Case 2 08-bk-62733 Claim 69-1 Filed 02/13/09 Desc Main Document 13□ B 10 (Official Form 10) (12/07) Southern District of Ohio FEB 16 2009 PROOF OF CLAIM United States Bankruptcy Court Name of Debtor Triad Resources, Inc Case Number 08-62733 NOTE This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 USC § 503 Name of Creditor (the person or other entity to whom the debtor owes money or property)
Houchin Construction Limited Liability Company ☐ Check this box to indicate that this claim amends a previously filed Name and address where notices should be sent claim Houchin Construction LLC, c/o J Breckennidge Martin, Esq. Court Claim Number Bowles Rice McDavid Graff & Love, P O Box 49, Parkersburg, WV 26102 (If known) Telephone number Filed on (304) 420-5506 Name and address where payment should be sent (if different from above) ☐ Check this box if you are aware that anyone else has filed a proof of claim Rt 3, Box 527 relating to your claim Attach copy of Arnoldsburg, WV 25234 statement giving particulars Telephone number (304) 655-8379 ☐ Check this box if you are the debtor or trustee in this case 501,884 30 1 Amount of Claim as of Date Case Filed Amount of Claim Entitled to Priority under 11 USC §507(a) If If all or part of your claim is secured, complete item 4 below, however, if all of your claim is unsecured, do not complete any portion of your claim falls in item 4 one of the following categories, check the box and state the If all or part of your claim is entitled to priority complete item 5 amount. Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized Specify the priority of the claim statement of interest or charges ☐ Domestic support obligations under 2 Basis for Claim Goods sold, services performed pursuant to contract 11 U S C §507(a)(1)(A) or (a)(1)(B) (See instruction #2 on reverse side ) 3 Last four digits of any number by which creditor identifies debtor N/A ☐ Wages salaries or commissions (up to \$10 950\*) earned within 180 days 3a Debtor may have scheduled account as no schedules filed to date before filing of the bankruptcy petition or cessation of the debtor's (See instruction #3a on reverse side) business whichever is earlier - 11 Secured Claim (See instruction #4 on reverse side ) USC §507 (a)(4) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information ☐ Contributions to an employee benefit plan - 11 U S C §507 (a)(5) □ Other ☐ Motor Vehicle ☐ Up to \$2 425\* of deposits toward Value of Property S\_\_\_\_\_ Annual Interest Rate\_\_% purchase, lease or rental of property or services for personal family or household use - 11 U S C §507 Amount of arrearage and other charges as of time case filed included in secured claim, (a)(7)Basis for perfection ☐ Taxes or penalties owed to governmental units - 11 U S C §507 Amount of Secured Claim \$ \_\_\_\_ Amount Unsecured \$\_\_\_ 6 Credits The amount of all payments on this claim has been credited for the purpose of making this proof of claim ☐ Other – Specify applicable paragraph of 11 U S C §507 (a)(\_\_) 7 Documents Attach redacted copies of any documents that support the claim such as promissory notes purchase orders invoices, itemized statements of running accounts, contracts, judgments mortgages and security agreements Amount entitled to priority You may also attach a summary Attach redacted copies of documents providing evidence of perfection of a security interest You may also attach a summary (See definition of redacted on reverse side) DO NOT SEND ORIGINAL DOCUMENTS ATTACHED DOCUMENTS MAY BE DESTROYED AFTER \*Amounts are subject to adjustment on SCANNING 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of advustment If the documents are not available please explain the date of adjustment FOR COUR TUST

Date 2/13/04

Signature The person filing this claim must sign it Sign and print name and title if any of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above Attach copy of power of attorney, if any.

