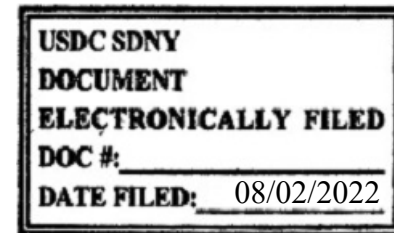


**TLGGR**TORRE, LENTZ, GAMELL,  
GARY & RITTMASER, LLP100 Jericho Quadrangle, Suite 309  
Jericho, NY 11753-2702Tel: (516) 240-8900  
Fax: (516) 240-8950  
www.tlggr.comBrian E. Gunther  
bgunther@tlggr.com

August 2, 2022

**BY ECF**Honorable Barbara Moses  
United States District Court  
Southern District of New York  
Daniel Patrick Moynihan Courthouse  
500 Pearl Street, Room 740  
New York, NY 10007**MEMO ENDORSED**Re: *BDG Gotham Residential, LLC and ZDG, LLC v. Western Waterproofing Company, Inc. d/b/a Western Specialty Contractors and Western Surety Company*; Case No. 19-cv-06386 (CM)(BCM) [rel. 20-cv-03199]

Dear Judge Moses:

We are the attorneys for defendants Western Waterproofing Company, Inc. and Western Surety Company (collectively, "Western") in the above-captioned action. We submit this letter motion pursuant to section 3 of Your Honor's Individual Practices to request permission to file a copy of the Deferred Prosecution Agreement and accompanying Statement of Facts (collectively, the "DPA") that is referenced in the August 1, 2022 joint letter submitted by all parties (Dkt#116).

As indicated in the August 1, 2022 letter, all parties have agreed to filing the DPA under seal in order to assist the Court in determining whether various statements contained therein are admissible in this litigation.

In support of this application, Western notes that on or about March 16, 2022, the criminal matter against Western was closed, and all records relating to the matter were sealed pursuant to NY Criminal Procedure Law 160.50. A copy of the Certificate of Disposition Dismissal from the Supreme Court of the State of New York, New York County, deeming the prosecution a nullity and sealing all official records and papers related to the case was previously filed (Dkt #108).

Accordingly, it is respectfully requested that the parties be permitted to file the DPA under seal. Thank you for your consideration.

Application GRANTED. SO ORDERED.

Barbara Moses, U.S.M.J.  
August 2, 2022

Respectfully submitted,

/s/Brian E. Gunther  
Brian E. Gunther