. Multiply line B by line I.
- K. N/A Pre-judgment costs (combined with pre-judgment attorney fees). Multiply line C by line I.
- L. 642.29 Post-judgment attorney fees allocable to this residence. Multiply line D by line I.
- M. 26.71 Post-judgment costs allocable to this residence. Multiply line E by line I.
- N. 321.28 Total interest allocable to this residence. Multiply line F by line I
- O. **\$11,404.18** Total amount claimed for this residence. Add line H and lines J through N. **Do not include line I in the total.**

SECTION 3—BANKRUPTCY FILING BY NONPAYING PARTY: Complete this section if claimant was precluded from obtaining a civil judgment because the nonpaying party filed for bankruptcy protection.

- P. _____ Amount of qualified services provided for this residence.
- Q. _____ Amount of attorney fees incurred to collect for qualified services on this residence. Total attorney fees may not exceed 15% of qualified services and the claimant's contract with the nonpaying party must authorize collection of attorney fees. [Utah Code Ann. § 38-11-203(3)(f)]
- R. _____ Amount of costs incurred to collect for qualified services on this residence. [See Utah Admin. § R156-38-204d(3)(b) for limits]
- S. _____ Interest. Calculate simple interest on the qualified services balance using the appropriate rate from the table in the instructions.
- R. _____ Total amount claimed. Add lines P through S.

Exhibit B

Conditional Denial



State of Utah
Department of Commerce

Division of Occupational and Professional Licensing

GARY R. HERBERT
Governor

FRANCINE A. GIANI
Executive Director

MARK B. STEINAGEL
Division Director

December 12, 2013

JASON ROBINSON
BABCOCK SCOTT & BABCOCK
505 E 200 S STE 300
SALT LAKE CITY UT 84102

Subject: Notice of Incomplete or Insufficient Claim Application
Conditional Denial of Claim
Lien Recovery Fund Claim No. LRF-2013-1031-04
Claimant: ProBuild Company LLC
Original Contractor: SMA Enterprises Inc dba Elite Builders Group
Nonpaying Party: SMA Enterprises Inc dba Elite Builders Group
Homeowner: Wayne Sei Lesa

RESPONSE DUE DATE: January 13, 2014

Dear Claimant:

The Division has reviewed the application for payment of the above-referenced claim. Based upon that review, we find the claim documents are incomplete and do not meet the requirements of Utah Admin. Code § R156-38a-101 *et seq.* This notice sets forth the defects in the claim and specifies the date by which the claimant must respond to the notice.

Unless the claim is completed, it will be denied. The following defects must be corrected to complete the application:

Written Contract Missing - Utah Code Ann. § 38-11-204(4)(a) requires:

To recover from the fund, . . . a qualified beneficiary shall establish that

(i) the owner of the owner-occupied residence or the owner's agent entered into a written contract with an original contractor licensed or exempt from licensure under Title 58, Chapter 55, . . .

(ii) the owner of the owner-occupied residence or the owner's agent entered into a written contract with a real estate developer for the purchase of an owner-occupied residence; or

(iii) the owner of the owner-occupied residence or the owner's agent entered into a written contract with a factory built

housing retailer for the purchase of an owner-occupied residence
(emphasis added)

For claimants' benefit, Utah Admin. Code § R156-38a-204b(1) provides:

The following supporting documents shall, at a minimum, accompany each nonlaborer claim for recovery from the fund:

- (1) one of the following:
 - (a) a copy of the certificate of compliance issued by the Division for the residence at issue in the claim;
 - (b) the documents required in Section R156-38-204a; or
 - (c) a copy of a civil judgment containing findings of fact that:
 - (i) the homeowner entered a written contract in compliance with Subsection 38-11-204(4)(a)

Paid in Full Missing - To recover from the fund, . . . a qualified beneficiary shall establish that . . . the owner has **paid in full** the original contractor . . . , real estate developer, or factory built housing retailer . . . **with whom the owner has a written contract** in accordance with the written contract and any amendments to the contract.
(emphasis added)

To assist claimants with this requirement, Utah Admin. Code § R156-38a-204b(1) provides:

The following supporting documents shall, at a minimum, accompany each nonlaborer claim for recovery from the fund:

- (1) one of the following:
 - (a) a copy of the certificate of compliance issued by the Division for the residence at issue in the claim;
 - (b) the documents required in Section R156-38-204a; or
 - (c) a copy of a civil judgment containing findings of fact that
 - (iii) the homeowner paid the contracting entity in full in accordance with the written contract and any amendments to the contract.

Owner-Occupied Residence Missing - Utah Code Ann. §§ 38-11-102(18), 38-11-204(1)(ii), 38-11-204(4)(a), and 38-11-204(4)(d)(ii) all require that the residence at issue in the claim must be an owner-occupied residence for the claimant to receive payment. To facilitate compliance with this requirement Utah Admin. Code § R156-38a-204b(1) requires:

The following supporting documents shall, at a minimum, accompany each nonlaborer claim for recovery from the fund:

- (1) one of the following:

- (a) a copy of the certificate of compliance issued by the Division for the residence at issue in the claim;
- (b) the documents required in Section R156-38-204a; or
- (c) a copy of a civil judgment containing findings of fact that . . .
- (iv) the homeowner is an owner as defined in Subsection 38-11-102(17) and the residence is an owner-occupied residence as defined in Subsection 38-11-102(18);

Jurisdictional Flaw – Failure to File Civil Action by Deadline: Utah Code Ann. § 38-11-204(4)(d)(i)(A) & (B) require:

To recover from the fund, . . . a qualified beneficiary shall establish that . . . the qualified beneficiary filed an action against the nonpaying party to recover monies owed to the qualified beneficiary with the earlier of:

- (A) 180 days from the date the qualified beneficiary filed a notice of claim under Section 38-1-7; or
- (B) 270 days from the completion of the original contract pursuant to Subsection 38-1-7(1);

Because we did not receive a copy of the notice of claim of lien or documentation demonstrating the completion of the original contract, we are unable to determine if your claim complies with the above-referenced requirement. If a notice of claim of lien was filed, we need a copy of the lien supplemented with documentation demonstrating the date of completion of the original contract. Also, you must submit one of the following as documentation demonstrating the date of completion of the original contract:

- A copy of the certificate of occupancy issued by the local government entity having jurisdiction over the incident residence
- If no occupancy permit was required, please submit a copy of the final inspection approval issued by the local government entity
- If there is neither a copy of a certificate of occupancy or a final inspection approval, please submit an affidavit from the homeowner or other credible evidence establishing the date on which the original contractor substantially completed the written contract

Response Procedure: Please submit the required documentation and a copy of this letter to my attention at:

DOPL - LRF
PO BOX 146741
SALT LAKE CITY UT 84114-6741

Documents may also be hand-delivered to the Division of Occupational and Professional Licensing on the 1st floor of the Heber M. Wells Building – 160 East 300 South, Salt Lake City, Utah. Office hours are from 8:00 a.m. to 5:00 p.m. Monday through Friday.

Presumption a Response is Complete: The Division will review the claim application again upon receiving a written response from the claimant. The Division will treat any response received as the claimant's complete and final response. Therefore, once we receive your response the claim will be reviewed and a decision rendered.

To avoid confusion, you are advised to submit a single, complete response; **DO NOT** submit your response in a piece meal manner.

Claim Will Be Denied Unless Completed: As required by Utah Admin. Code § R156-38a-105b(1)(b), this Notice serves to advise the claimant that the above-referenced claim application is incomplete and will be denied unless the Division *receives* your written response and the information needed to complete it on or before the Response Due Date shown above.

Additional Requests for Information: Please be aware providing the documents requested above does not guarantee the application will be completed. If the requested documents are incomplete or create additional questions, you may be contacted for further information.

No Interest Accrual During Response Period: Granting an applicant time to correct an incomplete application is considered a "delay attributable to the claimant." Therefore, no interest will accrue during the period beginning with the date of this letter and ending when the required documentation is received (see Utah Code Ann. § 38-11-203(3)(c)).

Questions, Assistance, and Extensions: If you have any questions, need assistance, or wish to request an extension of time to respond, please call. Please note, Utah Admin. Code § R156-38a-105b(2) limits claimants to a single 30-day extension of time to respond to this notice. If you anticipate you will be unable to complete the claim within 30 days from the Response Deadline given above, we recommend you request the claim be prolonged pursuant to Utah Admin. Code § R156-38a-105b(3). However, you should

Claim No. LRF-2013-1031-02

December 12, 2013

Page 5

consider that a claim may only be prolonged once unless certain narrowly defined criteria are met.

Respectfully,

Dane Ishihara

Program Manager

(801) 530-7632

dishihara@utah.gov

Exhibit C

Request for prolonged status

From: Jason Robinson
Sent: Thursday, December 19, 2013 4:37 PM
To: dishihara@utah.gov
Subject: Please place LRF applications on hold

Dane:

Given the holidays, I will need more time to respond to your letters dated December 12, 2013, for the following applications:

LRF-2013-1031-03 (Riley, May and/or Suflick)

LRF-2013-1031-04 (?)

LRF-2013-1031-05 (Trent & Brandy Hanna)

LRF-2013-1031-06 (Travis Thompson)

LRF-2013-1031-07 (Trent & Brandy Hanna)

LRF-2013-1031-08 (Wanda Oliverson)

Please place the foregoing applications on inactive, prolonged, hold status. Please confirm.

As to the following claims, they should not be placed on hold status; but please let me know if you need any additional information:

LRF Claim No. LRF-2013-1031-01 (Brian & Kari Anderson)

LRF Claim No. LRF-2013-1031-02 (Brett and Melanie Smith)

Final note; as to LRF-2013-1031-04 (?), I don't have a letter from you in my file. Did you send a letter?

Thanks.



Jason H. Robinson

Shareholder – Licensed in Utah & Wyoming
Washington Federal Plaza | 505 East 200 South, Suite 300

Salt Lake City, Utah 84102

T: 801.531.7000 | F: 801.531.7060

E: jason@babcockscott.com | www.babcockscott.com

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Exhibit D

Prolonged Status Granted



Tracy Naff <tnaff@utah.gov>

Fwd: Please place LRF applications on hold

1 message

Dane Ishihara <dishihara@utah.gov>

Fri, Apr 10, 2015 at 1:49 PM

To: Naffster <tnaff@utah.gov>

Will you place these on prolonged status.

----- Forwarded message -----

From: **Jason Robinson** <jason@babcockscott.com>

Date: Fri, Apr 10, 2015 at 12:38 PM

Subject: RE: Please place LRF applications on hold

To: Dane Ishihara <dishihara@utah.gov>

Dane:

I am still seeking supporting information from the contractor, Elite Builders Group. I am, therefore, requesting that the following applications be placed on prolonged status:

LRF-2013-1031-03 (Riley, May and/or Suflick)

LRF-2013-1031-04 (?)

LRF-2013-1031-05 (Trent & Brandy Hanna)

LRF-2013-1031-06 (Travis Thompson)

LRF-2013-1031-07 (Trent & Brandy Hanna)

LRF-2013-1031-08 (Wanda Oliverson)

Please confirm. Thank you.



Jason H. Robinson

Shareholder – Licensed in Utah & Wyoming

Washington Federal Plaza | 505 East 200 South, Suite 300

Salt Lake City, Utah 84102

T: 801.531.7000 | F: 801.531.7060

E: jason@babcockscott.com | www.babcockscott.com

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From: Dane Ishihara [mailto:dishihara@utah.gov]
Sent: Friday, December 20, 2013 1:12 PM
To: Jason Robinson
Subject: Re: Please place LRF applications on hold

Jason,

This email is to acknowledge your request to have the above referenced Lien Recovery Fund claims placed on prolonged status. The request has been reviewed and granted.

Claims are Inactive for One Year: Utah Admin. Code § R156-38a-105b (3) (c) provides "a claim granted prolonged status shall be inactive for a period of one year or until reactivated by the applicant, whichever comes first."

No Interest Accrual During Prolonged Status: Placing a claim on prolonged status is considered a "delay attributable to the claimant." Therefore, no interest will accrue during the period beginning with the date of this letter and ending when the claim is reactivated (see Utah Code Ann. § 38-11-203(3) (c)).

Dane

On Fri, Dec 20, 2013 at 12:12 PM, Jason Robinson <Jason@babcockscott.com> wrote:

Dane:

Following up. I found your letter for LRF-2013-1031-04 (Wayne Sei Lesa), which is one of the applications that we are placing on hold status.



Jason H. Robinson

Shareholder – Licensed in Utah & Wyoming
Washington Federal Plaza | 505 East 200 South, Suite 300

Salt Lake City, Utah 84102

T: 801.531.7000 | F: 801.531.7060

E: jason@babcockscott.com | www.babcockscott.com

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Exhibit E

Expiration of Prolonged Status



State of Utah
Department of Commerce

Division of Occupational and Professional Licensing

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

FRANCINE A. GIANI
Executive Director

MARK B. STEINAGEL
Division Director

May 2, 2016

JASON ROBINSON
BABCOCK SCOTT & BABCOCK
370 S TEMPLE
SALT LAKE CITY 84111

Subject: Expiration of Prolonged Status
Updated Notice of Incomplete or Insufficient Claim Application
Updated Conditional Denial of Claim
Opportunity to Request Renewal of Prolonged Status
Claim No. LRF-2013-1031-03,04,05,06,07,08
Claimant: ProBuild Company LLC
Original Contractor: SMA Enterprises Inc dba Elite Builder Group
Nonpaying Party: SMA Enterprises Inc dba Elite Builder Group

RESPONSE DUE DATE: June 2, 2016

Dear Claimant:

On April 10, 2015 the Division placed the above-cited claim on prolonged status for the second time. Utah Admin. Code § R156-38a-105b(3)(b) provides a claim may remain on prolonged status for one year. Therefore, the claim's period of prolonged status has expired.

Updated Conditional Denial of Claim: Utah Admin. Code § R156-38a-105b(3)(d) requires "upon expiration of the one-year prolonged status of a claim, the Division shall issue to the claimant an updated notice" as to why the claim application is incomplete. As of today, the following issues must be resolved to complete the claim application:

Please see attached "Conditional Denial of Claim" dated December 12, 2013

Response Procedure: Utah Admin. Code § R156-38-105b(3)(d) requires that the updated notice include a form that provides the claimant the opportunity to:

- Reactivate the claim and submit any documentation necessary to resolve any unresolved issues;
- Withdraw the claim; or

- Request the claim be granted another one-year prolonged status.

That form is attached. Please complete it and attach any required documentation. Note, if you request prolonged status be renewed, you must attach the documents mentioned in the instructions for the form. Please submit the form and documentation to my attention at:

DOPL - LRF
PO BOX 146741
SALT LAKE CITY UT 84114-6741

Documents may also be hand-delivered to the Division of Occupational and Professional Licensing on the 1st floor of the Heber M. Wells Building—160 East 300 South, Salt Lake City, Utah. Office hours are from 7:00 a.m. to 6:00 p.m. Monday through Thursday.

Presumption a Response is Complete: The Division will review the claim application again upon receiving a written response from the claimant. The Division will treat any response received as the claimant's complete and final response. Therefore, once we receive your response the claim will be reviewed and a decision rendered.

To avoid confusion, you are advised to submit a single, complete response; **DO NOT** submit your response in a piece meal manner.

Claim Will Be Denied Unless Completed: As required by Utah Admin. Code § R156-38a-105b(1)(b), this Notice serves to advise the claimant that the above-referenced claim application is incomplete and will be denied unless the Division *receives* the information needed to complete it on or before the Response Due Date shown above.

Additional Requests for Information: Please be aware providing the documents requested above do not guarantee the application will be completed. If the requested documents are incomplete or create additional questions, you may be contacted for further information.

Adjudicative Hearing May be Required: If the claimant has been unable to obtain judgment against the nonpaying party due to the nonpaying party filing bankruptcy, a formal hearing before the Advisory Board and the Division may be required. If a hearing is required, you will be contacted by Steve Eklund, Administrative Law Judge of the Department of Commerce, regarding the exact date, time, and place for the hearing.

No Interest Accrual During Response Period: Granting an applicant time to correct an incomplete application is considered a “delay attributable to the claimant.” Therefore, no interest will accrue during the period beginning with the date of this letter and ending when the required documentation is received (see Utah Code Ann. § 38-11-203(3)(c)).

Questions, Assistance, and Extensions: If you have any questions or need assistance please call.

Pursuant to Utah Admin. Code § R156-38a-105b(2), **the deadline to respond to this notice cannot be extended by the Division.**

Respectfully,

A handwritten signature in black ink, appearing to be 'Tracy Naff', with a long horizontal flourish extending to the right.

Tracy Naff
Fund Manager
801-530-6225
tnaff@utah.gov

Declaration of Intent
Regarding Prolonged Lien Recovery Fund Claim

Read all instructions before completing this form

Part A. Statement of Intent. Check the appropriate box

Probuild Company LLC states its intent with respect to claims LRF-2013-1031-03,04,05,06,07, and 08 which has been on prolonged status for more than one year, is as follows.

ProBuild Company LLC:

- Requests the claim be reactivated and processed.
- Withdraws the claim.
- Requests the claim be granted another one-year prolonged status for the reason given in Part B.

Part B. Reason for Renewing Prolonged Status. Check the appropriate box and attach documentation as explained in the instructions.