FEB 13 2009

J Breckenndge Martin, Counsel for Creditor

Case 2 08 07-62733 Claim 69-1 Filed 02/13/09 SERVICES Description Document Page 2 of
This Agreement is made this day of 100000000000000000000000000000000000
ARTICLE 1 TERM OF CONTRACT
101 This Agreement will become effective <u>Noter 1</u> , <u>2006</u> , and will continue in effect until the earliest to occur of the following: (a) services provided for under this Agreement have been performed, (b) terminated as provided in this Agreement; or (c) for <u>years</u> unless terminated sooner as provided in Article 6 of this Agreement.
ARTICLE 2 SERVICES TO BE PERFORMED BY CONTRACTOR
201. <u>Specific Services.</u> Contractor agrees to perform the services specified in the "Description of Services" attached to this Agreement and incorporated in this Agreement by reference.
2 02. <u>Method of Performing Services</u> . Contractor will determine the method, details, and means of performing the services described in Section 2 01 Client may specify only the results desired in regard to the specified services
203 <u>Employment of Assistants.</u> Contractor may, at Contractor's own expense, employ any assistants that Contractor deems necessary to perform the services required of Contractor by this Agreement. Client may not control, direct, or supervise Contractor's assistants or employees in the performance of those services
ARTICLE 3 COMPENSATION
3.01 <u>Compensation</u> . In consideration of the services to be performed by Contractor, Client agrees to pay Contractor as follows [check appropriate paragraph]
(a) Per Bid.
(b) Flat Rate. \$ Affen Inva welfarm NE Ims
Stated. \$ or Per Diem Compensation With Maximum and Minimum per In no event, however, will the compensation paid to the Contractor be less than \$ or more than
\$ or more than

Case 2 08 1 1 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2
(a) Periodic Payments Payments shall be a rate of \$ until paid in full with payments to begin on
ARTICLE 4 OBLIGATIONS OF CONTRACTOR
401 Minimum Amount of Service. Contractor agrees to devote a minimum of to performance of the services described in this Agreement. Contractor may represent, perform services for, and be employed by any additional clients, persons, or companies as Contractor, in Contractor's sole discretion, sees fit.
4.02 Hours During Which Services May Be Performed. Contractor agrees that any services described in this Agreement that must be performed on Client's premises will be performed during Client's regular business hours, unless otherwise agreed by Client.
4 03 Tools and Instrumentalities. Contractor will supply all tools and instruments required to perform the services under this agreement. In the event that Client and Contractor have agreed that Contractor will use equipment owned or supplied by Client, Contractor hereby represents that it and its employees and agents are or will be properly trained in the operation of said equipment before operating it on behalf of client. Contractor shall not permit any person to operate Client's equipment who is not properly trained in its operation.
4 04 Workers' Compensation. Contractor agrees to provide workers' compensation insurance for Contractor's employees and agents and agrees to hold harmless and indemnify Chent for any and all claims arising out of any injury, disability, or death of any of Contractor's employees or agents Prior to commencing work, Contractor shall provide Chent with a copy of its current Workers' Compensation certificate or other proof of Workers' Compensation coverage
4 05. Insurance. Contractor agrees to maintain the following insurance coverage's and limits which shall be evidenced by a certificate of insurance prior to commencement of the work required herein above Chent shall be provided the certificate of insurance Said certificate shall have a minimum of 30 days notice of cancellation, or, non-renewal:
Commercial General Liability \$1,000,000 per occurrence / \$2,000,000 in the aggregate providing coverage for Bodily Injury and Property Damage including coverage for the following exposures premises, operations, products and completed operations, explosion, collapse, underground resources, equipment and blowout or cratering.

All coverage's to be provided by an Insurer acceptable to Client with a rating of B+ or greater by A.M Best Company. Commercial General Liability to include "Additional Insured" in favor of Client Commercial General Liability to include "Waiver of

4 07 Assignment by Contractor. Neither this Agreement nor any duties or obligations under this Agreement may be assigned by Contractor without the prior written consent of Client.

### ARTICLE 5 OBLIGATIONS OF CLIENT

- 501. Cooperation of Client. Chent agrees to comply with all reasonable requests of Contractor necessary to the performance of Contractor's duties under this Agreement.
- 502. Place of Work. Client agrees to furnish space on Client's premises for use by Contractor while performing the services under this Agreement.
- 5 03. Assignment by Client. Neither this Agreement nor any duties or obligations under this Agreement may be assigned by Client without the prior written consent of Contractor.

