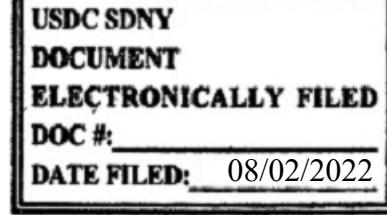


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August 2, 2022

**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.

A handwritten signature in blue ink, appearing to read 'Barbara Moses'.

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

Respectfully submitted,

/s/Brian E. Gunther

Brian E. Gunther