- Ongoing litigation
- Ongoing bankruptcy
- Continuing compliance with payment arrangement
- Other

I certify that I have reviewed the information provided on this form and that the answers marked represent the desires of «Claimant» with respect to claims LRF-2013-1031-03,04,05,06,07, and 08

Signature of claimant or claimant's agent

Date

Printed name of signator

Title of signator

Instructions for Declaration of Intent
Regarding Prolonged Lien Recovery Fund Claim

1. **Part A.** Check the box indicating how you want the claim processed at this point. Your choices are:
 - a. **Reactivate the Claim.** Selecting this option notifies the Division you want the claim processed based upon the current claim documents supplemented by whatever documentation you attach with this form. If you select this option you must submit all documentation necessary to complete the claim.
 - b. **Withdraw the Claim.** If you select this option your claim will be dismissed by the Division and the matter closed without payment being issued.
 - c. **Request Renewal of Prolonged Status.** Selecting this option notifies the Division you are requesting the claim be granted another one-year prolonged status. If you select this option you must complete Part B and provide the documentation requested therein.
2. **Part B.** If you are requesting renewal of prolonged status you must select one of the following reasons and provide the required documentation:
 - a. **Ongoing Litigation.** Utah Admin. Code § R156-38a-105a(9) provides a claim will be prolonged during the pendency of an appeal – judicial or administrative – if the outcome of the appeal directly affects adjudication of the claim. If you select this option you must attach a written explanation of why the appeal directly relates to adjudication of the claim and a copy of the court docket or similar administrative calendar showing the current status of the appeal.
 - b. **Ongoing Bankruptcy.** Bankruptcy by any claim party that precludes completion of the claim is adequate grounds for renewal of prolonged status. If you select this option you must attach a written explanation of why the bankruptcy is preventing completion of the claim and a copy of the bankruptcy court docket.
 - c. **Continuing Compliance with a Payment Plan.** If the nonpaying party is complying with a payment plan, the claim will remain on prolonged status. If you select this option no documentation need be attached.
 - d. **Other Reasons.** Other reasons may exist for renewing prolonged status. Utah Admin. Code § R156-38a-105b(3)(c)(iv) provides that the presiding officer of the claim may granted renewed prolonged status for other reasonable causes. If you wish to have the claim prolonged for some reason other than a, b, or c above select this option and provide a written explanation of the reason. The explanation must include a statement as to why it would be unreasonable for the Division to reactivate the claim considering the claimant has had a full year to complete the claim. The explanation must also include all supporting documents necessary to validate the claimant's reason for requesting prolonged status be renewed.
3. We must *receive* this form on or before the Response Due Date given in the attached Notice or the claim will be processed based on the existing file.

Claim Report

Informal Claim

Claim Number: LRF-2013-1031-05

Claimant: ProBuild Company LLC

Contractor License # 7919125-5501 **Issue Date:** 02/24/2011 **Expiration Date:** 11/30/2017

Claimant Classification: Contractor with LRF

Claimant's Attorney: Jason Robinson

Nonpaying Party: SMA Enterprises Inc dba Elite Builder Group

Contractor License # 7806577-5501 **NPP Classification:** Contractor with LRF

Original Contractor: SMA Enterprises Inc dba Elite Builder Group

Type: Contractor with LRF **Contractor License #** 7806577-5501

License Issuance Date: 01/13/2011 **License End Date:** 12/12/2012 (surrendered)

Homeowner(s) Hanna

Abstract and Recommendation

Division's recommended disposition: Deny

The Division has reviewed the evidence submitted by the Claimant. It is the Division's opinion that Claimant has failed to satisfy UTAH CODE ANN. § 38-11-204(4)(a) and (b). Further, Claimant's Prolonged Status has expired and Claimant has failed to respond to the "Expiration of Prolonged Status" notification.

Detailed Analysis and Findings of Facts

On October 31, 2013 the Claimant submitted an application for payment (Exhibit A). On December 12, 2013, a "Notice of Incomplete or Insufficient Claim Application Conditional Denial of Claim" notification was sent to the Claimant which outlined the deficiencies in the claim application (Exhibit B).

UTAH CODE ANN. § 38-11-204(4) states:

To recover from the fund, regardless of whether the residence is occupied by the owner, a subsequent owner, or the owner or subsequent owner's tenant or lessee, a qualified beneficiary shall establish that:

(a) (i) the owner of the owner-occupied residence or the owner's agent entered into a written contract with an original contractor licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act . . .

(b) the owner has paid in full the original contractor licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, real estate developer, or

factory built housing retailer under Subsection (4)(a) with whom the owner has a written contract in accordance with the written contract and any amendments to the contract . . .

UTAH ADMIN. CODE § R156-38a-204b(1) provides:

The following supporting documents shall, at a minimum, accompany each nonlaborer claim for recovery from the fund:

- (1) one of the following:
 - (a) a copy of the certificate of compliance issued by the Division for the residence at issue in the claim;
 - (b) the documents required in Section R156-38a-204a; or
 - (c) a copy of a civil judgment containing findings of fact that:
 - (i) the homeowner entered a written contract in compliance with Subsection 38-11-204(4)(a)

On December 20, 2013, Claimant requested Prolonged Status (Exhibit C). On April 10, 2015, Claimant requested Prolonged Status be renewed, allowing until April 11, 2016 to complete the application (Exhibit D). On May 2, 2016, an "Expiration of Prolonged Status" letter was sent to Claimant, outlining the deficiencies in the application, and allowing until June 2, 2016 to respond (Exhibit E). As of June 7, 2016, the Division has not received a response. Therefore, because the claim application does not include the requested documents, and Claimant has failed to respond to the "Expiration of Prolonged Status" notification, the Division recommends the application be denied.

Exhibit A

Application

APPLICATION FOR PAYMENT

GENERAL INFORMATION

Claimant:

Company Name: ProBuild Company, LLC

Contact Person: Ryan Palmer

Mailing Address: 7380 South 700 West

City: Midvale State: UT Zip: 84047

Telephone: (801) 255-4201 LRF Registration Number: 7919125-5501

Email: ryan.palmer@probuild.com

Claiming as (*select one*):

- Contractor
- Supplier
- Other

Claimant's Legal Counsel:

Name: Jason H. Robinson

Firm: BABCOCK SCOTT & BABCOCK, P.C.

Address: 505 East 200 South, Suite 300

City: Salt Lake City State: UT Zip: 84102

Telephone: (801) 531-7000 Email: jason@babcockscott.com

RECEIVED
OCT 31 2013
 DIVISION OF OCCUPATIONAL
 & PROFESSIONAL LICENSING

Nonpaying Party (Original Contractor):

Company Name: SMA Enterprises Inc. d/b/a Elite Builders Group

Address: P.O. Box 628 Email:

City: Lehi State: UT Zip: 84043

Telephone: Contractor License Number: 7806577-5501

Nonpaying Party's Legal Counsel:

Name: Brian R. Barnhill

Firm: OSBORNE & BARNHILL, P.C.

Address: 11576 South State Street, #204

City: Draper State: Utah Zip: 84020

Telephone: (801) 571-2555 Email: brian@oblawpc.com

Original Contractor/Factory Built Housing Retailer/Real Estate Developer

(Please circle applicable designation. See Definitions Section for additional information.)

Company Name: SMA Enterprises Inc. d/b/a Elite Builders Group

Address: P.O. Box 628 Email:

City: Lehi State: UT Zip: 84043

Contractor License Number: 7806577-5501

Telephone: () Email:

Homeowner:

Name: Trent and Brandy Hanna

Address: 2660 West Gordon Creek Road

City: Price State: UT Zip: 84501

Telephone: () Email:

Subsequent Homeowner (if applicable):

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: () Email: _____

Owner-Occupied Residence:

Address: 2660 West Gordon Creek Road

City: Price State: UT Zip: 84501

Legal Description (*required*):

LOT 1, STEVE'S SUBDIVISION.

Parcel/Serial No.: 02-0626-0005

RESIDENCE AND QUALIFIED SERVICES:

Residence is a (*select one*):

- Detached, single-family dwelling
- Duplex residence
- Other, describe: _____

Please describe the qualified services performed by the claimant for the nonpaying party on this residence:

Claimant furnished labor, materials, and/or equipment for the improvement of the above-described property.

Qualified services can be described as: (*select one*)

- Work designated for the improvement of incidental residence only
- Work constituting improvement to multiple properties or subdivisions (*i.e. infrastructure work, installation of utilities, roadways, sewer lines, and irrigation systems on a subdivision or on multiple properties*)

Date(s) claimant provided qualified services for nonpaying party on this residence: February 13, 2011 – January 13, 2012

Has the homeowner provided the claimant with a copy of a Certificate of Compliance for the incident residence? Yes No

Amount nonpaying party owes claimant for qualified services on this residence: \$19,563.02

Date claimant recorded mechanics' lien on incident residence: N/A

Date of occupancy permit: ____/____/____

No occupancy permit, date of final inspection on residence: ____/____/____

If none of the above, date contract between owner and original contractor was substantially complete: ____/____/____

CIVIL ACTION AGAINST NONPAYING PARTY:

Court, case number, and filing date of claimant’s civil action against the nonpaying party:

Fourth District Court of Utah County; Case No. 120401310; Filing date of the Complaint is 8/16/12

Date judgment was entered in civil action: 11/1/12

Date supplemental order was issued: 10/21/13 Date served: Defendants’ attorney accepted service of supplemental order

Date of Writ of Execution: ____/____/____ Date of Return of Execution: ____/____/____

Amount of judgment recovered through writ of execution (if any): \$ _____

NONPAYING PARTY’S BANKRUPTCY FILING:

Court, case number, and filing or conversion date for nonpaying party’s bankruptcy action:

ADDITIONAL SOURCES OF PAYMENT:

Is claimant likely to become entitled to reimbursement for this claim from any other source?

- No
- Yes, identify the source(s) including name, address, telephone number, and amount of expected reimbursement. *(Attach additional sheets as necessary.)*

PAYMENT WORKSHEET

Attach evidence supporting all amounts claimed. Evidence could include civil judgment, invoices, documentation of costs, attorney fee affidavits (*see Rule 4-505 Utah Code of Judicial Administration*), billing notices, supplemental order issuance reports, etc.

SECTION 1—CIVIL JUDGMENT: Complete this section only if claimant has obtained a civil judgment against the nonpaying party. If the judgment relates to more than one property, complete this section and Section 2. If the judgment relates to only one property, complete only this section. If claimant has been precluded from obtaining a civil judgment because the nonpaying party filed for bankruptcy protection, go to Section 3.

- A. \$138,445.28 Qualified services amount awarded in civil judgment.
- B. 6,906.00 Pre-judgment attorney fees (and pre-judgment costs)—may not exceed 15% of qualified services [Utah Code Ann. § 38-11-203(3)(f)]
- C. N/A Pre-judgment costs (combined with pre-judgment attorney fees).
- D. 8,970.50 Post-judgment attorney fees. Total attorney fees may not exceed 15% of qualified services [Utah Code Ann. § 38-11-203(3)(f)]
- E. 373.00 Post-judgment costs for entire principal amount authorized by the civil judgment. [See Utah Admin. Code § R156-38-204d(3)(a) for limits]
- F. 4,487.14 Interest. Calculate simple interest on the qualified services balance using the appropriate rate from the table in the instructions.
- G. **\$159,181.92** Total (*add lines A through F*).

SECTION 2—ALLOCATION OF CIVIL JUDGMENT TO RESIDENCE: Complete this section only if the claimant has obtained a civil judgment that includes an award for more than one residence. The Fund can pay only the portion of the civil judgment that relates to the subject property. Please attach a separate sheet that identifies the residences included in the civil judgment and state the amounts awarded for each residence.

- H. \$19,563.02 Qualified services attributable to this residence.
- I. 14.14% Allocation ratio. Divide line H by line A above and enter the percentage here (*Please round to the nearest 1/100 of a percent; i.e. 1/3 = 33.33% and 3/7 = 42.86%*).
- J. 976.51 Pre-judgment attorney fees (and pre-judgment costs) allocated to this residence. Multiply line B by line I.
- K. N/A Pre-judgment costs (combined with pre-judgment attorney fees). Multiply line C by line I.
- L. 1,268.43 Post-judgment attorney fees allocable to this residence. Multiply line D by line I.
- M. 52.74 Post-judgment costs allocable to this residence. Multiply line E by line I.
- N. 634.48 Total interest allocable to this residence. Multiply line F by line I
- O. **\$22,495.18** Total amount claimed for this residence. Add line H and lines J through N. **Do not include line I in the total.**

SECTION 3—BANKRUPTCY FILING BY NONPAYING PARTY: Complete this section if claimant was precluded from obtaining a civil judgment because the nonpaying party filed for bankruptcy protection.

- P. _____ Amount of qualified services provided for this residence.
- Q. _____ Amount of attorney fees incurred to collect for qualified services on this residence. Total attorney fees may not exceed 15% of qualified services and the claimant's contract with the nonpaying party must authorize collection of attorney fees. [Utah Code Ann. § 38-11-203(3)(f)]
- R. _____ Amount of costs incurred to collect for qualified services on this residence. [See Utah Admin. § R156-38-204d(3)(b) for limits]
- S. _____ Interest. Calculate simple interest on the qualified services balance using the appropriate rate from the table in the instructions.
- R. _____ Total amount claimed. Add lines P through S.

Exhibit B

Conditional Denial



State of Utah
Department of Commerce

Division of Occupational and Professional Licensing

GARY R. HERBERT
Governor

FRANCINE A. GIANI
Executive Director

MARK B. STEINAGEL
Division Director

December 12, 2013

JASON ROBINSON
BABCOCK SCOTT & BABCOCK
505 E 200 S STE 300
SALT LAKE CITY UT 84102

Subject: Notice of Incomplete or Insufficient Claim Application
Conditional Denial of Claim
Lien Recovery Fund Claim No. LRF-2013-1031-05
Claimant: ProBuild Company LLC
Original Contractor: SMA Enterprises Inc dba Elite Builders Group
Nonpaying Party: SMA Enterprises Inc dba Elite Builders Group
Homeowner: Trent & Brandy Hanna

RESPONSE DUE DATE: January 13, 2013

Dear Claimant:

The Division has reviewed the application for payment of the above-referenced claim. Based upon that review, we find the claim documents are incomplete and do not meet the requirements of Utah Admin. Code § R156-38a-101 *et seq.* This notice sets forth the defects in the claim and specifies the date by which the claimant must respond to the notice.

Unless the claim is completed, it will be denied. The following defects must be corrected to complete the application:

Written Contract Missing - Utah Code Ann. § 38-11-204(4)(a) requires:

To recover from the fund, . . . a qualified beneficiary shall establish that

(i) the owner of the owner-occupied residence or the owner's agent entered into a written contract with an original contractor licensed or exempt from licensure under Title 58, Chapter 55, . . .

(ii) the owner of the owner-occupied residence or the owner's agent entered into a written contract with a real estate developer for the purchase of an owner-occupied residence; or

(iii) the owner of the owner-occupied residence or the owner's agent entered into a written contract with a factory built

housing retailer for the purchase of an owner-occupied residence
(emphasis added)

For claimants' benefit, Utah Admin. Code § R156-38a-204b(1) provides:

The following supporting documents shall, at a minimum, accompany each nonlaborer claim for recovery from the fund:

- (1) one of the following:
 - (a) a copy of the certificate of compliance issued by the Division for the residence at issue in the claim;
 - (b) the documents required in Section R156-38-204a; or
 - (c) a copy of a civil judgment containing findings of fact that:
 - (i) the homeowner entered a written contract in compliance with Subsection 38-11-204(4)(a)

Paid in Full Missing - To recover from the fund, . . . a qualified beneficiary shall establish that . . . the owner has **paid in full** the original contractor . . . , real estate developer, or factory built housing retailer . . . **with whom the owner has a written contract** in accordance with the written contract and any amendments to the contract.
(emphasis added)

To assist claimants with this requirement, Utah Admin. Code § R156-38a-204b(1) provides:

The following supporting documents shall, at a minimum, accompany each nonlaborer claim for recovery from the fund:

- (1) one of the following:
 - (a) a copy of the certificate of compliance issued by the Division for the residence at issue in the claim;
 - (b) the documents required in Section R156-38-204a; or
 - (c) a copy of a civil judgment containing findings of fact that
 - (iii) the homeowner paid the contracting entity in full in accordance with the written contract and any amendments to the contract.

Owner-Occupied Residence Missing - Utah Code Ann. §§ 38-11-102(18), 38-11-204(1)(ii), 38-11-204(4)(a), and 38-11-204(4)(d)(ii) all require that the residence at issue in the claim must be an owner-occupied residence for the claimant to receive payment. To facilitate compliance with this requirement Utah Admin. Code § R156-38a-204b(1) requires:

The following supporting documents shall, at a minimum, accompany each nonlaborer claim for recovery from the fund:

- (1) one of the following:

- (a) a copy of the certificate of compliance issued by the Division for the residence at issue in the claim;
- (b) the documents required in Section R156-38-204a; or
- (c) a copy of a civil judgment containing findings of fact that . . .
- (iv) the homeowner is an owner as defined in Subsection 38-11-102(17) and the residence is an owner-occupied residence as defined in Subsection 38-11-102(18);

Jurisdictional Flaw – Failure to File Civil Action by Deadline: Utah Code Ann. § 38-11-204(4)(d)(i)(A) & (B) require:

- To recover from the fund, . . . a qualified beneficiary shall establish that . . . the qualified beneficiary filed an action against the nonpaying party to recover monies owed to the qualified beneficiary with the earlier of:
- (A) 180 days from the date the qualified beneficiary filed a notice of claim under Section 38-1-7; or
 - (B) 270 days from the completion of the original contract pursuant to Subsection 38-1-7(1);

Because we did not receive a copy of the notice of claim of lien or documentation demonstrating the completion of the original contract, we are unable to determine if your claim complies with the above-referenced requirement. If a notice of claim of lien was filed, we need a copy of the lien supplemented with documentation demonstrating the date of completion of the original contract. Also, you must submit one of the following as documentation demonstrating the date of completion of the original contract:

- A copy of the certificate of occupancy issued by the local government entity having jurisdiction over the incident residence
- If no occupancy permit was required, please submit a copy of the final inspection approval issued by the local government entity
- If there is neither a copy of a certificate of occupancy or a final inspection approval, please submit an affidavit from the homeowner or other credible evidence establishing the date on which the original contractor substantially completed the written contract

Response Procedure: Please submit the required documentation and a copy of this letter to my attention at:

DOPL - LRF
PO BOX 146741
SALT LAKE CITY UT 84114-6741

Documents may also be hand-delivered to the Division of Occupational and Professional Licensing on the 1st floor of the Heber M. Wells Building – 160 East 300 South, Salt Lake City, Utah. Office hours are from 8:00 a.m. to 5:00 p.m. Monday through Friday.

Presumption a Response is Complete: The Division will review the claim application again upon receiving a written response from the claimant. The Division will treat any response received as the claimant's complete and final response. Therefore, once we receive your response the claim will be reviewed and a decision rendered.

To avoid confusion, you are advised to submit a single, complete response; **DO NOT** submit your response in a piece meal manner.

Claim Will Be Denied Unless Completed: As required by Utah Admin. Code § R156-38a-105b(1)(b), this Notice serves to advise the claimant that the above-referenced claim application is incomplete and will be denied unless the Division *receives* your written response and the information needed to complete it on or before the Response Due Date shown above.