### ARTICLE 6 TERMINATION OF AGREEMENT

- 6.01. Termination on Notice. Notwithstanding any other provision of this Agreement, either party may terminate this Agreement at any time by giving thirty(30) days' written notice to the other party. Unless otherwise terminated as provided in this section, this Agreement shall continue in force for a period of 12 months or until the services provided for have been fully and completely performed]
- 602. Termination on Occurrence of Stated Events. This Agreement shall terminate automatically on the occurrence of any of the following events
  - (1) Bankruptcy or insolvency of either party
  - (2) Sale of the business of either party
  - (3) Death or dissolution of either party.
  - (4) Assignment of this Agreement by either party without the consent of the other party
- 6.03 Termination by Client for Default of Contractor. If Contractor defaults in the performance of this Agreement or materially breaches any of its provisions, Client, at Client's option, may immediately terminate this Agreement by giving written notification to Contractor
- 6 04 Termination by Contractor for Default of Client. If Client defaults in the performance of this Agreement or materially breaches any of its provisions, Contractor, at Contractor's option, may terminate this Agreement by giving written notification to Client. Nonpayment shall not constitute grounds for termination except as stated in paragraph 6.05, below
- 6 05. Termination for Failure to Make Payments. If Client fails to pay Contractor all or any part of the compensation set forth in Articles 3 01 and 3 02 of this Agreement on

6 06 Termination for failure to Make Payments. If client fails to pay Contractor all or any part of the compensation set forth in Articles 3.01 and 3 02 of this agreement on the date due, Contractor, at Contractor's option, may terminate this Agreement if the failure is not remedied by Client within fifteen (15) days after notice from Contractor that payment is overdue.

#### ARTICLE 7 GENERAL PROVISIONS

- 7 01. Notices. Any notices to be given under this Agreement by either party to the other may be effected either by personal delivery in writing or by registered or certified mail, with postage prepaid and with return receipt requested. Mailed notices shall be addressed to the parties at the addresses appearing in the introductory paragraph of this Agreement. However, each party may change the address for receipt of notice by giving written notice in accordance with this paragraph. Notices delivered personally will be deemed communicated at the time of delivery. Mailed notices will be deemed communicated when actually received
- 7 02. Entire Agreement of the Parties. This Agreement supersedes any and all agreements, both oral and written, between the parties with respect to the rendering of services by Contractor for Client, and contains all of the covenants and agreements between the parties with respect to the rendering of these services in any manner whatsoever. Each party acknowledges that no representations, inducements, promises, or agreements, written or oral, have been made by either party, or by anyone acting on behalf of either party, that are not embodied in this Agreement. Any modification of this Agreement will be effective only if it is in a writing signed by the party to be charged.
- 7 03 Partial Invalidity. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way
- 7 04. Payment of Moneys Due Deceased/Dissolved Contractor. If Contractor dies or is dissolved prior to completion of this Agreement, any moneys that may be due to Contractor from Client for services rendered prior to the date of death or dissolution shall be paid to Contractor's executors, administrators, heirs, personal representative, successors, or assigns
- 705. Attorneys' Fees. If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The attorneys' fees may be set by the court in the same action or in a separate action brought for that purpose
- 7 06 Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Ohio

707 Hold Harmless. Contractor agrees to hold harmless client and its officers, directors, as 2 108-bk-62/31 as any affiliates of allied 30mpanies from any and all flability arising out of any and all services provided by Contractor as required herein above, including but not limited to the use of Client's equipment as set forth in the paragraph 403, above, or for any other act undertaken by Contractor resulting in a loss regardless of Contractor's degree of negligence

708 Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Ohio

CLIENT:

**CONTRACTOR:** 

Executed at <u>Arnolds burg</u>, <u>wv</u>, on the date first written above

## Contract For Service renewal

#### TRIAD RESOURCES

## Memo

To:

Jeffery Houchin

From:

**Brent Powell** 

CC.

