Robert J. Berens (Nevada Bar No. 9510)
MANN, BERENS & WISNER, LLP
3300 N. Central Avenue, Suite 2400
Phoenix, Arizona 85012-2513
(602) 258-6200
(602) 258-6212
E-mail: rberens@mbwlaw.com

Attorneys for Merchants Bonding Company

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF NEVADA

In re: SOUTH EDGE, LLC, Debtor.	Chapter 11 Case No. BK-10-32968-bam **MERCHANTS' BONDING COMPANY'S LIMITED OBJECTION TO THE MOTION FOR ORDER (1) AUTHORIZING CHAPTER 11 TRUSTEE TO OBTAIN SENIOR PRIMING SECURED POSTPETITION FINANCING; (2) AUTHORIZING THE USE OF CASH COLLATERAL; AND (3) SCHEDULING A FINAL HEARING** **Hearing** Date: July 20, 2011 Time: 9:30 a.m. Place: Courtroom #3 Foley Federal Building 300 Las Vegas Blvd. Las Vegas, NV 89101

Merchants Bonding Company ("**Merchants**"), by and through undersigned counsel, hereby submits its limited objection to the Motion For Order (1) Authorizing Chapter 11 Trustee To Obtain Senior Priming Secured Postpetition Financing; (2) Authorizing The Use Of Cash Collateral; And (3) Scheduling A Final Hearing (the "**Financing Motion**") [Docket No. 784] filed on July 8, 2011 by Cynthia Nelson (the "**Trustee**"), the duly-appointed chapter 11 trustee in the above-captioned case.

The Motion provides that the Agent will be granted (i) second-priority liens in the "Collateral" subject only to the Builders' first-priority liens on the collateral and (ii) a first priority lien in all other assets of the Estate. See Motion, p. 5, ll. 17-23.

Merchants' limited objection is that these Adequate Protection Liens against "Collateral" do not include the Release of Mechanic's Lien Bond (the "**Release Bond**") issued on or about October 10, 2007 by Bond Safeguard Insurance Company ("**Bond Safeguard**") and/or any proceeds paid by Bond Safeguard under the Release Bond. Merchants respectfully requests that any Final Order on the Financing Motion include a clause that provides, in essence, that "Notwithstanding anything to the contrary in the Financing Motion and any Interim Order and/or Final Order that approves the Financing Motion provide that no 'Collateral' granted therein will include the Release of Mechanic's Lien Bond ("**Release Bond**") that was issued on or about October 10, 2007 by Bond Safeguard Insurance Company ('**Bond Safeguard**') and any proceeds paid by Bond Safeguard under the Release Bond."

This Limited Objection is supported by the accompanying Memorandum of Points and Authorities, the Financing Motion [Docket No. 784], all pleadings and papers of record, and any oral argument the Court may entertain.

RESPECTFULLY SUBMITTED this 19th day of July 2011.

MANN, BERENS & WISNER, LLP

/s/Robert J. Berens, Esq.
Robert J. Berens, Esq.
Nevada Bar No. 9510
3300 N. Central Ave., Suite 2400
Phoenix, Arizona 85226
Tel: (602) 258-6200
Fax: (602) 258-6212
rberens@mbwlaw.com
Attorneys for Merchants Bonding Company

MEMORANDUM OF POINTS AND AUTHORITIES

South Edge was in the business of developing master-planned communities in and around the Las Vegas, Nevada area. C&S Company, Inc. ("**C&S**") is an excavation company that, after a competitive bidding process that took place in August 2006, was awarded a

construction contract (the "**Construction Contract**") from Debtor for a construction project known as the Executive Airport Road/Volunteer Boulevard Sanitary Sewer Project (the "**Volunteer Sewer Project**"). During the course of the Volunteer Sewer Project, Debtor failed to pay C&S amounts due under the Construction Contract, which resulted in C&S being unable to pay its own subcontractors and suppliers.

On or about September 28, 2007, C&S filed its Notice of Lien against the Volunteer Sewer Project.