Additional Requests for Information: Please be aware providing the documents requested above does not guarantee the application will be completed. If the requested documents are incomplete or create additional questions, you may be contacted for further information.

No Interest Accrual During Response Period: Granting an applicant time to correct an incomplete application is considered a "delay attributable to the claimant." Therefore, no interest will accrue during the period beginning with the date of this letter and ending when the required documentation is received (see Utah Code Ann. § 38-11-203(3)(c)).

Questions, Assistance, and Extensions: If you have any questions, need assistance, or wish to request an extension of time to respond, please call. Please note, Utah Admin. Code § R156-38a-105b(2) limits claimants to a single 30-day extension of time to respond to this notice. If you anticipate you will be unable to complete the claim within 30 days from the Response Deadline given above, we recommend you request the claim be prolonged pursuant to Utah Admin. Code § R156-38a-105b(3). However, you should

Claim No. LRF-2013-1031-05
December 12, 2013
Page 5

consider that a claim may only be prolonged once unless certain narrowly defined criteria are met.

Respectfully,

A handwritten signature in black ink, appearing to read 'D Ishihara', with a large, stylized initial 'D'.

Dane Ishihara
Program Manager
(801) 530-7632
dishihara@utah.gov

Exhibit C

Request for prolonged status

From: Jason Robinson
Sent: Thursday, December 19, 2013 4:37 PM
To: dishihara@utah.gov
Subject: Please place LRF applications on hold

Dane:

Given the holidays, I will need more time to respond to your letters dated December 12, 2013, for the following applications:

LRF-2013-1031-03 (Riley, May and/or Suflick)

LRF-2013-1031-04 (?)

LRF-2013-1031-05 (Trent & Brandy Hanna)

LRF-2013-1031-06 (Travis Thompson)

LRF-2013-1031-07 (Trent & Brandy Hanna)

LRF-2013-1031-08 (Wanda Oliverson)

Please place the foregoing applications on inactive, prolonged, hold status. Please confirm.

As to the following claims, they should not be placed on hold status; but please let me know if you need any additional information:

LRF Claim No. LRF-2013-1031-01 (Brian & Kari Anderson)

LRF Claim No. LRF-2013-1031-02 (Brett and Melanie Smith)

Final note; as to LRF-2013-1031-04 (?), I don't have a letter from you in my file. Did you send a letter?

Thanks.



Jason H. Robinson

Shareholder – Licensed in Utah & Wyoming
Washington Federal Plaza | 505 East 200 South, Suite 300

Salt Lake City, Utah 84102

T: 801.531.7000 | F: 801.531.7060

E: jason@babcockscott.com | www.babcockscott.com

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Exhibit D

Prolonged Status Granted



Tracy Naff <tnaff@utah.gov>

Fwd: Please place LRF applications on hold

1 message

Dane Ishihara <dishihara@utah.gov>

Fri, Apr 10, 2015 at 1:49 PM

To: Naffster <tnaff@utah.gov>

Will you place these on prolonged status.

----- Forwarded message -----

From: **Jason Robinson** <jason@babcockscott.com>

Date: Fri, Apr 10, 2015 at 12:38 PM

Subject: RE: Please place LRF applications on hold

To: Dane Ishihara <dishihara@utah.gov>

Dane:

I am still seeking supporting information from the contractor, Elite Builders Group. I am, therefore, requesting that the following applications be placed on prolonged status:

LRF-2013-1031-03 (Riley, May and/or Suflick)

LRF-2013-1031-04 (?)

LRF-2013-1031-05 (Trent & Brandy Hanna)

LRF-2013-1031-06 (Travis Thompson)

LRF-2013-1031-07 (Trent & Brandy Hanna)

LRF-2013-1031-08 (Wanda Oliverson)

Please confirm. Thank you.



Jason H. Robinson

Shareholder – Licensed in Utah & Wyoming

Washington Federal Plaza | 505 East 200 South, Suite 300

Salt Lake City, Utah 84102

T: 801.531.7000 | F: 801.531.7060

E: jason@babcockscott.com | www.babcockscott.com

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From: Dane Ishihara [mailto:dishihara@utah.gov]

Sent: Friday, December 20, 2013 1:12 PM

To: Jason Robinson

Subject: Re: Please place LRF applications on hold

Jason,

This email is to acknowledge your request to have the above referenced Lien Recovery Fund claims placed on prolonged status. The request has been reviewed and granted.

Claims are Inactive for One Year: Utah Admin. Code § R156-38a-105b (3) (c) provides "a claim granted prolonged status shall be inactive for a period of one year or until reactivated by the applicant, whichever comes first."

No Interest Accrual During Prolonged Status: Placing a claim on prolonged status is considered a "delay attributable to the claimant." Therefore, no interest will accrue during the period beginning with the date of this letter and ending when the claim is reactivated (see Utah Code Ann. § 38-11-203(3) (c)).

Dane

On Fri, Dec 20, 2013 at 12:12 PM, Jason Robinson <Jason@babcockscott.com> wrote:

Dane:

Following up. I found your letter for LRF-2013-1031-04 (Wayne Sei Lesa), which is one of the applications that we are placing on hold status.



Jason H. Robinson

Shareholder – Licensed in Utah & Wyoming
Washington Federal Plaza | 505 East 200 South, Suite 300

Salt Lake City, Utah 84102

T: 801.531.7000 | F: 801.531.7060

E: jason@babcockscott.com | www.babcockscott.com

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Exhibit E

Expiration of Prolonged Status



Department of Commerce

Division of Occupational and Professional Licensing

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

FRANCINE A. GIANI
Executive Director

MARK B. STEINAGEL
Division Director

May 2, 2016

JASON ROBINSON
BABCOCK SCOTT & BABCOCK
370 S TEMPLE
SALT LAKE CITY 84111

Subject: Expiration of Prolonged Status
Updated Notice of Incomplete or Insufficient Claim Application
Updated Conditional Denial of Claim
Opportunity to Request Renewal of Prolonged Status
Claim No. LRF-2013-1031-03,04,05,06,07,08
Claimant: ProBuild Company LLC
Original Contractor: SMA Enterprises Inc dba Elite Builder Group
Nonpaying Party: SMA Enterprises Inc dba Elite Builder Group

RESPONSE DUE DATE: June 2, 2016

Dear Claimant:

On April 10, 2015 the Division placed the above-cited claim on prolonged status for the second time. Utah Admin. Code § R156-38a-105b(3)(b) provides a claim may remain on prolonged status for one year. Therefore, the claim's period of prolonged status has expired.

Updated Conditional Denial of Claim: Utah Admin. Code § R156-38a-105b(3)(d) requires "upon expiration of the one-year prolonged status of a claim, the Division shall issue to the claimant an updated notice" as to why the claim application is incomplete. As of today, the following issues must be resolved to complete the claim application:

Please see attached "Conditional Denial of Claim" dated December 12, 2013

Response Procedure: Utah Admin. Code § R156-38-105b(3)(d) requires that the updated notice include a form that provides the claimant the opportunity to:

- Reactivate the claim and submit any documentation necessary to resolve any unresolved issues;
- Withdraw the claim; or

- Request the claim be granted another one-year prolonged status.

That form is attached. Please complete it and attach any required documentation. Note, if you request prolonged status be renewed, you must attach the documents mentioned in the instructions for the form. Please submit the form and documentation to my attention at:

DOPL - LRF
PO BOX 146741
SALT LAKE CITY UT 84114-6741

Documents may also be hand-delivered to the Division of Occupational and Professional Licensing on the 1st floor of the Heber M. Wells Building— 160 East 300 South, Salt Lake City, Utah. Office hours are from 7:00 a.m. to 6:00 p.m. Monday through Thursday.

Presumption a Response is Complete: The Division will review the claim application again upon receiving a written response from the claimant. The Division will treat any response received as the claimant's complete and final response. Therefore, once we receive your response the claim will be reviewed and a decision rendered.

To avoid confusion, you are advised to submit a single, complete response; DO NOT submit your response in a piece meal manner.

Claim Will Be Denied Unless Completed: As required by Utah Admin. Code § R156-38a-105b(1)(b), this Notice serves to advise the claimant that the above-referenced claim application is incomplete and will be denied unless the Division *receives* the information needed to complete it on or before the Response Due Date shown above.

Additional Requests for Information: Please be aware providing the documents requested above do not guarantee the application will be completed. If the requested documents are incomplete or create additional questions, you may be contacted for further information.

Adjudicative Hearing May be Required: If the claimant has been unable to obtain judgment against the nonpaying party due to the nonpaying party filing bankruptcy, a formal hearing before the Advisory Board and the Division may be required. If a hearing is required, you will be contacted by Steve Eklund, Administrative Law Judge of the Department of Commerce, regarding the exact date, time, and place for the hearing.

No Interest Accrual During Response Period: Granting an applicant time to correct an incomplete application is considered a “delay attributable to the claimant.” Therefore, no interest will accrue during the period beginning with the date of this letter and ending when the required documentation is received (see Utah Code Ann. § 38-11-203(3)(c)).

Questions, Assistance, and Extensions: If you have any questions or need assistance please call.

Pursuant to Utah Admin. Code § R156-38a-105b(2), the deadline to respond to this notice cannot be extended by the Division.

Respectfully,

A handwritten signature in black ink, appearing to be 'Tracy Naff', with a long horizontal flourish extending to the right.

Tracy Naff
Fund Manager
801-530-6225
tnaff@utah.gov

Declaration of Intent
Regarding Prolonged Lien Recovery Fund Claim

Read all instructions before completing this form

Part A. Statement of Intent. Check the appropriate box

Probuild Company LLC states its intent with respect to claims LRF-2013-1031-03,04,05,06,07, and 08 which has been on prolonged status for more than one year, is as follows.

ProBuild Company LLC:

- Requests the claim be reactivated and processed.
- Withdraws the claim.
- Requests the claim be granted another one-year prolonged status for the reason given in Part B.

Part B. Reason for Renewing Prolonged Status. Check the appropriate box and attach documentation as explained in the instructions.

- Ongoing litigation
- Ongoing bankruptcy
- Continuing compliance with payment arrangement
- Other

I certify that I have reviewed the information provided on this form and that the answers marked represent the desires of «Claimant» with respect to claims LRF-2013-1031-03,04,05,06,07, and 08

Signature of claimant or claimant's agent

Date

Printed name of signator

Title of signator

Instructions for Declaration of Intent
Regarding Prolonged Lien Recovery Fund Claim

1. **Part A.** Check the box indicating how you want the claim processed at this point. Your choices are:
 - a. **Reactivate the Claim.** Selecting this option notifies the Division you want the claim processed based upon the current claim documents supplemented by whatever documentation you attach with this form. If you select this option you must submit all documentation necessary to complete the claim.
 - b. **Withdraw the Claim.** If you select this option your claim will be dismissed by the Division and the matter closed without payment being issued.
 - c. **Request Renewal of Prolonged Status.** Selecting this option notifies the Division you are requesting the claim be granted another one-year prolonged status. If you select this option you must complete Part B and provide the documentation requested therein.
2. **Part B.** If you are requesting renewal of prolonged status you must select one of the following reasons and provide the required documentation:
 - a. **Ongoing Litigation.** Utah Admin. Code § R156-38a-105a(9) provides a claim will be prolonged during the pendency of an appeal – judicial or administrative – if the outcome of the appeal directly affects adjudication of the claim. If you select this option you must attach a written explanation of why the appeal directly relates to adjudication of the claim and a copy of the court docket or similar administrative calendar showing the current status of the appeal.
 - b. **Ongoing Bankruptcy.** Bankruptcy by any claim party that precludes completion of the claim is adequate grounds for renewal of prolonged status. If you select this option you must attach a written explanation of why the bankruptcy is preventing completion of the claim and a copy of the bankruptcy court docket.
 - c. **Continuing Compliance with a Payment Plan.** If the nonpaying party is complying with a payment plan, the claim will remain on prolonged status. If you select this option no documentation need be attached.
 - d. **Other Reasons.** Other reasons may exist for renewing prolonged status. Utah Admin. Code § R156-38a-105b(3)(c)(iv) provides that the presiding officer of the claim may granted renewed prolonged status for other reasonable causes. If you wish to have the claim prolonged for some reason other than a, b, or c above select this option and provide a written explanation of the reason. The explanation must include a statement as to why it would be unreasonable for the Division to reactivate the claim considering the claimant has had a full year to complete the claim. The explanation must also include all supporting documents necessary to validate the claimant’s reason for requesting prolonged status be renewed.
3. We must *receive* this form on or before the Response Due Date given in the attached Notice or the claim will be processed based on the existing file.

Claim Report

Informal Claim

Claim Number: LRF-2013-1031-06

Claimant: ProBuild Company LLC

Contractor License # 7919125-5501 **Issue Date:** 02/24/2011 **Expiration Date:** 11/30/2017

Claimant Classification: Contractor with LRF

Claimant's Attorney: Jason Robinson

Nonpaying Party: SMA Enterprises Inc dba Elite Builder Group

Contractor License # 7806577-5501 **NPP Classification:** Contractor with LRF

Original Contractor: SMA Enterprises Inc dba Elite Builder Group

Type: Contractor with LRF **Contractor License #** 7806577-5501

License Issuance Date: 01/13/2011 **License End Date:** 12/12/2012 (surrendered)

Homeowner(s) Thompson

Abstract and Recommendation

Division's recommended disposition: Deny

The Division has reviewed the evidence submitted by the Claimant. It is the Division's opinion that Claimant has failed to satisfy UTAH CODE ANN. § 38-11-204(4)(a) and (b). Further, Claimant's Prolonged Status has expired and Claimant has failed to respond to the "Expiration of Prolonged Status" notification.

Detailed Analysis and Findings of Facts

On October 31, 2013 the Claimant submitted an application for payment (Exhibit A). On December 12, 2013, a "Notice of Incomplete or Insufficient Claim Application Conditional Denial of Claim" notification was sent to the Claimant which outlined the deficiencies in the claim application (Exhibit B).

UTAH CODE ANN. § 38-11-204(4) states:

To recover from the fund, regardless of whether the residence is occupied by the owner, a subsequent owner, or the owner or subsequent owner's tenant or lessee, a qualified beneficiary shall establish that:

(a) (i) the owner of the owner-occupied residence or the owner's agent entered into a written contract with an original contractor licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act . . .

(b) the owner has paid in full the original contractor licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, real estate developer, or

factory built housing retailer under Subsection (4)(a) with whom the owner has a written contract in accordance with the written contract and any amendments to the contract . . .

UTAH ADMIN. CODE § R156-38a-204b(1) provides:

The following supporting documents shall, at a minimum, accompany each nonlaborer claim for recovery from the fund:

- (1) one of the following:
 - (a) a copy of the certificate of compliance issued by the Division for the residence at issue in the claim;
 - (b) the documents required in Section R156-38a-204a; or
 - (c) a copy of a civil judgment containing findings of fact that:
 - (i) the homeowner entered a written contract in compliance with Subsection 38-11-204(4)(a)

On December 20, 2013, Claimant requested Prolonged Status (Exhibit C). On April 10, 2015, Claimant requested Prolonged Status be renewed, allowing until April 11, 2016 to complete the application (Exhibit D). On May 2, 2016, an "Expiration of Prolonged Status" letter was sent to Claimant, outlining the deficiencies in the application, and allowing until June 2, 2016 to respond (Exhibit E). As of June 7, 2016, the Division has not received a response. Therefore, because the claim application does not include the requested documents, and Claimant has failed to respond to the "Expiration of Prolonged Status" notification, the Division recommends the application be denied.

Exhibit A

Application

Nonpaying Party's Legal Counsel:

Name: Brian R. Barnhill

Firm: OSBORNE & BARNHILL, P.C.

Address: 11576 South State Street, #204

City: Draper State: Utah Zip: 84020

Telephone: (801) 571-2555 Email: brian@oblawpc.com

Original Contractor/Factory Built Housing Retailer/Real Estate Developer

(Please circle applicable designation. See Definitions Section for additional information.)

Company Name: SMA Enterprises Inc. d/b/a Elite Builders Group

Address: P.O. Box 628 Email:

City: Lehi State: UT Zip: 84043

Contractor License Number: 7806577-5501

Telephone: () Email:

Homeowner:

Name: Travis Thompson

Address: 11433 South Jackson Down Way

City: South Jordan State: UT Zip: 84095

Telephone: () Email:

Subsequent Homeowner (if applicable):

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: () Email: _____

Owner-Occupied Residence:

Address: 11433 South Jackson Down Way

City: South Jordan State: UT Zip: 84095

Legal Description (*required*):

LOT 11, JACKSON DOWNS SUB.

Parcel/Serial No.: 28311760460000

RESIDENCE AND QUALIFIED SERVICES:

Residence is a (*select one*):

- Detached, single-family dwelling
- Duplex residence
- Other, describe: _____

Please describe the qualified services performed by the claimant for the nonpaying party on this residence:

Claimant furnished labor, materials, and/or equipment for the improvement of the above-described property.

Qualified services can be described as: (*select one*)

- Work designated for the improvement of incidental residence only
- Work constituting improvement to multiple properties or subdivisions (*i.e. infrastructure work, installation of utilities, roadways, sewer lines, and irrigation systems on a subdivision or on multiple properties*)

Date(s) claimant provided qualified services for nonpaying party on this residence: November 30, 2011

Has the homeowner provided the claimant with a copy of a Certificate of Compliance for the incident residence? Yes No

Amount nonpaying party owes claimant for qualified services on this residence: \$26,400.73

Date claimant recorded mechanics' lien on incident residence: N/A

Date of occupancy permit: 9/21/12

No occupancy permit, date of final inspection on residence: ____/____/____

If none of the above, date contract between owner and original contractor was substantially complete: ____/____/____

CIVIL ACTION AGAINST NONPAYING PARTY:

Court, case number, and filing date of claimant’s civil action against the nonpaying party:

Fourth District Court of Utah County; Case No. 120401310; Filing date of the Complaint is 8/16/12

Date judgment was entered in civil action: 11/1/12

Date supplemental order was issued: 10/21/13 Date served: Defendants’ attorney accepted service of supplemental order

Date of Writ of Execution: ____/____/____ Date of Return of Execution: ____/____/____

Amount of judgment recovered through writ of execution (if any): \$ _____

NONPAYING PARTY’S BANKRUPTCY FILING:

Court, case number, and filing or conversion date for nonpaying party’s bankruptcy action:

ADDITIONAL SOURCES OF PAYMENT:

Is claimant likely to become entitled to reimbursement for this claim from any other source?