Date:

November 26, 2008

Re:

Contract For Service renewal

#### Mr. Houchin,

I am currently in the process of updating our contractor files and I noticed that the contract between Triad Resources & Houchin Construction had expired on the 1<sup>st</sup> of November

I have taken this opportunity to partially fill in a new contract. If you have any questions, please contact Tim Keaton, 364-567-7792-

If you do not have any questions about this renewal, please do the following,

- Enter new dates at top of form and Article 1
- check those boxes that apply in Article 3
- Sign the Contractor section on back page
- Mail the completed contract back to me and I will have Kean Weaver sign and return a signed copy to you

Respectfully,

**Brent Powell** 

Safety Director

(a)	2733 Claim 69-1 Filed 02/13/09 Desc Main Document ) Periodic Payments Payments Bhall be a rate of \$ per_	until
paid in full v	with payments to begin on,	
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	on or before the 30 to day following receipt of the month	
	ARTICLE 4 OBLIGATIONS OF CONTRACTOR	
	OBLIGATIONS OF CONTRACTOR	
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	Contractor may represent, perform services for, and be emploishents, persons, or companies as Contractor, in Contractor's sole	
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services desiperformed d 4 03 Tools required to Contractor h Contractor h trained in t Contractor s trained in its 4 04 Work	scribed in this Agreement that must be performed on Client's prenduring Client's regular business hours, unless otherwise agreed by and Instrumentalities. Contractor will supply all tools and perform the services under this agreement. In the event that have agreed that Contractor will use equipment owned or supplies hereby represents that it and its employees and agents are or will the operation of said equipment before operating it on behaltshall not permit any person to operate Client's equipment who is its equipment.	inses will be Client instruments Client and d by Client, be properly of client not properly

4 05 **Insurance.** Contractor agrees to maintain the following insurance coverage's and limits which shall be evidenced by a certificate of insurance prior to commencement of the work required herein above. Client shall be provided the certificate of insurance. Said certificate shall have a minimum of 30 days notice of cancellation, or, non-renewal.

Commercial General Liability \$1,000,000 per occurrence / \$2,000,000 in the aggregate providing coverage for Bodily Injury and Property Damage including coverage for the following exposures premises, operations, products and completed operations, explosion, collapse, underground resources, equipment and blowout or cratering

All coverage's to be provided by an Insurer acceptable to Chent with a rating of B+ or greater by A M Best Company Commercial General Liability to include "Additional Insured" in favor of Client Commercial General Liability to include "Waiver of Subrogation" in favor of Client

Case 2 US-02/33 Calm 69-1 tor Neither this Agreement nor any duties or obligations of under this Agreement may be assigned by Contractor without the prior written consent of Client

#### ARTICLE 5 OBLIGATIONS OF CLIENT

- 5 01 Cooperation of Client. Client agrees to comply with all reasonable requests of Contractor necessary to the performance of Contractor's duties under this Agreement
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- 6 03 Termination by Client for Default of Contractor. If Contractor defaults in the performance of this Agreement or materially breaches any of its provisions, Client, at Client's option, may immediately terminate this Agreement by giving written notification to Contractor
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- 6 05 Termination for Failure to Make Payments. If Client fails to pay Contractor all or any part of the compensation set forth in Articles 3 01 and 3 02 of this Agreement on the date due, Contractor, at Contractor's option, may terminate this Agreement if the