On or about October 10, 2007, Bond Safeguard issued its Release Bond. See Exhibit "A" attached hereto and incorporated herein by reference.

A General Agreement of Indemnity was issued in favor of Bond Safeguard as well as Lexon Insurance Company by various members of South Edge, LLC. See Exhibit "B" attached hereto and incorporated herein by this reference.

On or about April 8, 2011, C&S, Merchants and the Trustee entered into their Stipulation Regarding Relief From the Automatic Stay (the "**Stay Relief Stipulation**") [Docket No. 586]. On or about April 12, 2011, the Stay Relief Stipulation was noticed to creditors, the Trustee, South Edge, and the U.S. Trustee's office. See Docket Nos. 587 and 588.

Merchants objects to any Collateral being granted that would include the Release Bond issued by Bond Safeguard and any proceeds paid by Bond Safeguard. The reason Merchants' limited objection should be of little concern is the Release Bond is not property of the estate. See In re Lockard, 884 F.2d 1171, 1177-78 (9th Cir. 1989) (Noting the "overwhelming weight of authority" holding that contractors have no property interest in a surety bond and concluding "the surety bond at issue in this case is not property of the estate within the meaning of 11 U.S.C. § 541").

Merchants respectfully requests that the Final Order on the Financing Motion contain a specific provision that the Release Bond issued by Bond Safeguard does not come within the

terms "Adequate Protection Lien" and/or "Collateral" that is being given pursuant to the Financing Motion.

RESPECTFULLY SUBMITTED this 19th day of July 2011.

MANN, BERENS & WISNER, LLP

/s/Robert J. Berens, Esq.
Robert J. Berens, Esq.
Nevada Bar No. 9510
3300 N. Central Ave., Suite 2400
Phoenix, Arizona 85226
Tel: (602) 258-6200
Fax: (602) 258-6212
rberens@mbwlaw.com
Attorneys for Merchants Bonding Company

CERTIFICATE OF SERVICE

On July 19, 2011, I served the foregoing pleading, by the following means, to the persons as listed below:

(***Check all that apply***)

__X__ a. **ECF System (*You must attach the "Notice of Electronic Filing," or list all persons and addresses and attach additional paper if necessary*)**

[SEE ATTACHED NEF SERVICE LIST]

_____ b. **United States mail, postage fully prepaid (*List persons and addresses. Attach additional paper if necessary*)**

_____ c. **Personal Service (*List persons and addresses. Attach additional paper if necessary*)**

I personally delivered the document(s) to the persons at these addresses:

_____

_____For a party represented by an attorney, delivery was made by handing the document(s) to the attorney or by leaving the document(s) at the attorney's office with a clerk or other person in charge, or if no one is in charge by leaving the document(s) in a conspicuous place in the office.

_____For a party, delivery was made by handing the document(s) to the party or by leaving the document(s) at the person's dwelling house or usual place of abode with someone of suitable age and discretion residing there.

_____ d. **By direct email (as opposed to through the ECF System) (*List persons and email addresses. Attach additional paper if necessary*)**

_____

_____ e. **By fax transmission (*List persons and fax numbers. Attach additional paper if necessary*)**

Based upon the written agreement of the parties to accept service by fax transmission or a court order, I faxed the document(s) to the persons at the fax numbers listed below. No error was reported by the fax machine that I used. A copy of the record of the fax transmission is attached.

_____f. **By messenger (*List persons and addresses. Attach additional paper if necessary*)**

I served the document(s) by placing them in an envelope or package addressed to the persons at the addresses listed below and providing them to a messenger for service. (A declaration by the messenger must be attached to this Certificate of Service).

I declare under penalty of perjury that the foregoing is true and correct.

Signed on (*date*): July 19, 2011, at Phoenix, Arizona.