- No Yes, identify the source(s) including name, address, telephone number, and amount of expected reimbursement. *(Attach additional sheets as necessary.)*

PAYMENT WORKSHEET

Attach evidence supporting all amounts claimed. Evidence could include civil judgment, invoices, documentation of costs, attorney fee affidavits (*see Rule 4-505 Utah Code of Judicial Administration*), billing notices, supplemental order issuance reports, etc.

SECTION 1—CIVIL JUDGMENT: Complete this section only if claimant has obtained a civil judgment against the nonpaying party. If the judgment relates to more than one property, complete this section and Section 2. If the judgment relates to only one property, complete only this section. If claimant has been precluded from obtaining a civil judgment because the nonpaying party filed for bankruptcy protection, go to Section 3.

- A. \$138,445.28 Qualified services amount awarded in civil judgment.
- B. 6,906.00 Pre-judgment attorney fees (and pre-judgment costs)—may not exceed 15% of qualified services [Utah Code Ann. § 38-11-203(3)(f)]
- C. N/A Pre-judgment costs (combined with pre-judgment attorney fees).
- D. 8,970.50 Post-judgment attorney fees. Total attorney fees may not exceed 15% of qualified services [Utah Code Ann. § 38-11-203(3)(f)]
- E. 373.00 Post-judgment costs for entire principal amount authorized by the civil judgment. [See Utah Admin. Code § R156-38-204d(3)(a) for limits]
- F. 4,487.14 Interest. Calculate simple interest on the qualified services balance using the appropriate rate from the table in the instructions.
- G. \$159,181.92 Total (*add lines A through F*).

SECTION 2—ALLOCATION OF CIVIL JUDGMENT TO RESIDENCE: Complete this section only if the claimant has obtained a civil judgment that includes an award for more than one residence. The Fund can pay only the portion of the civil judgment that relates to the subject property. Please attach a separate sheet that identifies the residences included in the civil judgment and state the amounts awarded for each residence.

- H. \$26,400.73 Qualified services attributable to this residence.
- I. 19.07% Allocation ratio. Divide line H by line A above and enter the percentage here (*Please round to the nearest 1/100 of a percent; i.e. 1/3 = 33.33% and 3/7 = 42.86%*).
- J. 1,316.97 Pre-judgment attorney fees (and pre-judgment costs) allocated to this residence. Multiply line B by line I.
- K. N/A Pre-judgment costs (combined with pre-judgment attorney fees). Multiply line C by line I.
- L. 1,710.67 Post-judgment attorney fees allocable to this residence. Multiply line D by line I.
- M. 71.13 Post-judgment costs allocable to this residence. Multiply line E by line I.
- N. 855.70 Total interest allocable to this residence. Multiply line F by line I
- O. **\$30,355.20** Total amount claimed for this residence. Add line H and lines J through N. **Do not include line I in the total.**

SECTION 3—BANKRUPTCY FILING BY NONPAYING PARTY: Complete this section if claimant was precluded from obtaining a civil judgment because the nonpaying party filed for bankruptcy protection.

- P. _____ Amount of qualified services provided for this residence.
- Q. _____ Amount of attorney fees incurred to collect for qualified services on this residence. Total attorney fees may not exceed 15% of qualified services and the claimant's contract with the nonpaying party must authorize collection of attorney fees. [Utah Code Ann. § 38-11-203(3)(f)]
- R. _____ Amount of costs incurred to collect for qualified services on this residence. [See Utah Admin. § R156-38-204d(3)(b) for limits]
- S. _____ Interest. Calculate simple interest on the qualified services balance using the appropriate rate from the table in the instructions.
- R. _____ Total amount claimed. Add lines P through S.

AFFIDAVIT, CERTIFICATION and RELEASE AUTHORIZATION

I am authorized to sign this affidavit for the claimant described and identified in this Residence Lien Recovery Fund claim application.

To the best of my knowledge, the information contained in this application and the supporting documents is free from fraud, misrepresentation, or omission of material fact.

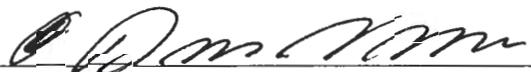
I will ensure that any information subsequently submitted to the Division of Occupational and Professional Licensing in conjunction with this claim application and/or its supporting documents will meet the same standard set forth above.

I understand that claimants who, in order to receive payment from the Lien Recovery Fund to which they are not entitled, report false information, withhold information, or present false or misleading documentation pertinent to a claim will be disqualified from receiving payment and may be subject to both criminal prosecution and civil penalties.

I understand that this application will be classified as a public record and will be available for inspection by the public except with regard to the release of information which is classified as controlled, private, or protected under the Government Records Access and Management Act or restricted by other law.

I certify that the claimant is not entitled to reimbursement from any other entity for this claim as of the date of this affidavit. Should the claimant become entitled to reimbursement from any other entity for this claim after this date, the claimant will immediately notify the Division of Occupational and Professional Licensing.

I hereby authorize all persons, institutions, governmental agencies, employers, or any others not specifically included in the preceding characterization, which are set forth directly or by reference in this application, to release to the Division of Occupational and Professional Licensing, State of Utah or the Residence Lien Recovery Fund Advisory Board, any files, records or information of any type reasonably required for the Division of Occupational and Professional Licensing or the Board to properly evaluate my claim.

Signature of Applicant: 

Date of Signature: 10 / 31 / 13

Printed Name of Applicant: Jason Robinson, Atty.

Exhibit B

Conditional Denial



State of Utah
Department of Commerce

Division of Occupational and Professional Licensing

GARY R. HERBERT
Governor

FRANCINE A. GIANI
Executive Director

MARK B. STEINAGEL
Division Director

December 12, 2013

JASON ROBINSON
BABCOCK SCOTT & BABCOCK
505 E 200 S STE 300
SALT LAKE CITY UT 84102

Subject: Notice of Incomplete or Insufficient Claim Application
Conditional Denial of Claim
Lien Recovery Fund Claim No. LRF-2013-1031-06
Claimant: ProBuild Company LLC
Original Contractor: SMA Enterprises Inc dba Elite Builders Group
Nonpaying Party: SMA Enterprises Inc dba Elite Builders Group
Homeowner: Travis Thompson

RESPONSE DUE DATE: January 13, 2013

Dear Claimant:

The Division has reviewed the application for payment of the above-referenced claim. Based upon that review, we find the claim documents are incomplete and do not meet the requirements of Utah Admin. Code § R156-38a-101 *et seq.* This notice sets forth the defects in the claim and specifies the date by which the claimant must respond to the notice.

Unless the claim is completed, it will be denied. The following defects must be corrected to complete the application:

Written Contract Missing - Utah Code Ann. § 38-11-204(4)(a) requires:

To recover from the fund, . . . a qualified beneficiary shall establish that

(i) the owner of the owner-occupied residence or the owner's agent entered into a written contract with an original contractor licensed or exempt from licensure under Title 58, Chapter 55, . . .

(ii) the owner of the owner-occupied residence or the owner's agent entered into a written contract with a real estate developer for the purchase of an owner-occupied residence; or

(iii) the owner of the owner-occupied residence or the owner's agent entered into a written contract with a factory built

housing retailer for the purchase of an owner-occupied residence
(emphasis added)

For claimants' benefit, Utah Admin. Code § R156-38a-204b(1) provides:

The following supporting documents shall, at a minimum, accompany each nonlaborer claim for recovery from the fund:

- (1) one of the following:
 - (a) a copy of the certificate of compliance issued by the Division for the residence at issue in the claim;
 - (b) the documents required in Section R156-38-204a; or
 - (c) a copy of a civil judgment containing findings of fact that:
 - (i) the homeowner entered a written contract in compliance with Subsection 38-11-204(4)(a)

Paid in Full Missing - To recover from the fund, . . . a qualified beneficiary shall establish that . . . the owner has **paid in full** the original contractor . . . , real estate developer, or factory built housing retailer . . . **with whom the owner has a written contract** in accordance with the written contract and any amendments to the contract.
(emphasis added)

To assist claimants with this requirement, Utah Admin. Code § R156-38a-204b(1) provides:

The following supporting documents shall, at a minimum, accompany each nonlaborer claim for recovery from the fund:

- (1) one of the following:
 - (a) a copy of the certificate of compliance issued by the Division for the residence at issue in the claim;
 - (b) the documents required in Section R156-38-204a; or
 - (c) a copy of a civil judgment containing findings of fact that
 - (iii) the homeowner paid the contracting entity in full in accordance with the written contract and any amendments to the contract.

Owner-Occupied Residence Missing - Utah Code Ann. §§ 38-11-102(18), 38-11-204(1)(ii), 38-11-204(4)(a), and 38-11-204(4)(d)(ii) all require that the residence at issue in the claim must be an owner-occupied residence for the claimant to receive payment. To facilitate compliance with this requirement Utah Admin. Code § R156-38a-204b(1) requires:

The following supporting documents shall, at a minimum, accompany each nonlaborer claim for recovery from the fund:

- (1) one of the following:

- (a) a copy of the certificate of compliance issued by the Division for the residence at issue in the claim;
- (b) the documents required in Section R156-38-204a; or
- (c) a copy of a civil judgment containing findings of fact that . . .
- (iv) the homeowner is an owner as defined in Subsection 38-11-102(17) and the residence is an owner-occupied residence as defined in Subsection 38-11-102(18);

Jurisdictional Flaw – Failure to File Civil Action by Deadline: Utah Code Ann. § 38-11-204(4)(d)(i)(A) & (B) require:

To recover from the fund, . . . a qualified beneficiary shall establish that . . . the qualified beneficiary filed an action against the nonpaying party to recover monies owed to the qualified beneficiary with the earlier of:

- (A) 180 days from the date the qualified beneficiary filed a notice of claim under Section 38-1-7; or
- (B) 270 days from the completion of the original contract pursuant to Subsection 38-1-7(1);

While we received documentation demonstrating the date of completion of the original contract, we did not receive a copy of the notice of claim of lien specific to the residence at issue. Therefore, we are unable to determine if your claim complies with the above-referenced requirement.

Response Procedure: Please submit the required documentation and a copy of this letter to my attention at:

DOPL - LRF
PO BOX 146741
SALT LAKE CITY UT 84114-6741

Documents may also be hand-delivered to the Division of Occupational and Professional Licensing on the 1st floor of the Heber M. Wells Building – 160 East 300 South, Salt Lake City, Utah. Office hours are from 8:00 a.m. to 5:00 p.m. Monday through Friday.

Presumption a Response is Complete: The Division will review the claim application again upon receiving a written response from the claimant. The Division will treat any response received as the claimant's complete and final response. Therefore, once we receive your response the claim will be reviewed and a decision rendered.

To avoid confusion, you are advised to submit a single, complete response; **DO NOT** submit your response in a piece meal manner.

Claim Will Be Denied Unless Completed: As required by Utah Admin. Code § R156-38a-105b(1)(b), this Notice serves to advise the claimant that the above-referenced claim application is incomplete and will be denied unless the Division *receives* your written response and the information needed to complete it on or before the Response Due Date shown above.

Additional Requests for Information: Please be aware providing the documents requested above does not guarantee the application will be completed. If the requested documents are incomplete or create additional questions, you may be contacted for further information.

No Interest Accrual During Response Period: Granting an applicant time to correct an incomplete application is considered a "delay attributable to the claimant." Therefore, no interest will accrue during the period beginning with the date of this letter and ending when the required documentation is received (see Utah Code Ann. § 38-11-203(3)(c)).

Questions, Assistance, and Extensions: If you have any questions, need assistance, or wish to request an extension of time to respond, please call. Please note, Utah Admin. Code § R156-38a-105b(2) limits claimants to a single 30-day extension of time to respond to this notice. If you anticipate you will be unable to complete the claim within 30 days from the Response Deadline given above, we recommend you request the claim be prolonged pursuant to Utah Admin. Code § R156-38a-105b(3). However, you should consider that a claim may only be prolonged once unless certain narrowly defined criteria are met.

Respectfully,



Dane Ishihara
Program Manager
(801) 530-7632
dishihara@utah.gov

Exhibit C

Request for prolonged status

From: Jason Robinson
Sent: Thursday, December 19, 2013 4:37 PM
To: dishihara@utah.gov
Subject: Please place LRF applications on hold

Dane:

Given the holidays, I will need more time to respond to your letters dated December 12, 2013, for the following applications:

LRF-2013-1031-03 (Riley, May and/or Suflick)

LRF-2013-1031-04 (?)

LRF-2013-1031-05 (Trent & Brandy Hanna)

LRF-2013-1031-06 (Travis Thompson)

LRF-2013-1031-07 (Trent & Brandy Hanna)

LRF-2013-1031-08 (Wanda Oliverson)

Please place the foregoing applications on inactive, prolonged, hold status. Please confirm.

As to the following claims, they should not be placed on hold status; but please let me know if you need any additional information:

LRF Claim No. LRF-2013-1031-01 (Brian & Kari Anderson)

LRF Claim No. LRF-2013-1031-02 (Brett and Melanie Smith)

Final note; as to LRF-2013-1031-04 (?), I don't have a letter from you in my file. Did you send a letter?

Thanks.



Jason H. Robinson

Shareholder – Licensed in Utah & Wyoming
Washington Federal Plaza | 505 East 200 South, Suite 300

Salt Lake City, Utah 84102

T: 801.531.7000 | F: 801.531.7060

E: jason@babcockscott.com | www.babcockscott.com

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Exhibit D

Prolonged Status Granted

From: Jason Robinson
Sent: Thursday, December 19, 2013 4:37 PM
To: dishihara@utah.gov
Subject: Please place LRF applications on hold

Dane:

Given the holidays, I will need more time to respond to your letters dated December 12, 2013, for the following applications:

LRF-2013-1031-03 (Riley, May and/or Suflick)

LRF-2013-1031-04 (?)

LRF-2013-1031-05 (Trent & Brandy Hanna)

LRF-2013-1031-06 (Travis Thompson)

LRF-2013-1031-07 (Trent & Brandy Hanna)

LRF-2013-1031-08 (Wanda Oliverson)

Please place the foregoing applications on inactive, prolonged, hold status. Please confirm.

As to the following claims, they should not be placed on hold status; but please let me know if you need any additional information:

LRF Claim No. LRF-2013-1031-01 (Brian & Kari Anderson)

LRF Claim No. LRF-2013-1031-02 (Brett and Melanie Smith)

Final note; as to LRF-2013-1031-04 (?), I don't have a letter from you in my file. Did you send a letter?

Thanks.



Jason H. Robinson

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Exhibit E

Expiration of Prolonged Status



Department of Commerce

Division of Occupational and Professional Licensing

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

FRANCINE A. GIANI
Executive Director

MARK B. STEINAGEI
Division Director

May 2, 2016

JASON ROBINSON
BABCOCK SCOTT & BABCOCK
370 S TEMPLE
SALT LAKE CITY 84111

Subject: Expiration of Prolonged Status
Updated Notice of Incomplete or Insufficient Claim Application
Updated Conditional Denial of Claim
Opportunity to Request Renewal of Prolonged Status
Claim No. LRF-2013-1031-03,04,05,06,07,08
Claimant: ProBuild Company LLC
Original Contractor: SMA Enterprises Inc dba Elite Builder Group
Nonpaying Party: SMA Enterprises Inc dba Elite Builder Group

RESPONSE DUE DATE: June 2, 2016

Dear Claimant:

On April 10, 2015 the Division placed the above-cited claim on prolonged status for the second time. Utah Admin. Code § R156-38a-105b(3)(b) provides a claim may remain on prolonged status for one year. Therefore, the claim's period of prolonged status has expired.

Updated Conditional Denial of Claim: Utah Admin. Code § R156-38a-105b(3)(d) requires "upon expiration of the one-year prolonged status of a claim, the Division shall issue to the claimant an updated notice" as to why the claim application is incomplete. As of today, the following issues must be resolved to complete the claim application:

Please see attached "Conditional Denial of Claim" dated December 12, 2013

Response Procedure: Utah Admin. Code § R156-38-105b(3)(d) requires that the updated notice include a form that provides the claimant the opportunity to:

- Reactivate the claim and submit any documentation necessary to resolve any unresolved issues;
- Withdraw the claim; or

- Request the claim be granted another one-year prolonged status.

That form is attached. Please complete it and attach any required documentation. Note, if you request prolonged status be renewed, you must attach the documents mentioned in the instructions for the form. Please submit the form and documentation to my attention at:

DOPL - LRF
PO BOX 146741
SALT LAKE CITY UT 84114-6741

Documents may also be hand-delivered to the Division of Occupational and Professional Licensing on the 1st floor of the Heber M. Wells Building— 160 East 300 South, Salt Lake City, Utah. Office hours are from 7:00 a.m. to 6:00 p.m. Monday through Thursday.

Presumption a Response is Complete: The Division will review the claim application again upon receiving a written response from the claimant. The Division will treat any response received as the claimant's complete and final response. Therefore, once we receive your response the claim will be reviewed and a decision rendered.

To avoid confusion, you are advised to submit a single, complete response; DO NOT submit your response in a piece meal manner.

Claim Will Be Denied Unless Completed: As required by Utah Admin. Code § R156-38a-105b(1)(b), this Notice serves to advise the claimant that the above-referenced claim application is incomplete and will be denied unless the Division *receives* the information needed to complete it on or before the Response Due Date shown above.

Additional Requests for Information: Please be aware providing the documents requested above do not guarantee the application will be completed. If the requested documents are incomplete or create additional questions, you may be contacted for further information.

Adjudicative Hearing May be Required: If the claimant has been unable to obtain judgment against the non-paying party due to the non-paying party filing bankruptcy, a formal hearing before the Advisory Board and the Division may be required. If a hearing is required, you will be contacted by Steve Eklund, Administrative Law Judge of the Department of Commerce, regarding the exact date, time, and place for the hearing.

No Interest Accrual During Response Period: Granting an applicant time to correct an incomplete application is considered a "delay attributable to the claimant." Therefore, no interest will accrue during the period beginning with the date of this letter and ending when the required documentation is received (see Utah Code Ann. § 38-11-203(3)(c)).