#### ARTICLE 7 GENERAL PROVISIONS

- 7 01 Notices. Any notices to be given under this Agreement by either party to the other may be effected either by personal delivery in writing or by registered or certified mail, with postage prepaid and with return receipt requested. Mailed notices shall be addressed to the parties at the addresses appearing in the introductory paragraph of this Agreement However, each party may change the address for receipt of notice by giving written notice in accordance with this paragraph. Notices delivered personally will be deemed communicated at the time of delivery. Mailed notices will be deemed communicated when actually received.
- 7 02 Entire Agreement of the Parties. This Agreement supersedes any and all agreements, both oral and written, between the parties with respect to the rendering of services by Contractor for Client, and contains all of the covenants and agreements between the parties with respect to the rendering of these services in any manner whatsoever Each party acknowledges that no representations, inducements, promises, or agreements, written or oral, have been made by either party, or by anyone acting on behalf of either party, that are not embodied in this Agreement. Any modification of this Agreement will be effective only if it is in a writing signed by the party to be charged
- 7 03 Partial Invalidity. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way
- 7 04 Payment of Moneys Due Deceased/Dissolved Contractor. If Contractor dies or 1s dissolved prior to completion of this Agreement, any moneys that may be due to Contractor from Client for services rendered prior to the date of death or dissolution shall be paid to Contractor's executors, administrators, heirs, personal representative, successors, or assigns
- 7 05 Attorneys' Fees. If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The attorneys' fees may be set by the court in the same action or in a separate action brought for that purpose
- 7 06 Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Ohio
- 7 07 Hold Harmless. Contractor agrees to hold harmless client and its officers, directors, employees as well as any affiliates or allied companies from any and all liability arising out of any and all services provided by Contractor as required herein above, including but not limited to the use of Client's equipment as set forth in the paragraph 4 03, above, or

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AOF

4PAGE617

FROM

### *INVOICE*

PAGE 1

HOUCHIN CONSTRUCTION LIMITED LIABILITY COMPANY RT 3, BOX 527

ARNOLDSBURG, WV 25234 (304) 655-8379

INVOICE NUMBER 0007158-IN

INVOICE DATE 12/08/08

TO

TRIAD ENERGY

P O BOX 430 RENO

OH 45773

CONTRACT

ATTN JEFF BRAMMER

JOB NUMBER TDDB-800

TERMS NET 30

CODE	DESCRIPTION	QUANTITY	U/M	PRICE	AMOUNT
12P ROEX RS LOWBOY WE HEL WELRIG	WETZEL CO PIPELINE  12" PLASTIC PIPE ROCK EXCAVATION ROCK SHIELD EXTRA TRUCK AND DRIVER WELDER WELDER WELDER'S HELPER WELDING RIG	13,627 00 750 00 3,000 00 52.00 4 00 4 00 4 00	FT LF LF HR HR HR	WETZEL Instru Date R Docume Book-P	475,582 30 12,750 00 9,000 00 4,108 00 196 00 132 00 6 HAUGHT 116 00 County 09 29 38 AM ment No 87607 ecorded 01/23/2009 nt Type N/L age 4-609 ing Fee \$8 00 onal \$6 00

STATE OF WEST VIRGINIA COUNTY OF WETZEL TO-WIT OFFICE OF THE CLERK OF THE COUNTY COMMISSION

OF WETZEL COUNTY 

presented for record in my office and thereupon, together with the certificate thereto annexed is admitted to record

TESTEE COLORS HOUSE, CLERK COUNTY COMMISSION OF WEIZEL COUNTY

A FINANCE CHARGE OF 1 5% PER MONTH (18% PER ANNUM) WILL BE CHARGED ON UNPAID BALANCES

INVOICE TOTAL 501,884 30 RETENTION AMT 00

NET INVOICE 501,884 30

#### EXHIBIT B

# Southern District of Ohio Claims Register

#### 2:08-bk-62733 Triad Resources, Inc.

Judge C Kathryn Preston

Chapter: 11

Office. Columbus

Last Date to file claims · 05/25/2009

Trustee:

Last Date to file (Govt):

Creditor (12053378) Houchin Construction Limited Liability Company c/o J Breckenridge Martin, Esq Bowles Rice McDavid Graff & Love, LLP P O Box 49 Parkersburg, WV 26102	Claim No 69 Original Filed Date 02/13/2009 Original Entered Date 02/13/2009	Status Filed by CR Entered by Bays, Robert Modified	
Unsecured claimed \$501884  Total claimed \$501884			
		ouchin Construction Limited Lie 1884 3 (Bays, Robert)	ibility Company, total
Description Remarks			<b>-</b>

**Claims Register Summary**