Carolyn J. Harrington	/s/ Carolyn J. Harrington
(NAME OF DECLARANT)	(SIGNATURE OF DECLARANT)

NEF SERVICE LIST

MARTIN R BARASH on behalf of Debtor SOUTH EDGE, LLC
mbarash@ktbslaw.com

I SCOTT BOGATZ on behalf of Interested Party FOCUS SOUTH GROUP, LLC
rpoll@isbnv.com

ROBERT M. CHARLES on behalf of Creditor ALTRIUM CDO
rcharles@lrlaw.com; cjordan@lrlaw.com

DAVID COLVIN on behalf of Creditor ESSEX REAL ESTATE PARTNERS, LLC
dcolvin@maclaw.com; mwalters@maclaw.com; kgallegos@maclaw.com; tszostek@maclaw.com

NATALIE M. COX on behalf of Creditor CITY OF HENDERSON
ncox@klnevada.com; bankruptcy@klnevada.com; kgregos@klnevada.com

LAUREL E. DAVIS on behalf of Interested Party MERITAGE HOMES OF NV
ldavis@fclaw.com; mhurtado@fclaw.com

TRACY A. DIFILLIPPO on behalf of Trustee CYNTHIA NELSON
tdifillippo@jonesvargas.com; enunez@jonesvargas.com; ehardy@jonesvargas.com

GREGORY E. GARMAN on behalf of Interested Party BEAZER HOMES HOLDING CORP.
bankruptcynotices@gordonsilver.com; bknotices@gordonsilver.com

KEVIN R. HANSEN on behalf of Creditor C&S COMPANY, INC.
Kevin@shumwayvan.com

MATTHEW C. HEYN on behalf of Debtor SOUTH EDGE, LLC.
mheyn@ktbslaw.com

WHITMAN L. HOLT on behalf of Attorney KLEE, TUCHIN, BOGDANOFF & STERN LLP
wholt@ktbslaw.com

BRIAN E. HOLTHUS on behalf of Petitioning Creditor CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK
bankruptcy@juww.com

NILE LEATHAM on behalf of Creditor CITY OF HENDERSON
nleatham@klnevada.com; ckishi@klnevada.com; bankruptcy@klnevada.com

PAT LUNDVALL on behalf of Interested Party PARDEE HOMES OF NEVADA
lundavall@mcdonaldcarano.com; ahallmark@mcdonaldcarano.com; ebarnwell@mcdonaldcarano.com

WILLIAM M. NOALL on behalf of Interested Party BEAZER HOMES HOLDING CORP.
bankruptcynotices@gordonsilver.com; bknotices@gordonsilver.com

STEVEN PEEK on behalf of BOND SAFEGUARD INSURANCE COMPANY
speek@hollandhart.com

ROBERT J. PFISTER on behalf of Debtor SOUTH EDGE, LLC
rpfister@ktbslaw.com

TERESA M. PILATOWICZ on behalf of Interested Party BEAZER HOMES HOLDING CORP.
bankruptcynotices@gordonsilver.com; bknotices@gordonsilver.com

CHRISTINE A. ROBERTS on behalf of Creditor LEXON SURETY GROUP
Roberts@sullivanhill.com; hill@sullivanhill.com; vidovich@sullivanhill.com; stephens@sullivanhill.com; stein@sullivanhill.com; calderone@sullivanhill.com; manning@sullivanhill.com; tmpsd@sullivanhill.com

SAMUEL A. SCHWARTZ on behalf of Debtor SOUTH EDGE, LLC
sam@schwartzlawyers.com; bryan@schwartzlawyers.com; ecf@schwartzlawyers.com; schwartzecf@gmail.com

SEAN THUESON on behalf of BOND SAFEGUARD INSURANCE COMPANY
SDThueson@hollandhart.com

U.S. TRUSTEE – LV – 11
USTPRegion17.lv.ecf@usdoj.gov

ANDREW J. URBAN on behalf of Other Prof. MANNY GOMEZ
andy@nevadavlo.com; ajurban@cox.net

TYLER N. URE on behalf of Petitioning Creditor CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK
bankruptcy@juww.com

MICHAEL C. VAN on behalf of Creditor C&S COMPANY, INC.
michael@shumwayvan.com; sandy@shumwayvan.com; erica@shumwayvan.com; ashley@shumwayvan.com