Questions, Assistance, and Extensions: If you have any questions or need assistance please call.

Pursuant to Utah Admin. Code § R156-38a-105b(2), the **deadline to respond to this notice cannot be extended by the Division.**

Respectfully,

A handwritten signature in black ink, appearing to be 'Tracy Naff', with a long horizontal flourish extending to the right.

Tracy Naff
Fund Manager
801-530-6225
tnaff@utah.gov

Declaration of Intent
Regarding Prolonged Lien Recovery Fund Claim

Read all instructions before completing this form

Part A. Statement of Intent. Check the appropriate box

Probuild Company LLC states its intent with respect to claims LRF-2013-1031-03,04,05,06,07, and 08 which has been on prolonged status for more than one year, is as follows.

ProBuild Company LLC:

- Requests the claim be reactivated and processed.
- Withdraws the claim.
- Requests the claim be granted another one-year prolonged status for the reason given in Part B.

Part B. Reason for Renewing Prolonged Status. Check the appropriate box and attach documentation as explained in the instructions.

- Ongoing litigation
- Ongoing bankruptcy
- Continuing compliance with payment arrangement
- Other

I certify that I have reviewed the information provided on this form and that the answers marked represent the desires of «Claimant» with respect to claims LRF-2013-1031-03,04,05,06,07, and 08

Signature of claimant or claimant's agent

Date

Printed name of signator

Title of signator

Instructions for Declaration of Intent
Regarding Prolonged Lien Recovery Fund Claim

1. **Part A.** Check the box indicating how you want the claim processed at this point. Your choices are:
 - a. **Reactivate the Claim.** Selecting this option notifies the Division you want the claim processed based upon the current claim documents supplemented by whatever documentation you attach with this form. If you select this option you must submit all documentation necessary to complete the claim.
 - b. **Withdraw the Claim.** If you select this option your claim will be dismissed by the Division and the matter closed without payment being issued.
 - c. **Request Renewal of Prolonged Status.** Selecting this option notifies the Division you are requesting the claim be granted another one-year prolonged status. If you select this option you must complete Part B and provide the documentation requested therein.
2. **Part B.** If you are requesting renewal of prolonged status you must select one of the following reasons and provide the required documentation:
 - a. **Ongoing Litigation.** Utah Admin. Code § R156-38a-105a(9) provides a claim will be prolonged during the pendency of an appeal—judicial or administrative—if the outcome of the appeal directly affects adjudication of the claim. If you select this option you must attach a written explanation of why the appeal directly relates to adjudication of the claim and a copy of the court docket or similar administrative calendar showing the current status of the appeal.
 - b. **Ongoing Bankruptcy.** Bankruptcy by any claim party that precludes completion of the claim is adequate grounds for renewal of prolonged status. If you select this option you must attach a written explanation of why the bankruptcy is preventing completion of the claim and a copy of the bankruptcy court docket.
 - c. **Continuing Compliance with a Payment Plan.** If the nonpaying party is complying with a payment plan, the claim will remain on prolonged status. If you select this option no documentation need be attached.
 - d. **Other Reasons.** Other reasons may exist for renewing prolonged status. Utah Admin. Code § R156-38a-105b(3)(c)(iv) provides that the presiding officer of the claim may granted renewed prolonged status for other reasonable causes. If you wish to have the claim prolonged for some reason other than a, b, or c above select this option and provide a written explanation of the reason. The explanation must include a statement as to why it would be unreasonable for the Division to reactivate the claim considering the claimant has had a full year to complete the claim. The explanation must also include all supporting documents necessary to validate the claimant's reason for requesting prolonged status be renewed.
3. We must *receive* this form on or before the Response Due Date given in the attached Notice or the claim will be processed based on the existing file.

Claim Report

Informal Claim

Claim Number: LRF-2013-1031-07

Claimant: ProBuild Company LLC

Contractor License # 7919125-5501 **Issue Date:** 02/24/2011 **Expiration Date:** 11/30/2017

Claimant Classification: Contractor with LRF

Claimant's Attorney: Jason Robinson

Nonpaying Party: SMA Enterprises Inc dba Elite Builder Group

Contractor License # 7806577-5501 **NPP Classification:** Contractor with LRF

Original Contractor: SMA Enterprises Inc dba Elite Builder Group

Type: Contractor with LRF **Contractor License #** 7806577-5501

License Issuance Date: 01/13/2011 **License End Date:** 12/12/2012 (surrendered)

Homeowner(s) Birrell

Abstract and Recommendation

Division's recommended disposition: Deny

The Division has reviewed the evidence submitted by the Claimant. It is the Division's opinion that Claimant has failed to satisfy UTAH CODE ANN. § 38-11-204(4)(a) and (b). Further, Claimant's Prolonged Status has expired and Claimant has failed to respond to the "Expiration of Prolonged Status" notification.

Detailed Analysis and Findings of Facts

On October 31, 2013 the Claimant submitted an application for payment (Exhibit A). On December 12, 2013, a "Notice of Incomplete or Insufficient Claim Application Conditional Denial of Claim" notification was sent to the Claimant which outlined the deficiencies in the claim application (Exhibit B).

UTAH CODE ANN. § 38-11-204(4) states:

To recover from the fund, regardless of whether the residence is occupied by the owner, a subsequent owner, or the owner or subsequent owner's tenant or lessee, a qualified beneficiary shall establish that:

(a) (i) the owner of the owner-occupied residence or the owner's agent entered into a written contract with an original contractor licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act . . .

(b) the owner has paid in full the original contractor licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, real estate developer, or

factory built housing retailer under Subsection (4)(a) with whom the owner has a written contract in accordance with the written contract and any amendments to the contract . . .

UTAH ADMIN. CODE § R156-38a-204b(1) provides:

The following supporting documents shall, at a minimum, accompany each nonlaborer claim for recovery from the fund:

- (1) one of the following:
 - (a) a copy of the certificate of compliance issued by the Division for the residence at issue in the claim;
 - (b) the documents required in Section R156-38a-204a; or
 - (c) a copy of a civil judgment containing findings of fact that:
 - (i) the homeowner entered a written contract in compliance with Subsection 38-11-204(4)(a)

On December 20, 2013, Claimant requested Prolonged Status (Exhibit C). On April 10, 2015, Claimant requested Prolonged Status be renewed, allowing until April 11, 2016 to complete the application (Exhibit D). On May 2, 2016, an "Expiration of Prolonged Status" letter was sent to Claimant, outlining the deficiencies in the application, and allowing until June 2, 2016 to respond (Exhibit E). As of June 7, 2016, the Division has not received a response. Therefore, because the claim application does not include the requested documents, and Claimant has failed to respond to the "Expiration of Prolonged Status" notification, the Division recommends the application be denied.

Exhibit A

Application

07

APPLICATION FOR PAYMENT

GENERAL INFORMATION

Claimant:

Company Name: ProBuild Company, LLC

Contact Person: Ryan Palmer

Mailing Address: 7380 South 700 West

City: Midvale State: UT Zip: 84047

Telephone: (801) 255-4201 LRF Registration Number: 7919125-5501

Email: ryan.palmer@probuild.com

Claiming as (*select one*):

- Contractor
- Supplier
- Other

Claimant's Legal Counsel:

Name: Jason H. Robinson

Firm: BABCOCK SCOTT & BABCOCK, P.C.

Address: 505 East 200 South, Suite 300

City: Salt Lake City State: UT Zip: 84102

Telephone: (801) 531-7000 Email: jason@babcockscott.com

RECEIVED
OCT 31 2013
 DIVISION OF OCCUPATIONAL
 & PROFESSIONAL LICENSING

Nonpaying Party (Original Contractor):

Company Name: SMA Enterprises Inc. d/b/a Elite Builders Group

Address: P.O. Box 628 Email:

City: Lehi State: UT Zip: 84043

Telephone: Contractor License Number: 7806577-5501

Nonpaying Party's Legal Counsel:

Name: Brian R. Barnhill

Firm: OSBORNE & BARNHILL, P.C.

Address: 11576 South State Street, #204

City: Draper State: Utah Zip: 84020

Telephone: (801) 571-2555 Email: brian@oblawpc.com

Original Contractor/Factory Built Housing Retailer/Real Estate Developer

(Please circle applicable designation. See Definitions Section for additional information.)

Company Name: SMA Enterprises Inc. d/b/a Elite Builders Group

Address: P.O. Box 628 Email:

City: Lehi State: UT Zip: 84043

Contractor License Number: 7806577-5501

Telephone: () Email:

Homeowner:

Name: Gary Birrell

Address: 870 East Raymond Road

City: Fruit Heights State: UT Zip: 84037

Telephone: () Email:

Subsequent Homeowner (if applicable):

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: () Email: _____

Owner-Occupied Residence:

Address: 870 East Raymond Road

City: Fruit Heights State: UT Zip: 84037

Legal Description (*required*):

ALL OF LOT 39, GRAND OAKS PLAT A. CONT. 0.23 ACRES.

Parcel/Serial No.: 111430039

RESIDENCE AND QUALIFIED SERVICES:

Residence is a (*select one*):

Detached, single-family dwelling

Duplex residence

Other, describe: _____

Please describe the qualified services performed by the claimant for the nonpaying party on this residence:

Claimant furnished labor, materials, and/or equipment for the improvement of the above-described property.

Qualified services can be described as: (*select one*)

Work designated for the improvement of incidental residence only

Work constituting improvement to multiple properties or subdivisions (*i.e. infrastructure work, installation of utilities, roadways, sewer lines, and irrigation systems on a subdivision or on multiple properties*)

Date(s) claimant provided qualified services for nonpaying party on this residence: December 9, 2011 – January 6, 2012

Has the homeowner provided the claimant with a copy of a Certificate of Compliance for the incident residence? Yes No

Amount nonpaying party owes claimant for qualified services on this residence: \$6,613.46

Date claimant recorded mechanics' lien on incident residence: N/A

Date of occupancy permit: ____/____/____

No occupancy permit, date of final inspection on residence: ____/____/____

If none of the above, date contract between owner and original contractor was substantially complete: ____/____/____

CIVIL ACTION AGAINST NONPAYING PARTY:

Court, case number, and filing date of claimant's civil action against the nonpaying party:

Fourth District Court of Utah County; Case No. 120401310; Filing date of the Complaint is 8/16/12

Date judgment was entered in civil action: 11/1/12

Date supplemental order was issued: 10/21/13 Date served: Defendants' attorney accepted service of supplemental order

Date of Writ of Execution: ____/____/____ Date of Return of Execution: ____/____/____

Amount of judgment recovered through writ of execution (if any): \$ _____

NONPAYING PARTY'S BANKRUPTCY FILING:

Court, case number, and filing or conversion date for nonpaying party's bankruptcy action:

ADDITIONAL SOURCES OF PAYMENT:

Is claimant likely to become entitled to reimbursement for this claim from any other source?

- No Yes, identify the source(s) including name, address, telephone number, and amount of expected reimbursement. (*Attach additional sheets as necessary.*)

PAYMENT WORKSHEET

Attach evidence supporting all amounts claimed. Evidence could include civil judgment, invoices, documentation of costs, attorney fee affidavits (*see Rule 4-505 Utah Code of Judicial Administration*), billing notices, supplemental order issuance reports, etc.

SECTION 1—CIVIL JUDGMENT: Complete this section only if claimant has obtained a civil judgment against the nonpaying party. If the judgment relates to more than one property, complete this section and Section 2. If the judgment relates to only one property, complete only this section. If claimant has been precluded from obtaining a civil judgment because the nonpaying party filed for bankruptcy protection, go to Section 3.

- | | | |
|----|--------------|--|
| A. | \$138,445.28 | Qualified services amount awarded in civil judgment. |
| B. | 6,906.00 | Pre-judgment attorney fees (and pre-judgment costs)—may not exceed 15% of qualified services [Utah Code Ann. § 38-11-203(3)(f)] |
| C. | N/A | Pre-judgment costs (combined with pre-judgment attorney fees). |
| D. | 8,970.50 | Post-judgment attorney fees. <u>Total</u> attorney fees may not exceed 15% of qualified services [Utah Code Ann. § 38-11-203(3)(f)] |
| E. | 373.00 | Post-judgment costs for entire principal amount authorized by the civil judgment. [See Utah Admin. Code § R156-38-204d(3)(a) for limits] |
| F. | 4,487.14 | Interest. Calculate simple interest on the qualified services balance using the appropriate rate from the table in the instructions. |
| G. | \$159,181.92 | Total (<i>add lines A through F</i>). |

SECTION 2—ALLOCATION OF CIVIL JUDGMENT TO RESIDENCE: Complete this section only if the claimant has obtained a civil judgment that includes an award for more than one residence. The Fund can pay only the portion of the civil judgment that relates to the subject property. Please attach a separate sheet that identifies the residences included in the civil judgment and state the amounts awarded for each residence.

- H. \$6,613.46 Qualified services attributable to this residence.
- I. 4.78% Allocation ratio. Divide line H by line A above and enter the percentage here (*Please round to the nearest 1/100 of a percent; i.e. 1/3 = 33.33% and 3/7 = 42.86%*).
- J. 330.11 Pre-judgment attorney fees (and pre-judgment costs) allocated to this residence. Multiply line B by line I.
- K. N/A Pre-judgment costs (combined with pre-judgment attorney fees). Multiply line C by line I.
- L. 428.79 Post-judgment attorney fees allocable to this residence. Multiply line D by line I.
- M. 17.83 Post-judgment costs allocable to this residence. Multiply line E by line I.
- N. 214.49 Total interest allocable to this residence. Multiply line F by line I
- O. **\$7,604.68** Total amount claimed for this residence. Add line H and lines J through N. **Do not include line I in the total.**

SECTION 3—BANKRUPTCY FILING BY NONPAYING PARTY: Complete this section if claimant was precluded from obtaining a civil judgment because the nonpaying party filed for bankruptcy protection.

- P. _____ Amount of qualified services provided for this residence.
- Q. _____ Amount of attorney fees incurred to collect for qualified services on this residence. Total attorney fees may not exceed 15% of qualified services and the claimant's contract with the nonpaying party must authorize collection of attorney fees. [Utah Code Ann. § 38-11-203(3)(f)]
- R. _____ Amount of costs incurred to collect for qualified services on this residence. [See Utah Admin. § R156-38-204d(3)(b) for limits]
- S. _____ Interest. Calculate simple interest on the qualified services balance using the appropriate rate from the table in the instructions.
- R. _____ Total amount claimed. Add lines P through S.

AFFIDAVIT, CERTIFICATION and RELEASE AUTHORIZATION

I am authorized to sign this affidavit for the claimant described and identified in this Residence Lien Recovery Fund claim application.

To the best of my knowledge, the information contained in this application and the supporting documents is free from fraud, misrepresentation, or omission of material fact.

I will ensure that any information subsequently submitted to the Division of Occupational and Professional Licensing in conjunction with this claim application and/or its supporting documents will meet the same standard set forth above.

I understand that claimants who, in order to receive payment from the Lien Recovery Fund to which they are not entitled, report false information, withhold information, or present false or misleading documentation pertinent to a claim will be disqualified from receiving payment and may be subject to both criminal prosecution and civil penalties.

I understand that this application will be classified as a public record and will be available for inspection by the public except with regard to the release of information which is classified as controlled, private, or protected under the Government Records Access and Management Act or restricted by other law.

I certify that the claimant is not entitled to reimbursement from any other entity for this claim as of the date of this affidavit. Should the claimant become entitled to reimbursement from any other entity for this claim after this date, the claimant will immediately notify the Division of Occupational and Professional Licensing.

I hereby authorize all persons, institutions, governmental agencies, employers, or any others not specifically included in the preceding characterization, which are set forth directly or by reference in this application, to release to the Division of Occupational and Professional Licensing, State of Utah or the Residence Lien Recovery Fund Advisory Board, any files, records or information of any type reasonably required for the Division of Occupational and Professional Licensing or the Board to properly evaluate my claim.

Signature of Applicant: 

Date of Signature: 10/31/13

Printed Name of Applicant: Jaron Robinson, Atty.

Exhibit B

Conditional Denial



State of Utah
Department of Commerce

Division of Occupational and Professional Licensing

GARY R. HERBERT
Governor

FRANCINE A. GIANI
Executive Director

MARK B. STEINAGEL
Division Director

December 12, 2013

JASON ROBINSON
BABCOCK SCOTT & BABCOCK
505 E 200 S STE 300
SALT LAKE CITY UT 84102

Subject: Notice of Incomplete or Insufficient Claim Application
Conditional Denial of Claim
Lien Recovery Fund Claim No. LRF-2013-1031-07
Claimant: ProBuild Company LLC
Original Contractor: SMA Enterprises Inc dba Elite Builders Group
Nonpaying Party: SMA Enterprises Inc dba Elite Builders Group
Homeowner: Gary Birrell

RESPONSE DUE DATE: January 13, 2013

Dear Claimant:

The Division has reviewed the application for payment of the above-referenced claim. Based upon that review, we find the claim documents are incomplete and do not meet the requirements of Utah Admin. Code § R156-38a-101 *et seq.* This notice sets forth the defects in the claim and specifies the date by which the claimant must respond to the notice.

Unless the claim is completed, it will be denied. The following defects must be corrected to complete the application:

Written Contract Missing - Utah Code Ann. § 38-11-204(4)(a) requires:

To recover from the fund, . . . a qualified beneficiary shall establish that

(i) the owner of the owner-occupied residence or the owner's agent entered into a written contract with an original contractor licensed or exempt from licensure under Title 58, Chapter 55, . . .

(ii) the owner of the owner-occupied residence or the owner's agent entered into a written contract with a real estate developer for the purchase of an owner-occupied residence; or

(iii) the owner of the owner-occupied residence or the owner's agent entered into a written contract with a factory built

housing retailer for the purchase of an owner-occupied residence
(emphasis added)

For claimants' benefit, Utah Admin. Code § R156-38a-204b(1) provides:

The following supporting documents shall, at a minimum, accompany each nonlaborer claim for recovery from the fund:

- (1) one of the following:
 - (a) a copy of the certificate of compliance issued by the _____ Division for the residence at issue in the claim;
 - (b) the documents required in Section R156-38-204a; or
 - (c) a copy of a civil judgment containing findings of fact that:
 - (i) the homeowner entered a written contract in compliance with Subsection 38-11-204(4)(a)

Paid in Full Missing - To recover from the fund, . . . a qualified beneficiary shall establish that . . . the owner has **paid in full** the original contractor . . . , real estate developer, or factory built housing retailer . . . **with whom the owner has a written contract** in accordance with the written contract and any amendments to the contract.
(emphasis added)

To assist claimants with this requirement, Utah Admin. Code § R156-38a-204b(1) provides:

The following supporting documents shall, at a minimum, accompany each nonlaborer claim for recovery from the fund:

- (1) one of the following:
 - (a) a copy of the certificate of compliance issued by the Division for the residence at issue in the claim;
 - (b) the documents required in Section R156-38-204a; or
 - (c) a copy of a civil judgment containing findings of fact that
 - (iii) the homeowner paid the contracting entity in full in accordance with the written contract and any amendments to the contract.

Owner-Occupied Residence Missing - Utah Code Ann. §§ 38-11-102(18), 38-11-204(1)(ii), 38-11-204(4)(a), and 38-11-204(4)(d)(ii) all require that the residence at issue in the claim must be an owner-occupied residence for the claimant to receive payment. To facilitate compliance with this requirement Utah Admin. Code § R156-38a-204b(1) requires:

The following supporting documents shall, at a minimum, accompany each nonlaborer claim for recovery from the fund:

- (1) one of the following:

- (a) a copy of the certificate of compliance issued by the Division for the residence at issue in the claim;
- (b) the documents required in Section R156-38-204a; or
- (c) a copy of a civil judgment containing findings of fact that . . .
- (iv) the homeowner is an owner as defined in Subsection 38-11-102(17) and the residence is an owner-occupied residence as defined in Subsection 38-11-102(18);

Jurisdictional Flaw – Failure to File Civil Action by Deadline: Utah Code Ann. § 38-11-204(4)(d)(i)(A) & (B) require:

- To recover from the fund, . . . a qualified beneficiary shall establish that . . . the qualified beneficiary filed an action against the nonpaying party to recover monies owed to the qualified beneficiary with the earlier of:
- (A) 180 days from the date the qualified beneficiary filed a notice of claim under Section 38-1-7; or
 - (B) 270 days from the completion of the original contract pursuant to Subsection 38-1-7(1);

Because we did not receive a copy of the notice of claim of lien or documentation demonstrating the completion of the original contract, we are unable to determine if your claim complies with the above-referenced requirement. If a notice of claim of lien was filed, we need a copy of the lien supplemented with documentation demonstrating the date of completion of the original contract. Also, you must submit one of the following as documentation demonstrating the date of completion of the original contract:

- A copy of the certificate of occupancy issued by the local government entity having jurisdiction over the incident residence
- If no occupancy permit was required, please submit a copy of the final inspection approval issued by the local government entity
- If there is neither a copy of a certificate of occupancy or a final inspection approval, please submit an affidavit from the homeowner or other credible evidence establishing the date on which the original contractor substantially completed the written contract

Response Procedure: Please submit the required documentation and a copy of this letter to my attention at:

DOPL - LRF
PO BOX 146741
SALT LAKE CITY UT 84114-6741

Documents may also be hand-delivered to the Division of Occupational and Professional Licensing on the 1st floor of the Heber M. Wells Building – 160 East 300 South, Salt Lake City, Utah. Office hours are from 8:00 a.m. to 5:00 p.m. Monday through Friday.

Presumption a Response is Complete: The Division will review the claim application again upon receiving a written response from the claimant. The Division will treat any response received as the claimant's complete and final response. Therefore, once we receive your response the claim will be reviewed and a decision rendered.

To avoid confusion, you are advised to submit a single, complete response; **DO NOT** submit your response in a piece meal manner.

Claim Will Be Denied Unless Completed: As required by Utah Admin. Code § R156-38a-105b(1)(b), this Notice serves to advise the claimant that the above-referenced claim application is incomplete and will be denied unless the Division *receives* your written response and the information needed to complete it on or before the Response Due Date shown above.

Additional Requests for Information: Please be aware providing the documents requested above does not guarantee the application will be completed. If the requested documents are incomplete or create additional questions, you may be contacted for further information.

No Interest Accrual During Response Period: Granting an applicant time to correct an incomplete application is considered a "delay attributable to the claimant." Therefore, no interest will accrue during the period beginning with the date of this letter and ending when the required documentation is received (see Utah Code Ann. § 38-11-203(3)(c)).

Questions, Assistance, and Extensions: If you have any questions, need assistance, or wish to request an extension of time to respond, please call. Please note, Utah Admin. Code § R156-38a-105b(2) limits claimants to a single 30-day extension of time to respond to this notice. If you anticipate you will be unable to complete the claim within 30 days from the Response Deadline given above, we recommend you request the claim be prolonged pursuant to Utah Admin. Code § R156-38a-105b(3). However, you should

Claim No. LRF-2013-1031-07
December 12, 2013
Page 5

consider that a claim may only be prolonged once unless certain narrowly defined criteria are met.

Respectfully,

A handwritten signature in black ink, appearing to read 'D Ishihara', with a large, stylized initial 'D'.

Dane Ishihara
Program Manager
(801) 530-7632
dishihara@utah.gov

Exhibit C

Request for prolonged status



Tracy Naff <tnaff@utah.gov>

Fwd: Please place LRF applications on hold

1 message

Dane Ishihara <dishihara@utah.gov>
To: Naffster <tnaff@utah.gov>

Fri, Apr 10, 2015 at 1:49 PM

Will you place these on prolonged status.

----- Forwarded message -----

From: **Jason Robinson** <jason@babcockscott.com>
Date: Fri, Apr 10, 2015 at 12:38 PM
Subject: RE: Please place LRF applications on hold
To: Dane Ishihara <dishihara@utah.gov>

Dane:

I am still seeking supporting information from the contractor, Elite Builders Group. I am, therefore, requesting that the following applications be placed on prolonged status:

LRF-2013-1031-03 (Riley, May and/or Suflick)

LRF-2013-1031-04 (?)

LRF-2013-1031-05 (Trent & Brandy Hanna)

LRF-2013-1031-06 (Travis Thompson)

LRF-2013-1031-07 (Trent & Brandy Hanna)

LRF-2013-1031-08 (Wanda Oliverson)

Please confirm. Thank you.



Jason H. Robinson

Shareholder – Licensed in Utah & Wyoming

Washington Federal Plaza | 505 East 200 South, Suite 300

Salt Lake City, Utah 84102

T: 801.531.7000 | F: 801.531.7060

E: jason@babcockscott.com | www.babcockscott.com

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From: Dane Ishihara [mailto:dishihara@utah.gov]

Sent: Friday, December 20, 2013 1:12 PM

To: Jason Robinson

Subject: Re: Please place LRF applications on hold

Jason,

This email is to acknowledge your request to have the above referenced Lien Recovery Fund claims placed on prolonged status. The request has been reviewed and granted.

Claims are Inactive for One Year: Utah Admin. Code § R156-38a-105b (3) (c) provides "a claim extended prolonged status shall be inactive for a period of one year or until reactivated by the applicant, whichever comes first."

No Interest Accrual During Prolonged Status: Placing a claim on prolonged status is considered a "delay attributable to the claimant." Therefore, no interest will accrue during the period beginning with the date of this letter and ending when the claim is reactivated (see Utah Code Ann. § 38-11-203(3) (c)).

Dane

On Fri, Dec 20, 2013 at 12:12 PM, Jason Robinson <Jason@babcockscott.com> wrote:

Dane:

Following up. I found your letter for LRF-2013-1031-04 (Wayne Sei Lesa), which is one of the applications that we are placing on hold status.



Jason H. Robinson

Shareholder – Licensed in Utah & Wyoming
Washington Federal Plaza | 505 East 200 South, Suite 300

Salt Lake City, Utah 84102

T: 801.531.7000 | F: 801.531.7060

E: jason@babcockscott.com | www.babcockscott.com

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Exhibit D

Prolonged Status Granted



Tracy Naff <tnaff@utah.gov>

Fwd: Please place LRF applications on hold

1 message

Dane Ishihara <dishihara@utah.gov>
To: Naffster <tnaff@utah.gov>

Fri, Apr 10, 2015 at 1:49 PM

Will you place these on prolonged status.

----- Forwarded message -----

From: **Jason Robinson** <jason@babcockscott.com>
Date: Fri, Apr 10, 2015 at 12:38 PM
Subject: RE: Please place LRF applications on hold
To: Dane Ishihara <dishihara@utah.gov>

Dane:

I am still seeking supporting information from the contractor, Elite Builders Group. I am, therefore, requesting that the following applications be placed on prolonged status:

LRF-2013-1031-03 (Riley, May and/or Suflick)

LRF-2013-1031-04 (?)

LRF-2013-1031-05 (Trent & Brandy Hanna)

LRF-2013-1031-06 (Travis Thompson)

LRF-2013-1031-07 (Trent & Brandy Hanna)

LRF-2013-1031-08 (Wanda Oliverson)

Please confirm. Thank you.



Jason H. Robinson

Shareholder – Licensed in Utah & Wyoming

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Salt Lake City, Utah 84102

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From: Dane Ishihara [mailto:dishihara@utah.gov]

Sent: Friday, December 20, 2013 1:12 PM

To: Jason Robinson

Subject: Re: Please place LRF applications on hold

Jason,

This email is to acknowledge your request to have the above referenced Lien Recovery Fund claims placed on prolonged status. The request has been reviewed and granted.

Claims are Inactive for One Year: Utah Admin. Code § R156-38a-105b (3) (c) provides "a claim extended prolonged status shall be inactive for a period of one year or until reactivated by the applicant, whichever comes first."

No Interest Accrual During Prolonged Status: Placing a claim on prolonged status is considered a "delay attributable to the claimant." Therefore, no interest will accrue during the period beginning with the date of this letter and ending when the claim is reactivated (see Utah Code Ann. § 38-11-203(3) (c)).

Dane

On Fri, Dec 20, 2013 at 12:12 PM, Jason Robinson <Jason@babcockscott.com> wrote:

Dane:

Following up. I found your letter for LRF-2013-1031-04 (Wayne Sei Lesa), which is one of the applications that we are placing on hold status.



Jason H. Robinson

Shareholder – Licensed in Utah & Wyoming
Washington Federal Plaza | 505 East 200 South, Suite 300

Salt Lake City, Utah 84102

T: 801.531.7000 | F: 801.531.7060

E: jason@babcockscott.com | www.babcockscott.com

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Exhibit E

Expiration of Prolonged Status



Department of Commerce

Division of Occupational and Professional Licensing

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

FRANCINE A. GIANI
Executive Director

MARK B. STEINAGEL
Division Director

May 2, 2016

JASON ROBINSON
BABCOCK SCOTT & BABCOCK
370 S TEMPLE
SALT LAKE CITY 84111

Subject: Expiration of Prolonged Status
Updated Notice of Incomplete or Insufficient Claim Application
Updated Conditional Denial of Claim
Opportunity to Request Renewal of Prolonged Status
Claim No. LRF-2013-1031-03,04,05,06,07,08
Claimant: ProBuild Company LLC
Original Contractor: SMA Enterprises Inc dba Elite Builder Group
Nonpaying Party: SMA Enterprises Inc dba Elite Builder Group

RESPONSE DUE DATE: June 2, 2016

Dear Claimant:

On April 10, 2015 the Division placed the above-cited claim on prolonged status for the second time. Utah Admin. Code § R156-38a-105b(3)(b) provides a claim may remain on prolonged status for one year. Therefore, the claim's period of prolonged status has expired.

Updated Conditional Denial of Claim: Utah Admin. Code § R156-38a-105b(3)(d) requires "upon expiration of the one-year prolonged status of a claim, the Division shall issue to the claimant an updated notice" as to why the claim application is incomplete. As of today, the following issues must be resolved to complete the claim application:

Please see attached "Conditional Denial of Claim" dated December 12, 2013

Response Procedure: Utah Admin. Code § R156-38-105b(3)(d) requires that the updated notice include a form that provides the claimant the opportunity to:

- Reactivate the claim and submit any documentation necessary to resolve any unresolved issues;
- Withdraw the claim; or

- Request the claim be granted another one-year prolonged status.

That form is attached. Please complete it and attach any required documentation. Note, if you request prolonged status be renewed, you must attach the documents mentioned in the instructions for the form. Please submit the form and documentation to my attention at:

DOPL - LRF
PO BOX 146741
SALT LAKE CITY UT 84114-6741

Documents may also be hand-delivered to the Division of Occupational and Professional Licensing on the 1st floor of the Heber M. Wells Building—160 East 300 South, Salt Lake City, Utah. Office hours are from 7:00 a.m. to 6:00 p.m. Monday through Thursday.

Presumption a Response is Complete: The Division will review the claim application again upon receiving a written response from the claimant. The Division will treat any response received as the claimant's complete and final response. Therefore, once we receive your response the claim will be reviewed and a decision rendered.

To avoid confusion, you are advised to submit a single, complete response; **DO NOT** submit your response in a piece meal manner.

Claim Will Be Denied Unless Completed: As required by Utah Admin. Code § R156-38a-105b(1)(b), this Notice serves to advise the claimant that the above-referenced claim application is incomplete and will be denied unless the Division *receives* the information needed to complete it on or before the Response Due Date shown above.

Additional Requests for Information: Please be aware providing the documents requested above do not guarantee the application will be completed. If the requested documents are incomplete or create additional questions, you may be contacted for further information.

Adjudicative Hearing May be Required: If the claimant has been unable to obtain judgment against the nonpaying party due to the nonpaying party filing bankruptcy, a formal hearing before the Advisory Board and the Division may be required. If a hearing is required, you will be contacted by Steve Eklund, Administrative Law Judge of the Department of Commerce, regarding the exact date, time, and place for the hearing.

No Interest Accrual During Response Period: Granting an applicant time to correct an incomplete application is considered a “delay attributable to the claimant.” Therefore, no interest will accrue during the period beginning with the date of this letter and ending when the required documentation is received (see Utah Code Ann. § 38-11-203(3)(c)).

Questions, Assistance, and Extensions: If you have any questions or need assistance please call.

Pursuant to Utah Admin. Code § R156-38a-105b(2), the deadline to respond to this notice cannot be extended by the Division.

Respectfully,

A handwritten signature in black ink, appearing to be 'Tracy Naff', with a long horizontal flourish extending to the right.

Tracy Naff
Fund Manager
801-530-6225
tnaff@utah.gov

Declaration of Intent
Regarding Prolonged Lien Recovery Fund Claim

Read all instructions before completing this form

Part A. Statement of Intent. Check the appropriate box

Probuild Company LLC states its intent with respect to claims LRF-2013-1031-03,04,05,06,07, and 08 which has been on prolonged status for more than one year, is as follows.

ProBuild Company LLC:

- Requests the claim be reactivated and processed.
- Withdraws the claim.
- Requests the claim be granted another one-year prolonged status for the reason given in Part B.

Part B. Reason for Renewing Prolonged Status. Check the appropriate box and attach documentation as explained in the instructions.

- Ongoing litigation
- Ongoing bankruptcy
- Continuing compliance with payment arrangement
- Other

I certify that I have reviewed the information provided on this form and that the answers marked represent the desires of «Claimant» with respect to claims LRF-2013-1031-03,04,05,06,07, and 08

Signature of claimant or claimant's agent

Date

Printed name of signator

Title of signator

Instructions for Declaration of Intent
Regarding Prolonged Lien Recovery Fund Claim

1. **Part A.** Check the box indicating how you want the claim processed at this point. Your choices are:
 - a. **Reactivate the Claim.** Selecting this option notifies the Division you want the claim processed based upon the current claim documents supplemented by whatever documentation you attach with this form. If you select this option you must submit all documentation necessary to complete the claim.
 - b. **Withdraw the Claim.** If you select this option your claim will be dismissed by the Division and the matter closed without payment being issued.
 - c. **Request Renewal of Prolonged Status.** Selecting this option notifies the Division you are requesting the claim be granted another one-year prolonged status. If you select this option you must complete Part B and provide the documentation requested therein.
2. **Part B.** If you are requesting renewal of prolonged status you must select one of the following reasons and provide the required documentation:
 - a. **Ongoing Litigation.** Utah Admin. Code § R156-38a-105a(9) provides a claim will be prolonged during the pendency of an appeal – judicial or administrative – if the outcome of the appeal directly affects adjudication of the claim. If you select this option you must attach a written explanation of why the appeal directly relates to adjudication of the claim and a copy of the court docket or similar administrative calendar showing the current status of the appeal.
 - b. **Ongoing Bankruptcy.** Bankruptcy by any claim party that precludes completion of the claim is adequate grounds for renewal of prolonged status. If you select this option you must attach a written explanation of why the bankruptcy is preventing completion of the claim and a copy of the bankruptcy court docket.
 - c. **Continuing Compliance with a Payment Plan.** If the nonpaying party is complying with a payment plan, the claim will remain on prolonged status. If you select this option no documentation need be attached.
 - d. **Other Reasons.** Other reasons may exist for renewing prolonged status. Utah Admin. Code § R156-38a-105b(3)(c)(iv) provides that the presiding officer of the claim may granted renewed prolonged status for other reasonable causes. If you wish to have the claim prolonged for some reason other than a, b, or c above select this option and provide a written explanation of the reason. The explanation must include a statement as to why it would be unreasonable for the Division to reactivate the claim considering the claimant has had a full year to complete the claim. The explanation must also include all supporting documents necessary to validate the claimant’s reason for requesting prolonged status be renewed.
3. We must *receive* this form on or before the Response Due Date given in the attached Notice or the claim will be processed based on the existing file.

Claim Report

Informal Claim

Claim Number: LRF-2013-1031-08

Claimant: ProBuild Company LLC

Contractor License #7919125-5501 **Issue Date:** 02/24/2011 **Expiration Date:** 11/30/2017

Claimant Classification: Contractor with LRF

Claimant's Attorney: Jason Robinson

Nonpaying Party: SMA Enterprises Inc dba Elite Builder Group

Contractor License # 7806577-5501 **NPP Classification:** Contractor with LRF

Original Contractor: SMA Enterprises Inc dba Elite Builder Group

Type: Contractor with LRF **Contractor License #** 7806577-5501

License Issuance Date: 01/13/2011 **License End Date:** 12/12/2012 (surrendered)

Homeowner(s) Oliverson

Abstract and Recommendation

Division's recommended disposition: Deny

The Division has reviewed the evidence submitted by the Claimant. It is the Division's opinion that Claimant has failed to satisfy UTAH CODE ANN. § 38-11-204(4)(a) and (b). Further, Claimant's Prolonged Status has expired and Claimant has failed to respond to the "Expiration of Prolonged Status" notification.

Detailed Analysis and Findings of Facts

On October 31, 2013 the Claimant submitted an application for payment (Exhibit A). On December 12, 2013, a "Notice of Incomplete or Insufficient Claim Application Conditional Denial of Claim" notification was sent to the Claimant which outlined the deficiencies in the claim application (Exhibit B).

UTAH CODE ANN. § 38-11-204(4) states:

To recover from the fund, regardless of whether the residence is occupied by the owner, a subsequent owner, or the owner or subsequent owner's tenant or lessee, a qualified beneficiary shall establish that:

(a) (i) the owner of the owner-occupied residence or the owner's agent entered into a written contract with an original contractor licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act . . .

(b) the owner has paid in full the original contractor licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, real estate developer, or

factory built housing retailer under Subsection (4)(a) with whom the owner has a written contract in accordance with the written contract and any amendments to the contract . . .

UTAH ADMIN. CODE § R156-38a-204b(1) provides:

The following supporting documents shall, at a minimum, accompany each nonlaborer claim for recovery from the fund:

(1) one of the following:

(a) a copy of the certificate of compliance issued by the Division for the residence at issue in the claim;

(b) the documents required in Section R156-38a-204a; or

(c) a copy of a civil judgment containing findings of fact that:

(i) the homeowner entered a written contract in compliance with Subsection 38-11-204(4)(a)

On December 20, 2013, Claimant requested Prolonged Status (Exhibit C). On April 10, 2015, Claimant requested Prolonged Status be renewed, allowing until April 11, 2016 to complete the application (Exhibit D). On May 2, 2016, an "Expiration of Prolonged Status" letter was sent to Claimant, outlining the deficiencies in the application, and allowing until June 2, 2016 to respond (Exhibit E). As of June 7, 2016, the Division has not received a response. Therefore, because the claim application does not include the requested documents, and Claimant has failed to respond to the "Expiration of Prolonged Status" notification, the Division recommends the application be denied.

Exhibit A

Application

08

APPLICATION FOR PAYMENT

GENERAL INFORMATION

Claimant:

Company Name: ProBuild Company, LLC

Contact Person: Ryan Palmer

Mailing Address: 7380 South 700 West

City: Midvale State: UT Zip: 84047

Telephone: (801) 255-4201 LRF Registration Number: 7919125-5501

Email: ryan.palmer@probuild.com

Claiming as (*select one*):

- Contractor
- Supplier
- Other

Claimant's Legal Counsel:

Name: Jason H. Robinson

Firm: BABCOCK SCOTT & BABCOCK, P.C.

Address: 505 East 200 South, Suite 300

City: Salt Lake City State: UT Zip: 84102

Telephone: (801) 531-7000 Email: jason@babcockscott.com

RECEIVED
OCT 31 2013
 DIVISION OF OCCUPATIONAL
 & PROFESSIONAL LICENSING

Nonpaying Party (Original Contractor):

Company Name: SMA Enterprises Inc. d/b/a Elite Builders Group

Address: P.O. Box 628 Email:

City: Lehi State: UT Zip: 84043

Telephone: Contractor License Number: 7806577-5501

Nonpaying Party's Legal Counsel:

Name: Brian R. Barnhill

Firm: OSBORNE & BARNHILL, P.C.

Address: 11576 South State Street, #204

City: Draper State: Utah Zip: 84020

Telephone: (801) 571-2555 Email: brian@oblawpc.com

Original Contractor/Factory Built Housing Retailer/Real Estate Developer

(Please circle applicable designation. See Definitions Section for additional information.)

Company Name: SMA Enterprises Inc. d/b/a Elite Builders Group

Address: P.O. Box 628 Email:

City: Lehi State: UT Zip: 84043

Contractor License Number: 7806577-5501

Telephone: () Email: _____

Homeowner:

Name: Wanda J. Oliverson

Address: 2260 North Valley View Drive

City: Layton State: UT Zip: 84040

Telephone: () Email: _____

Subsequent Homeowner (if applicable):

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: () Email: _____

Owner-Occupied Residence:

Address: 2260 North Valley View Drive

City: Layton State: UT Zip: 84040

Legal Description (*required*):

BEG AT A PT N 0^29' E 1551 FT & S 89^56' E 1045.99 FT & S 3^16' E 127.21 FT FR THE SW COR OF SEC 12-T4N-R1W; SLM; TH S 3^39' W 106 FT; TH N 89^56' W 354.89 FT TO E LINE OF OLD MOUNTAIN ROAD; TH N 3^39

Parcel/Serial No.: 090770043

RESIDENCE AND QUALIFIED SERVICES:

Residence is a (*select one*):

- Detached, single-family dwelling
- Duplex residence
- Other, describe: _____

Please describe the qualified services performed by the claimant for the nonpaying party on this residence:

Claimant furnished labor, materials, and/or equipment for the improvement of the above-described property.

Qualified services can be described as: (*select one*)

- Work designated for the improvement of incidental residence only
- Work constituting improvement to multiple properties or subdivisions (*i.e. infrastructure work, installation of utilities, roadways, sewer lines, and irrigation systems on a subdivision or on multiple properties*)

Date(s) claimant provided qualified services for nonpaying party on this residence: November 30, 2011

Has the homeowner provided the claimant with a copy of a Certificate of Compliance for the incident residence? Yes No

Amount nonpaying party owes claimant for qualified services on this residence: \$14,040.58

Date claimant recorded mechanics' lien on incident residence: N/A

Date of occupancy permit: ____/____/____

No occupancy permit, date of final inspection on residence: 3/26/12 (date of most recent

inspection)

If none of the above, date contract between owner and original contractor was substantially complete: ____/____/____

CIVIL ACTION AGAINST NONPAYING PARTY:

Court, case number, and filing date of claimant’s civil action against the nonpaying party:

Fourth District Court of Utah County; Case No. 120401310; Filing date of the Complaint is 8/16/12

Date judgment was entered in civil action: 11/1/12

Date supplemental order was issued: 10/21/13 Date served: Defendants’ attorney accepted service of supplemental order

Date of Writ of Execution: ____/____/____ Date of Return of Execution: ____/____/____

Amount of judgment recovered through writ of execution (if any): \$ _____

NONPAYING PARTY’S BANKRUPTCY FILING:

Court, case number, and filing or conversion date for nonpaying party’s bankruptcy action:

ADDITIONAL SOURCES OF PAYMENT:

Is claimant likely to become entitled to reimbursement for this claim from any other source?

- No
- Yes, identify the source(s) including name, address, telephone number, and amount of expected reimbursement. *(Attach additional sheets as necessary.)*

PAYMENT WORKSHEET

Attach evidence supporting all amounts claimed. Evidence could include civil judgment, invoices, documentation of costs, attorney fee affidavits (*see Rule 4-505 Utah Code of Judicial Administration*), billing notices, supplemental order issuance reports, etc.

SECTION 1—CIVIL JUDGMENT: Complete this section only if claimant has obtained a civil judgment against the nonpaying party. If the judgment relates to more than one property, complete this section and Section 2. If the judgment relates to only one property, complete only this section. If claimant has been precluded from obtaining a civil judgment because the nonpaying party filed for bankruptcy protection, go to Section 3.

- | | |
|-----------------|--|
| A. \$138,445.28 | Qualified services amount awarded in civil judgment. |
| B. 6,906.00 | Pre-judgment attorney fees (and pre-judgment costs)—may not exceed 15% of qualified services [Utah Code Ann. § 38-11-203(3)(f)] |
| C. N/A | Pre-judgment costs (combined with pre-judgment attorney fees). |
| D. 8,970.50 | Post-judgment attorney fees. <u>Total</u> attorney fees may not exceed 15% of qualified services [Utah Code Ann. § 38-11-203(3)(f)] |
| E. 373.00 | Post-judgment costs for entire principal amount authorized by the civil judgment. [See Utah Admin. Code § R156-38-204d(3)(a) for limits] |
| F. 4,487.14 | Interest. Calculate simple interest on the qualified services balance using the appropriate rate from the table in the instructions. |
| G. \$159,181.92 | Total (<i>add lines A through F</i>). |

SECTION 2—ALLOCATION OF CIVIL JUDGMENT TO RESIDENCE: Complete this section only if the claimant has obtained a civil judgment that includes an award for more than one residence. The Fund can pay only the portion of the civil judgment that relates to the subject property. Please attach a separate sheet that identifies the residences included in the civil judgment and state the amounts awarded for each residence.

- H. \$14,040.58 Qualified services attributable to this residence.
- I. 10.14% Allocation ratio. Divide line H by line A above and enter the percentage here (*Please round to the nearest 1/100 of a percent; i.e. 1/3 = 33.33% and 3/7 = 42.86%*).
- J. 700.27 Pre-judgment attorney fees (and pre-judgment costs) allocated to this residence. Multiply line B by line I.
- K. N/A Pre-judgment costs (combined with pre-judgment attorney fees). Multiply line C by line I.
- L. 909.60 Post-judgment attorney fees allocable to this residence. Multiply line D by line I.
- M. 37.82 Post-judgment costs allocable to this residence. Multiply line E by line I.
- N. 455.00 Total interest allocable to this residence. Multiply line F by line I
- O. **\$16,143.27** Total amount claimed for this residence. Add line H and lines J through N. **Do not include line I in the total.**

SECTION 3—BANKRUPTCY FILING BY NONPAYING PARTY: Complete this section if claimant was precluded from obtaining a civil judgment because the nonpaying party filed for bankruptcy protection.

- P. _____ Amount of qualified services provided for this residence.
- Q. _____ Amount of attorney fees incurred to collect for qualified services on this residence. Total attorney fees may not exceed 15% of qualified services and the claimant's contract with the nonpaying party must authorize collection of attorney fees. [Utah Code Ann. § 38-11-203(3)(f)]
- R. _____ Amount of costs incurred to collect for qualified services on this residence. [See Utah Admin. § R156-38-204d(3)(b) for limits]
- S. _____ Interest. Calculate simple interest on the qualified services balance using the appropriate rate from the table in the instructions.
- R. _____ Total amount claimed. Add lines P through S.

AFFIDAVIT, CERTIFICATION and RELEASE AUTHORIZATION

I am authorized to sign this affidavit for the claimant described and identified in this Residence Lien Recovery Fund claim application.

To the best of my knowledge, the information contained in this application and the supporting documents is free from fraud, misrepresentation, or omission of material fact.

I will ensure that any information subsequently submitted to the Division of Occupational and Professional Licensing in conjunction with this claim application and/or its supporting documents will meet the same standard set forth above.

I understand that claimants who, in order to receive payment from the Lien Recovery Fund to which they are not entitled, report false information, withhold information, or present false or misleading documentation pertinent to a claim will be disqualified from receiving payment and may be subject to both criminal prosecution and civil penalties.

I understand that this application will be classified as a public record and will be available for inspection by the public except with regard to the release of information which is classified as controlled, private, or protected under the Government Records Access and Management Act or restricted by other law.

I certify that the claimant is not entitled to reimbursement from any other entity for this claim as of the date of this affidavit. Should the claimant become entitled to reimbursement from any other entity for this claim after this date, the claimant will immediately notify the Division of Occupational and Professional Licensing.

I hereby authorize all persons, institutions, governmental agencies, employers, or any others not specifically included in the preceding characterization, which are set forth directly or by reference in this application, to release to the Division of Occupational and Professional Licensing, State of Utah or the Residence Lien Recovery Fund Advisory Board, any files, records or information of any type reasonably required for the Division of Occupational and Professional Licensing or the Board to properly evaluate my claim.

Signature of Applicant: 

Date of Signature: 10/31/13

Printed Name of Applicant: Jason Ashinson, AHT

Exhibit B

Conditional Denial



State of Utah
Department of Commerce

Division of Occupational and Professional Licensing

GARY R. HERBERT
Governor

FRANCINE A. GIANI
Executive Director

MARK B. STEINAGEL
Division Director

December 12, 2013

JASON ROBINSON
BABCOCK SCOTT & BABCOCK
505 E 200 S STE 300
SALT LAKE CITY UT 84102

Subject: Notice of Incomplete or Insufficient Claim Application
Conditional Denial of Claim
Lien Recovery Fund Claim No. LRF-2013-1031-08
Claimant: ProBuild Company LLC
Original Contractor: SMA Enterprises Inc dba Elite Builders Group
Nonpaying Party: SMA Enterprises Inc dba Elite Builders Group
Homeowner: Wanda Oliverson

RESPONSE DUE DATE: January 13, 2013

Dear Claimant:

The Division has reviewed the application for payment of the above-referenced claim. Based upon that review, we find the claim documents are incomplete and do not meet the requirements of Utah Admin. Code § R156-38a-101 *et seq.* This notice sets forth the defects in the claim and specifies the date by which the claimant must respond to the notice.

Unless the claim is completed, it will be denied. The following defects must be corrected to complete the application:

Written Contract Missing - Utah Code Ann. § 38-11-204(4)(a) requires:

To recover from the fund, . . . a qualified beneficiary shall establish that

(i) the owner of the owner-occupied residence or the owner's agent entered into a written contract with an original contractor licensed or exempt from licensure under Title 58, Chapter 55, . . .

(ii) the owner of the owner-occupied residence or the owner's agent entered into a written contract with a real estate developer for the purchase of an owner-occupied residence; or

(iii) the owner of the owner-occupied residence or the owner's agent entered into a written contract with a factory built

housing retailer for the purchase of an owner-occupied residence
(emphasis added)

For claimants' benefit, Utah Admin. Code § R156-38a-204b(1) provides:

The following supporting documents shall, at a minimum, accompany each nonlaborer claim for recovery from the fund:

(1) one of the following:

(a) a copy of the certificate of compliance issued by the Division for the residence at issue in the claim;

(b) the documents required in Section R156-38-204a; or

(c) a copy of a civil judgment containing findings of fact that:

(i) the homeowner entered a written contract in compliance with Subsection 38-11-204(4)(a)

Paid in Full Missing - To recover from the fund, . . . a qualified beneficiary shall establish that . . . the owner has paid in full the original contractor . . . , real estate developer, or factory built housing retailer . . . with whom the owner has a written contract in accordance with the written contract and any amendments to the contract.
(emphasis added)

To assist claimants with this requirement, Utah Admin. Code § R156-38a-204b(1) provides:

The following supporting documents shall, at a minimum, accompany each nonlaborer claim for recovery from the fund:

(1) one of the following:

(a) a copy of the certificate of compliance issued by the Division for the residence at issue in the claim;

(b) the documents required in Section R156-38-204a; or

(c) a copy of a civil judgment containing findings of fact that

(iii) the homeowner paid the contracting entity in full in accordance with the written contract and any amendments to the contract.

Owner-Occupied Residence Missing - Utah Code Ann. §§ 38-11-102(18), 38-11-204(1)(ii), 38-11-204(4)(a), and 38-11-204(4)(d)(ii) all require that the residence at issue in the claim must be an owner-occupied residence for the claimant to receive payment. To facilitate compliance with this requirement Utah Admin. Code § R156-38a-204b(1) requires:

The following supporting documents shall, at a minimum, accompany each nonlaborer claim for recovery from the fund:

(1) one of the following:

- (a) a copy of the certificate of compliance issued by the Division for the residence at issue in the claim;
- (b) the documents required in Section R156-38-204a; or
- (c) a copy of a civil judgment containing findings of fact that . . .
- (iv) the homeowner is an owner as defined in Subsection 38-11-102(17) and the residence is an owner-occupied residence as defined in Subsection 38-11-102(18);

Jurisdictional Flaw – Failure to File Civil Action by Deadline: Utah Code Ann. § 38-11-204(4)(d)(i)(A) & (B) require:

To recover from the fund, . . . a qualified beneficiary shall establish that . . . the qualified beneficiary filed an action against the nonpaying party to recover monies owed to the qualified beneficiary with the earlier of:

- (A) 180 days from the date the qualified beneficiary filed a notice of claim under Section 38-1-7; or
- (B) 270 days from the completion of the original contract pursuant to Subsection 38-1-7(1);

Because we did not receive a copy of the notice of claim of lien or documentation demonstrating the completion of the original contract, we are unable to determine if your claim complies with the above-referenced requirement. If a notice of claim of lien was filed, we need a copy of the lien supplemented with documentation demonstrating the date of completion of the original contract. Also, you must submit one of the following as documentation demonstrating the date of completion of the original contract:

- A copy of the certificate of occupancy issued by the local government entity having jurisdiction over the incident residence
- If no occupancy permit was required, please submit a copy of the final inspection approval issued by the local government entity
- If there is neither a copy of a certificate of occupancy or a final inspection approval, please submit an affidavit from the homeowner or other credible evidence establishing the date on which the original contractor substantially completed the written contract

Response Procedure: Please submit the required documentation and a copy of this letter to my attention at:

DOPL - LRF
PO BOX 146741
SALT LAKE CITY UT 84114-6741

Documents may also be hand-delivered to the Division of Occupational and Professional Licensing on the 1st floor of the Heber M. Wells Building – 160 East 300 South, Salt Lake City, Utah. Office hours are from 8:00 a.m. to 5:00 p.m. Monday through Friday.

Presumption a Response is Complete: The Division will review the claim application again upon receiving a written response from the claimant. The Division will treat any response received as the claimant's complete and final response. Therefore, once we receive your response the claim will be reviewed and a decision rendered.

To avoid confusion, you are advised to submit a single, complete response; **DO NOT** submit your response in a piece meal manner.

Claim Will Be Denied Unless Completed: As required by Utah Admin. Code § R156-38a-105b(1)(b), this Notice serves to advise the claimant that the above-referenced claim application is incomplete and will be denied unless the Division *receives* your written response and the information needed to complete it on or before the Response Due Date shown above.

Additional Requests for Information: Please be aware providing the documents requested above does not guarantee the application will be completed. If the requested documents are incomplete or create additional questions, you may be contacted for further information.

No Interest Accrual During Response Period: Granting an applicant time to correct an incomplete application is considered a "delay attributable to the claimant." Therefore, no interest will accrue during the period beginning with the date of this letter and ending when the required documentation is received (see Utah Code Ann. § 38-11-203(3)(c)).

Questions, Assistance, and Extensions: If you have any questions, need assistance, or wish to request an extension of time to respond, please call. Please note, Utah Admin. Code § R156-38a-105b(2) limits claimants to a single 30-day extension of time to respond to this notice. If you anticipate you will be unable to complete the claim within 30 days from the Response Deadline given above, we recommend you request the claim be prolonged pursuant to Utah Admin. Code § R156-38a-105b(3). However, you should

Claim No. LRF-2013-1031-08
December 12, 2013
Page 5

consider that a claim may only be prolonged once unless certain narrowly defined criteria are met.

Respectfully,

A handwritten signature in black ink, appearing to read 'D Ishihara', with a stylized 'D' and a cursive 'Ishihara'.

Dane Ishihara
Program Manager
(801) 530-7632
dishihara@utah.gov

cc: Wanda Oliverson, homeowner

Exhibit C

Request for prolonged status

From: Jason Robinson
Sent: Thursday, December 19, 2013 4:37 PM
To: dishihara@utah.gov
Subject: Please place LRF applications on hold

Dane:

Given the holidays, I will need more time to respond to your letters dated December 12, 2013, for the following applications:

LRF-2013-1031-03 (Riley, May and/or Sufflick)

LRF-2013-1031-04 (?)

LRF-2013-1031-05 (Trent & Brandy Hanna)

LRF-2013-1031-06 (Travis Thompson)

LRF-2013-1031-07 (Trent & Brandy Hanna)

LRF-2013-1031-08 (Wanda Oliverson)

Please place the foregoing applications on inactive, prolonged, hold status. Please confirm.

As to the following claims, they should not be placed on hold status; but please let me know if you need any additional information:

LRF Claim No. LRF-2013-1031-01 (Brian & Kari Anderson)

LRF Claim No. LRF-2013-1031-02 (Brett and Melanie Smith)

Final note; as to LRF-2013-1031-04 (?), I don't have a letter from you in my file. Did you send a letter?

Thanks.



Jason H. Robinson

Shareholder – Licensed in Utah & Wyoming
Washington Federal Plaza | 505 East 200 South, Suite 300

Salt Lake City, Utah 84102

T: 801.531.7000 | F: 801.531.7060

E: jason@babcockscott.com | www.babcockscott.com

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Exhibit D

Prolonged Status Granted



Tracy Naff <tnaff@utah.gov>

Fwd: Please place LRF applications on hold

1 message

Dane Ishihara <dishihara@utah.gov>
To: Naffster <tnaff@utah.gov>

Fri, Apr 10, 2015 at 1:49 PM

Will you place these on prolonged status.

----- Forwarded message -----

From: **Jason Robinson** <jason@babcockscott.com>
Date: Fri, Apr 10, 2015 at 12:38 PM
Subject: RE: Please place LRF applications on hold
To: Dane Ishihara <dishihara@utah.gov>

Dane:

I am still seeking supporting information from the contractor, Elite Builders Group. I am, therefore, requesting that the following applications be placed on prolonged status:

LRF-2013-1031-03 (Riley, May and/or Suflick)

LRF-2013-1031-04 (?)

LRF-2013-1031-05 (Trent & Brandy Hanna)

LRF-2013-1031-06 (Travis Thompson)

LRF-2013-1031-07 (Trent & Brandy Hanna)

LRF-2013-1031-08 (Wanda Oliverson)

Please confirm. Thank you.



Jason H. Robinson

Shareholder – Licensed in Utah & Wyoming

Washington Federal Plaza | 505 East 200 South, Suite 300

Salt Lake City, Utah 84102

T: 801.531.7000 | F: 801.531.7060

E: jason@babcockscott.com | www.babcockscott.com

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From: Dane Ishihara [<mailto:dishihara@utah.gov>]
Sent: Friday, December 20, 2013 1:12 PM
To: Jason Robinson
Subject: Re: Please place LRF applications on hold

Jason,

This email is to acknowledge your request to have the above referenced Lien Recovery Fund claims placed on prolonged status. The request has been reviewed and granted.

Claims are Inactive for One Year: Utah Admin. Code § R156-38a-105b (3) (c) provides "a claim extended prolonged status shall be inactive for a period of one year or until reactivated by the applicant, whichever comes first."

No Interest Accrual During Prolonged Status: Placing a claim on prolonged status is considered a "delay attributable to the claimant." Therefore, no interest will accrue during the period beginning with the date of this letter and ending when the claim is reactivated (see Utah Code Ann. § 38-11-203(3) (c)).

Dane

On Fri, Dec 20, 2013 at 12:12 PM, Jason Robinson <Jason@babcockscott.com> wrote:

Dane:

Following up. I found your letter for LRF-2013-1031-04 (Wayne Sei Lesa), which is one of the applications that we are placing on hold status.



Jason H. Robinson

Shareholder – Licensed in Utah & Wyoming
Washington Federal Plaza | 505 East 200 South, Suite 300

Salt Lake City, Utah 84102

T: 801.531.7000 | F: 801.531.7060

E: jason@babcockscott.com | www.babcockscott.com

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Exhibit E

Expiration of Prolonged Status



State of Utah Department of Commerce

Division of Occupational and Professional Licensing

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

FRANCINE A. GIANI
Executive Director

MARK B. STEINAGEL
Division Director

May 2, 2016

JASON ROBINSON
BABCOCK SCOTT & BABCOCK
370 S TEMPLE
SALT LAKE CITY 84111

Subject: Expiration of Prolonged Status
Updated Notice of Incomplete or Insufficient Claim Application
Updated Conditional Denial of Claim
Opportunity to Request Renewal of Prolonged Status
Claim No. LRF-2013-1031-03,04,05,06,07,08
Claimant: ProBuild Company LLC
Original Contractor: SMA Enterprises Inc dba Elite Builder Group
Nonpaying Party: SMA Enterprises Inc dba Elite Builder Group

RESPONSE DUE DATE: June 2, 2016

Dear Claimant:

On April 10, 2015 the Division placed the above-cited claim on prolonged status for the second time. Utah Admin. Code § R156-38a-105b(3)(b) provides a claim may remain on prolonged status for one year. Therefore, the claim's period of prolonged status has expired.

Updated Conditional Denial of Claim: Utah Admin. Code § R156-38a-105b(3)(d) requires "upon expiration of the one-year prolonged status of a claim, the Division shall issue to the claimant an updated notice" as to why the claim application is incomplete. As of today, the following issues must be resolved to complete the claim application:

Please see attached "Conditional Denial of Claim" dated December 12, 2013

Response Procedure: Utah Admin. Code § R156-38-105b(3)(d) requires that the updated notice include a form that provides the claimant the opportunity to:

- Reactivate the claim and submit any documentation necessary to resolve any unresolved issues;
- Withdraw the claim; or

- Request the claim be granted another one-year prolonged status.

That form is attached. Please complete it and attach any required documentation. Note, if you request prolonged status be renewed, you must attach the documents mentioned in the instructions for the form. Please submit the form and documentation to my attention at:

DOPL - LRF
PO BOX 146741
SALT LAKE CITY UT 84114-6741

Documents may also be hand-delivered to the Division of Occupational and Professional Licensing on the 1st floor of the Heber M. Wells Building – 160 East 300 South, Salt Lake City, Utah. Office hours are from 7:00 a.m. to 6:00 p.m. Monday through Thursday.

Presumption a Response is Complete: The Division will review the claim application again upon receiving a written response from the claimant. The Division will treat any response received as the claimant's complete and final response. Therefore, once we receive your response the claim will be reviewed and a decision rendered.

To avoid confusion, you are advised to submit a single, complete response; **DO NOT** submit your response in a piece meal manner.

Claim Will Be Denied Unless Completed: As required by Utah Admin. Code § R156-38a-105b(1)(b), this Notice serves to advise the claimant that the above-referenced claim application is incomplete and will be denied unless the Division *receives* the information needed to complete it on or before the Response Due Date shown above.

Additional Requests for Information: Please be aware providing the documents requested above do not guarantee the application will be completed. If the requested documents are incomplete or create additional questions, you may be contacted for further information.

Adjudicative Hearing May be Required: If the claimant has been unable to obtain judgment against the nonpaying party due to the nonpaying party filing bankruptcy, a formal hearing before the Advisory Board and the Division may be required. If a hearing is required, you will be contacted by Steve Eklund, Administrative Law Judge of the Department of Commerce, regarding the exact date, time, and place for the hearing.

No Interest Accrual During Response Period: Granting an applicant time to correct an incomplete application is considered a “delay attributable to the claimant.” Therefore, no interest will accrue during the period beginning with the date of this letter and ending when the required documentation is received (see Utah Code Ann. § 38-11-203(3)(c)).

Questions, Assistance, and Extensions: If you have any questions or need assistance please call.

Pursuant to Utah Admin. Code § R156-38a-105b(2), **the deadline to respond to this notice cannot be extended by the Division.**

Respectfully,

A handwritten signature in black ink, appearing to be 'Tracy Naff', with a long horizontal line extending to the right.

Tracy Naff
Fund Manager
801-530-6225
tnaff@utah.gov

Declaration of Intent
Regarding Prolonged Lien Recovery Fund Claim

Read all instructions before completing this form

Part A. Statement of Intent. Check the appropriate box

Probuild Company LLC states its intent with respect to claims LRF-2013-1031-03,04,05,06,07, and 08 which has been on prolonged status for more than one year, is as follows.

ProBuild Company LLC:

- Requests the claim be reactivated and processed.
- Withdraws the claim.
- Requests the claim be granted another one-year prolonged status for the reason given in Part B.

Part B. Reason for Renewing Prolonged Status. Check the appropriate box and attach documentation as explained in the instructions.

- Ongoing litigation
- Ongoing bankruptcy
- Continuing compliance with payment arrangement
- Other

I certify that I have reviewed the information provided on this form and that the answers marked represent the desires of «Claimant» with respect to claims LRF-2013-1031-03,04,05,06,07, and 08

Signature of claimant or claimant's agent

Date

Printed name of signator

Title of signator

Instructions for Declaration of Intent
Regarding Prolonged Lien Recovery Fund Claim

1. **Part A.** Check the box indicating how you want the claim processed at this point. Your choices are:
 - a. **Reactivate the Claim.** Selecting this option notifies the Division you want the claim processed based upon the current claim documents supplemented by whatever documentation you attach with this form. If you select this option you must submit all documentation necessary to complete the claim.
 - b. **Withdraw the Claim.** If you select this option your claim will be dismissed by the Division and the matter closed without payment being issued.
 - c. **Request Renewal of Prolonged Status.** Selecting this option notifies the Division you are requesting the claim be granted another one-year prolonged status. If you select this option you must complete Part B and provide the documentation requested therein.
2. **Part B.** If you are requesting renewal of prolonged status you must select one of the following reasons and provide the required documentation:
 - a. **Ongoing Litigation.** Utah Admin. Code § R156-38a-105a(9) provides a claim will be prolonged during the pendency of an appeal—judicial or administrative—if the outcome of the appeal directly affects adjudication of the claim. If you select this option you must attach a written explanation of why the appeal directly relates to adjudication of the claim and a copy of the court docket or similar administrative calendar showing the current status of the appeal.
 - b. **Ongoing Bankruptcy.** Bankruptcy by any claim party that precludes completion of the claim is adequate grounds for renewal of prolonged status. If you select this option you must attach a written explanation of why the bankruptcy is preventing completion of the claim and a copy of the bankruptcy court docket.
 - c. **Continuing Compliance with a Payment Plan.** If the nonpaying party is complying with a payment plan, the claim will remain on prolonged status. If you select this option no documentation need be attached.
 - d. **Other Reasons.** Other reasons may exist for renewing prolonged status. Utah Admin. Code § R156-38a-105b(3)(c)(iv) provides that the presiding officer of the claim may granted renewed prolonged status for other reasonable causes. If you wish to have the claim prolonged for some reason other than a, b, or c above select this option and provide a written explanation of the reason. The explanation must include a statement as to why it would be unreasonable for the Division to reactivate the claim considering the claimant has had a full year to complete the claim. The explanation must also include all supporting documents necessary to validate the claimant's reason for requesting prolonged status be renewed.
3. We must *receive* this form on or before the Response Due Date given in the attached Notice or the claim will be processed based on the existing file.

APPLICATION FOR PAYMENT

RECOMMENDED FOR DENIAL

- EXPLANATION REQUIRED -

Claim Report

Informal Claim

Claim Number: LRF-2016-0614-01

July 18, 2016

Claimant: Mountain States Supply LLC

Contractor License # 6822191-5501 Issue Date: 11/20/2007 Expiration Date: 11/30/2017

Claimant Classification: Contractor

Claimant's Attorney: AnnMarie Howard

Nonpaying Party: Chris Jensen Landscaping Inc

Contractor License # 7898005-5501 NPP Classification: Contractor

Original Contractor: Chris Jensen Landscaping Inc

Type: Contractor

Contractor License # 7898005-5501

License Issuance Date: 02/09/2011 License End Date: 11/30/2015

Homeowner(s): Thomas & Julie Hardman

Abstract and Recommendation

Division's recommended disposition: Deny

Having reviewed evidence submitted by Claimant, it is the Division's opinion that the evidence submitted fails to meet the claimant's burden of proof. Specifically, the Division finds that the claimant failed to meet the statutory requirement of UTAH CODE ANN. § 38-11-204 (4) (d) (i) (A) & (B). For this reason, the Division recommends the application be denied.

Detailed Analysis and Findings of Facts

UTAH CODE ANN. § 38-11-204 (4) (d) (i) (A) & (B) require:

To recover from the fund, . . . a qualified beneficiary shall establish that . . . the qualified beneficiary filed an action against the nonpaying party to recover monies owed to the qualified beneficiary within the earlier of:

- (A) 180 days from the date the qualified beneficiary filed a notice of claim under Section 38-1-7; or
- (B) 270 days from the completion of the original contract pursuant to Subsection 38-1-7(1);

- Claimant filed a Notice of Lien on January 27, 2015 (Exhibit A).
 - 180 Days from this date is July 26, 2015.
- The Completion Date, according to the Certificate of Occupancy is April 22, 2014 (Exhibit B).
 - 270 days from this date is January 17, 2015.

The earlier of the two dates, is January 17, 2015.

Claimant did not file a civil action against the nonpaying party until January 30, 2015, thirteen days after the deadline imposed by UTAH CODE ANN. § 38-11-204 (4) (d) (i) (A) & (B)

Thus, the Division recommends that the claim be denied

Exhibit A

Lien

11982521
1/27/2015 10:35:00 AM \$10.00
Book - 10291 Pg - 3409
Gary W. Ott
Recorder, Salt Lake County, UT
LIEN COUNSEL
BY: eCASH, DEPUTY - EF 1 P.

Notice of Mechanics Lien

Claimant: MOUNTAIN STATES SUPPLY, LLC, 184 WEST 3300 SOUTH, Salt Lake City, Utah, 84115 (801) 234-6050
Reported Owner: HARDMAN, JULIE
Record Owner: HARDMAN, THOMAS & JULIE, JT
Non-paying Party: CHRIS JENSEN LANDSCAPING, INC.
Amount owed: \$915,41, together with interest, costs, and reasonable attorney fees.

First labor/materials were furnished: October 24, 2014

Last labor/materials were furnished: October 24, 2014

Property subject to this lien:

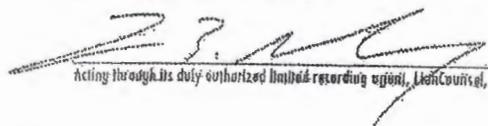
LOT 754, BELLEVUE PH 7B 10226-6859, SALT LAKE COUNTY, STATE OF UTAH.

28323530210000

PROTECTION AGAINST LIENS AND CIVIL ACTION, Notice is hereby provided in accordance with Section 38-11-108 of the Utah Code that under Utah law an "owner" may be protected against liens being maintained against an "owner-occupied residence" and from other civil action being maintained to recover monies owed for "qualified services" performed or provided by suppliers and subcontractors as a part of this contract, if either section (1) or (2) is met: (1)(a) the owner entered into a written contract with an original contractor, a factory built housing retailer, or a real estate developer; (b) the original contractor was properly licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act at the time the contract was executed; and (c) the owner paid in full the contracting entity in accordance with the written contract and any written or oral amendments to the contract; or (2) the amount of the general contract between the owner and the original contractor totals no more than \$5,000.

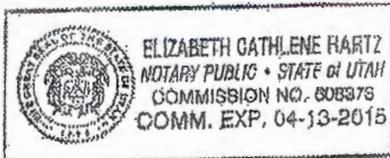
DATED this 27th day of January, 2015.

CLAIMANT, MOUNTAIN STATES SUPPLY, LLC


Acting through its duly authorized limited recording agent, LienCounsel, Inc.

ACKNOWLEDGMENT

On the 27th day of January, 2015, Zina E. Manley personally appeared before me and stated and swore under oath that LienCounsel, Inc. is the authorized agent to sign for Claimant, that this Notice of Mechanic's Lien was signed on claimant's behalf, that LienCounsel, Inc. is authorized by Claimant to sign on its behalf, that this claim of Mechanic's Lien and the information contained herein is true and correct and represents a valid claim to the best of her knowledge.




Notary Public

Exhibit B

Certificate of Occupancy

CERTIFICATE OF OCCUPANCY

DEPARTMENT OF BUILDING SAFETY

This certificate is issued pursuant to the requirements of Section R110 of the International Residential Code.
Certifying that at the time of issuance this structure was in compliance with the requirements of the 2012 International Residential Code.
For the Following:

Single Family Dwelling
754 Bellevue VII-B
Permanent Occupancy

PERMIT NO: BR-2013-01007-DRA SUBDIVISION: BELLEVUE PHASE VII B LOT NUMBER: LOT 754

OCCUPANCY GROUP: R-3/U CONSTRUCTION TYPE: VB

Owner of Structure: Ivory Homes LLC

Owner Address: 978 E Woodoak Ln

Building Address: 776 E KAMBER Cv



Keith Collier - Building Official

By: Tim Novinger

Issue Date: 04/22/2014

Expiration Date: _____

Automatic sprinkler system has been provided

Special Requirements of Permit: