

JURISDICTION AND VENUE

1. The Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. sections 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. section 157(b). Venue is proper pursuant to 28 U.S.C. sections 1408 and 1409.

BACKGROUND

2. On June 16, 2009 (the "*Petition Date*"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the "*Chapter 11 Cases*"). The Debtors continue to operate their businesses and manage their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in the Chapter 11 Cases. On June 26, 2009, the Office of the United States Trustee (the "*U.S. Trustee*") appointed the official committee of unsecured creditors (the "*Creditors' Committee*").

3. The Debtors are one of the largest providers of residential building products and construction services in the United States. The Debtors distribute building materials, manufacture building components (e.g., millwork, floor and roof trusses, and wall panels), and provide construction services to professional builders and contractors through a network of 31 distribution facilities, 43 manufacturing facilities, and five regional construction services facilities.

4. The Debtors operate under two brand names: BMC West® and SelectBuild®.

- ***BMC West.*** Under the BMC West brand, the Debtors market and sell building products, manufacture building components, and provide construction services to professional builders and contractors. Products include structural lumber and building materials purchased from manufacturers, as well as manufactured building components such as millwork, trusses, and wall panels.

Construction services include installation of various building products and framing. The Debtors currently offer these products and services in major metropolitan markets in Texas, Washington, Colorado, Idaho, Utah, Montana, North Carolina, California, and Oregon.

- ***SelectBuild***. Under the SelectBuild brand, the Debtors offer integrated construction services to production homebuilders, as well as commercial and multi-family builders. Services include wood framing, concrete services, managing labor and construction schedules, and sourcing materials. The Debtors currently offer these services in major metropolitan markets in California, Arizona, Nevada and Illinois.

5. On the Petition Date, the Debtors filed their proposed chapter 11 plan (as may be amended, modified, and/or supplemented, the "***Plan***") and accompanying disclosure statement (as may be amended, modified, and/or supplemented, the "***Disclosure Statement***"). The Debtors filed several amended versions of the Plan and Disclosure Statement since that time. The Court approved the Disclosure Statement by order entered on October 22, 2009. To implement this restructuring, the Debtors have obtained \$80 million in debtor-in-possession financing, which the Court approved on a final basis on July 1, 2009.

6. The Exit Credit Facilities² described in the Debtors' Plan and Disclosure Statement (the "***Old Exit Financing***") represented the most favorable exit financing the Debtors were able to obtain as of the date the Court approved the Disclosure Statement. The Debtors have a binding agreement from the Exit Credit Facility Lenders to provide the Old Exit Financing. However, due to several factors described in paragraph 7 below, the Debtors continued to pursue other, more favorable, exit financing alternatives.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

THE NEW EXIT FINANCING

7. After approval of the commitment letter and fee with respect to the Old Exit Financing and even after approval and dissemination of the Disclosure Statement, several factors occurred that caused the Debtors to renew and redouble their efforts to pursue other exit financing alternatives. First, Congress enacted (and the President signed) the Worker, Homeownership, and Business Assistance Act of 2009 (the "*New Tax Legislation*"). The New Tax Legislation allows the carryback for 5-years of net operating losses generated in 2009. The result of the increased carryback period is that the Debtors believe that they will now be able to realize (by carrying back their 2009 losses and offsetting them against profits generated in 2004 and 2005) a federal tax refund of approximately \$70 million in 2010. The existence of the tax refund asset opened up the possibility for an alternative approach to exit financing for the Debtors. Second, notwithstanding the availability of this significant and totally unexpected tax refund asset which facilitates the rapid deleveraging of the Debtors, upon information and belief, some of the key lenders in the Old Exit Financing reacted negatively to this prospective deleveraging of the Company by imposing more hurdles to the ability to reach closure on reasonable terms with respect to the Old Exit Financing. In this regard, upon information and belief, these lenders refused to provide covenant relief directly related to the closure of two business units that contribute to the amount of the federal tax refund, required a new 3% prepayment fee on any repayment made possible by receipt of the tax refund, and, at least for some period of time after payment of the commitment fee, a 37% participant in the Old Exit Financing even attempted to extract in its favor an entirely new term unrelated to the Old Exit Financing - a right of first refusal on Reorganized BMHC equity transfers and an equity buy-out price - as a condition to final agreement to and funding of the Old Exit Financing. Third,

notwithstanding having signed the acknowledgment of approval of the Plan required to receive, and as a result having actually received, the 5% commitment fee relative to the Old Exit Financing, the large participant described above refused to vote its prepetition secured claim in favor of the Plan, causing the Debtors to have serious concerns about the intent to close the Old Exit Financing and the good faith and motives of that key lender. As a result of the Debtors' renewed efforts to obtain more favorable exit financing, the Debtors have obtained a binding commitment, subject to the terms and conditions of the applicable commitment letters, from the New Exit Lenders to provide exit financing, in the form of a \$50 million revolving credit facility and a \$40 million term loan (the "*New Exit Financing*"), on more favorable terms than the Old Exit Financing. The New Exit Financing has a lower overall cost and contains less restrictive financial covenants than the Old Exit Financing. In addition, the Debtors anticipate that it will be easier to work through any future issues that may arise with respect to New Exit Financing because the New Exit Financing will have only one term lender and one revolver lender, as opposed to the multiple-lender arrangements embodied in the Old Exit Financing.

8. In order to induce DKAP to enter into negotiations with respect to the New Exit Financing, the Debtors have agreed, by virtue an expense agreement letter that is attached to the commitment letter (the "*DKAP Expense Agreement Letter*"), to pay DKAP's documented out-of-pocket expenses of up to \$500,000 related to the New Exit Financing (the "*DKAP Out-of-Pocket Expenses*") and to indemnify DKAP for any losses it may incur as a result of its negotiations with the Debtors (the "*DKAP Indemnification Expenses*," and together with the DKAP Out-of-Pocket Expenses, the "*DKAP Expense Reimbursement*"), subject to Court approval. A true and correct copy of the DKAP Expense Agreement Letter, with certain exhibits omitted due to their voluminous nature, is attached hereto as *Exhibit B*.

9. As described in more detail in the DKAP Expense Agreement Letter, the Debtors have agreed to pay DKAP's Out-of-Pocket Expenses, which include all reasonable, actual and documented third-party fees and expenses of up to \$500,000 (the "*DKAP Expense Cap*") related to the New Exit Financing, including, but not limited to, those incurred in connection with the negotiation, preparation, execution and delivery of a proposal letter and/or commitment letter, any term sheet and any and all definitive documentation relating thereto, DKAP's reasonable legal fees and expenses (for outside counsel), costs and expenses incurred by DKAP's examiners and appraisers (including agents for DKAP), audit fees, documentation fees and any filing and search fees. On November 27, 2009, the Debtors paid DKAP an expense deposit of \$200,000 (the "*DKAP Expense Deposit*"), which DKAP may directly apply to pay the DKAP Out-of-Pocket Expenses. The DKAP Expense Agreement Letter provides that when the Expense Deposit has been reduced to \$150,000 or less, the Debtors will promptly pay DKAP amount necessary to increase the DKAP Expense Deposit to \$200,000, subject to the DKAP Expense Cap and amounts already paid for application to the DKAP Out-of-Pocket Expenses. Upon termination of discussions regarding the New Exit Financing or the closing thereto, DKAP shall return the DKAP Expense Deposit to the Debtors net of the DKAP Out-of-Pocket Expenses that have not been previously reimbursed pursuant to the DKAP Expense Agreement Letter.

10. In addition, as described in more detail in the DKAP Expense Agreement Letter, the Debtors have agreed to indemnify DKAP and certain related parties from claims arising out of or related to the DKAP Expense Agreement Letter, any commitment letter issued in connection therewith or the New Exit Financing,

11. In order to induce WFF to execute a binding commitment letter to provide the New Exit Financing, the Debtors have agreed in the commitment letter (the "*WFF Expense*

Agreement Letter"), to pay WFF's documented out-of-pocket expenses related to the New Exit Financing (the "*WFF Out-of-Pocket Expenses*") and to indemnify DKAP for any losses it may incur as a result of its negotiations with the Debtors, subject to Court approval (the "*WFF Indemnification Expenses*," and together with the WFF Out-of-Pocket Expenses, the "*WFF Expense Reimbursement*," and together with the DKAP Expense Reimbursement, the "*Expense Reimbursement*"). A true and correct copy of the DKAP Expense Agreement Letter, with certain exhibits omitted due to their voluminous nature, is attached hereto as *Exhibit C*.

12. As described in more detail in the WFF Expense Agreement Letter, the Debtors have agreed to pay or reimburse all reasonable, out-of-pocket fees, costs and expenses incurred by or on behalf of WFF in connection with due diligence, the preparation, negotiation, execution and delivery of the WFF Expense Agreement Letter and all documentation for the New Exit Financing, and the enforcement of WFF's rights under the WFF Expense Agreement Letter.

13. In addition, as described in more detail in the WFF Expense Agreement Letter, the Debtors have agreed to indemnify WFF and certain related parties from claims arising out of or related to the New Exit Financing, the Chapter 11 Cases or the Plan of Reorganization, or any alleged untrue statement of material fact contained in, or omissions or alleged omissions in, information furnished by the Debtors or any other person in connection with the New Exit Financing, the WFF Expense Agreement Letter or the Chapter 11 Cases; provided, however, such indemnity agreement shall not apply to any portion of any claim of the indemnified parties to the extent it is found in a final judgment to have resulted primarily and directly from the gross negligence or willful misconduct of such indemnified person.

14. Payment of the Expense Reimbursement is an actual and necessary cost of preserving the Debtors' estates because, absent agreement to make such payment, the Debtors

would not have been able to obtain the New Exit Lenders' binding commitment to provide the New Exit Financing.

BASIS FOR RELIEF REQUESTED

15. Based on the facts and circumstances of these cases, the Debtors submit that good and sufficient justification exists to warrant approval of the Expense Reimbursement. Section 363(b)(1) of the Bankruptcy Code provides, in relevant part, that "the trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate " 11 U.S.C. § 363(b)(1). Although section 363 does not set forth a standard for determining when it is appropriate for a court to authorize transactions outside of the ordinary course, courts have required that the proposed transaction be supported by the sound business judgment of the debtor. *See, e.g., In re Chateaugay Corp.*, 973 F.2d 141 (2d Cir. 1992) (holding that a good business reason must exist to authorize a use of property outside of the ordinary course under section 363); *Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983) (same); *see also Stephens Indus. v. McClung*, 789 F.3d 386, 390 (6th Cir. 1986) (a "bankruptcy court can authorize a sale of all of a chapter 11 debtor's assets under § 363(b)(1) when a sound business purpose dictates such action"); *Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999) ("In determining whether to authorize the use, sale or lease of property of the estate under [section 363(b)], courts require the debtor to show that a sound business purpose justifies such actions."); *In re Phoenix Steel Corp.*, 82 B.R. 334, 335-36 (Bankr. D. Del. 1987) (stating that judicial approval of a section 363 sale requires a showing that the proposed sale is fair and equitable, a good business reason exists for completing the sale and that the transaction is in good faith).

16. In the context of using assets of a bankruptcy estate to provide a proposed investor with a break-up fee, an expense reimbursement, or other similar protections, other courts use the "business judgment" test to measure the appropriateness of such provisions. *See, e.g., Official Committee of Subordinated Bondholders v. Integrated Resources, Inc. (In re Integrated Resources, Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992). The business judgment rule "is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company." *Id.* (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985); *Aronson v. Lewis*, 473 A.2d 805, 812 (Del. 1984)).

17. In the Third Circuit, the propriety of payment of the Expense Reimbursement as a general administrative expense may also be evaluated, by analogy, under the standards articulated in *Calpine Corp. v. O'Brien Envtl. Energy, Inc. (In re O'Brien Envtl. Energy, Inc.)*, 181 F.3d 527 (3d Cir. 1999) ("*O'Brien*"). In *O'Brien*, a case involving the payment of break-up fees and expenses, the Third Circuit concluded that "the determination whether break-up fees or expenses are allowable under § 503(b) must be made in reference to general administrative expense jurisprudence. In other words, the allowability of [such] fees...depends upon the requesting party's ability to show that the fees were actually necessary to preserve the value of the estate." *O'Brien*, 181 F.3d at 535. As the Third Circuit recognized in *O'Brien*, expense reimbursement may be necessary to preserve the value of the estate if payment of the expenses "promote[s] more competitive bidding, such as by inducing a bid that otherwise would not have been made and without which bidding would have been limited." The Debtors' agreement, subject to court approval, to pay the Expense Reimbursement induced the New Exit

Lenders to commit to providing the Debtors with exit financing on terms that would not have been available if the Debtors had not entered into such an agreement.

18. In *O'Brien*, the Third Circuit referred to nine factors that the bankruptcy court viewed as relevant in deciding whether to approve an expense reimbursement: (1) the presence of self-dealing or manipulation in negotiating the expense reimbursement; (2) whether the fee harms, rather than encourages, bidding; (3) the reasonableness of the expense reimbursement relative to the purchase price; (4) whether the "unsuccessful bidder place[d] the estate property in a sales configuration mode to attract other bidders to the auction;" (5) the ability of the request for expenses reimbursement "to attract or retain a potentially successful bid, establish a bid standard or minimum for other bidders, or attract additional bidders"; (6) the correlation of the fee to a maximization of value of the debtor's estate; (7) the support of the principal secured creditors and creditors' committees of the expense reimbursement; (8) the benefits of the safeguards to the debtor's estate; and (9) the "substantial adverse impact [of the break-up fee] on unsecured creditors, where such creditors are in opposition to the break-up fee." *See O'Brien*, 181 F.3d at 536. Some of these factors are, of course, not applicable to the Expense Reimbursement because it does not arise in the context of a competing bid for the Debtors. Those that are applicable, however, clearly support approval of the Expense Reimbursement. The Expense Reimbursement involves no self-dealing or manipulating, encourages rather than harms competitive bidding for exit financing, is reasonable relative to the amount of the committed exit financing (\$90 million), maximizes the value of the Debtors' estates, was necessary to induce the New Exit Lenders to commit to providing the New Exit Financing and, under the circumstances, has a positive impact on secured and unsecured creditors and the

Debtors' estates by potentially reducing the cost of the Debtors' exit financing and the risk that the Debtors will default thereunder.

19. Whether evaluated under the "business judgment rule" applied by many courts or the Third Circuit's "administrative expense" standard, the Expense Reimbursement should be approved because it is necessary to preserve the full value of the Debtors' estates. The Debtors' payment of the Expense Reimbursement under the circumstances described herein would be (i) an actual and necessary cost and expense of preserving the Debtors' estates, within the meaning of section 503(b) of the Bankruptcy Code; (ii) of substantial benefit to the Debtors' estates; and (iii) reasonable and appropriate in light of the efforts and the significant due diligence costs and expenses that have been and will be expended by the New Exit Lenders. Accordingly, the Debtors have determined, in the exercise of their business judgment, that paying the Expense Reimbursement is reasonable and in the best interests of the Debtors, their creditors, and all parties in interest. The New Exit Financing provides the Debtors with a more favorable exit financing option than they previously had and will serve as a benchmark for the financial covenants that will be embodied in the exit financing ultimately selected by the Debtors. Even if the New Exit Financing is not ultimately selected by the Debtors, the Debtors will still have benefited from the competitive tension generated by the New Exit Lenders' efforts.

20. Numerous other courts have approved the payment of a variety of fees and expenses as beneficial to the estate in creating incentives to bid, to provide financing to, or purchase the assets of, the debtor based on the facts and circumstances of the case. *See Integrated Resources*, 147 B.R. at 662; *In re Radnor Holdings Corp.*, Case No. 06-10894 (PJW) (Bankr. D. Del. Sept. 22, 2006) (aggregate fee and expense reimbursement of 3% permitted); *In re Riverstone Networks, Inc.*, Case No. 06-10110 (CSS) (Bankr. D. Del. Feb. 24, 2006); *In re*

Chi-Chi's, Inc., Case No. 03-13063 (PJW) (Bankr. D. Del. Nov. 4, 2003); *In re Great Northern Paper, Inc.*, Case No. 03-10048 (LHK) (Bankr. D. Me. Feb. 18, 2003) (fee of 5.4% plus reimbursement of expenses upheld); *In re FSC Corp.*, Case No. 00-B-04659 (JHL) (Bankr. N.D. Ill. Feb. 28, 2000) (break-up fee of 3.4% plus reimbursement of expenses is reasonable); *In re Hechinger Inv. Co. Inc.*, Case No. 99-2261 (PJW) (Bankr. D. Del. Oct. 1, 1999); *In re Montgomery Ward Holding Corp.*, Case No. 97-1409 (PJW) (Bankr. D. Del. February 17, 1998).

REQUEST FOR WAIVER OF STAY

21. To implement the foregoing, the Debtors seek a waiver of any stay of the effectiveness of the order approving this Motion. Pursuant to Bankruptcy Rule 6004(h), any "order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Because the Debtors' Plan requires exit financing for its implementation, the Debtors submit that ample cause exists to justify a waiver of the 14-day stay under by Bankruptcy Rule 6004(h).

NOTICE

22. No trustee or examiner has been appointed in the Chapter 11 Cases. The Debtors have provided notice of filing of the Motion to: (a) the U.S. Trustee; (b) counsel to the Creditors' Committee; (c) counsel to Wells Fargo Bank, as agent under the Debtors' Prepetition Credit Agreement and DIP Facility (as defined in the Plan); (d) DKAP; (e) WFF; and (f) any persons who have filed a request for notice in the Chapter 11 Cases pursuant to Bankruptcy Rule 2002. Due to the nature of the relief requested, the Debtors respectfully submit that no further notice of this Motion is required.

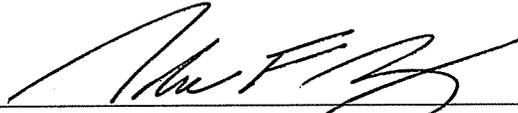
NO PRIOR REQUEST

23. No prior request for the relief sought in this Motion has been made to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as the Court may deem just and proper.

Dated: Wilmington, Delaware
December 14, 2009

YOUNG CONAWAY STARGATT &
TAYLOR, LLP



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ATTORNEYS FOR DEBTORS
AND DEBTORS IN POSSESSION

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 11
BUILDING MATERIALS HOLDING CORPORATION, et al.,¹)	Case No. 09-12074 (KJC)
Debtors.)	Jointly Administered
)	Requested Hearing Date: December 17, 2009 at 1:00 p.m. (ET)
)	Requested Objection Deadline: Prior to the hearing

NOTICE OF MOTION

TO: (A) The Office of the United States Trustee for the District of Delaware; (B) Counsel to Wells Fargo Bank, as Agent Under the Prepetition Credit Facility and the DIP Facility (as Defined in the Plan); (C) Counsel to the Official Committee of Unsecured Creditors; (D) DKAP; (E) WFF; and (F) All Parties That Have Requested Notice Pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure.

PLEASE TAKE NOTICE that the above-captioned debtors and debtors in possession (collectively, the “Debtors”) have filed the attached **Debtors’ Motion for an Order Pursuant to Section 363(b) of the Bankruptcy Code and Bankruptcy Rule 6004 Authorizing the Reimbursement of Certain Expenses and Certain Indemnity Agreements** (the “Motion”).

PLEASE TAKE FURTHER NOTICE THAT THE DEBTORS HAVE FILED A MOTION (THE “MOTION TO SHORTEN”) REQUESTING THAT A HEARING TO CONSIDER THE MOTION BE HELD ON **DECEMBER 17, 2009 AT 1:00 P.M. (ET)** (THE “HEARING”) BEFORE THE HONORABLE KEVIN J. CAREY AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 NORTH MARKET STREET, 5TH FLOOR, COURTROOM NO. 5, WILMINGTON, DELAWARE 19801.

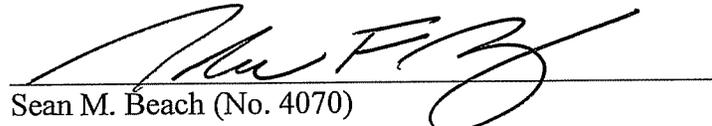
PLEASE TAKE FURTHER NOTICE that pursuant to the Motion to Shorten, the Debtors further requested that any objections to the relief requested in the Motion be filed with the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801 prior to the Hearing (the “Objection Deadline”). You must also serve a copy of any objection upon the undersigned counsel to the Debtors so as to be received prior to the Objection Deadline.

¹ The Debtors, along with the last four digits of each Debtor’s tax identification number, are as follows: Building Materials Holding Corporation (4269), BMC West Corporation (0454), SelectBuild Construction, Inc. (1340), SelectBuild Northern California, Inc. (7579), Illinois Framing, Inc. (4451), C Construction, Inc. (8206), TWF Construction, Inc. (3334), H.N.R. Framing Systems, Inc. (4329), SelectBuild Southern California, Inc. (9378), SelectBuild Nevada, Inc. (8912), SelectBuild Arizona, LLC (0036), and SelectBuild Illinois, LLC (0792). The mailing address for the Debtors is 720 Park Boulevard, Suite 200, Boise, Idaho 83712.

PLEASE TAKE FURTHER NOTICE that if you fail to respond in accordance with this notice, the Court may grant the relief requested in the Motion without further notice or a hearing.

Dated: Wilmington, Delaware
December 14, 2009

YOUNG CONAWAY STARGATT & TAYLOR, LLP



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ATTORNEYS FOR THE DEBTORS
AND DEBTORS-IN-POSSESSION

EXHIBIT A
Proposed Order

other parties in interest; and notice of the Motion and the opportunity for a hearing on the Motion was appropriate under the particular circumstances; and the Court having reviewed the Motion and having considered the statements in support of the relief requested therein at a hearing before the Court (the "*Hearing*"); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED:

1. The Motion is granted as set forth below.
2. All objections to the Motion or the relief requested therein that have not been withdrawn, waived, or settled, and all reservations of rights included therein, hereby are overruled on the merits.
3. The Debtors are authorized to reimburse DKAP for its DKAP Out-of-Pocket Expenses in an amount not to exceed \$500,000.
4. The Debtors are authorized to pay the DKAP Indemnification Expenses pursuant to the terms of the DKAP Expense Agreement Letter.
5. The Debtors are authorized to reimburse WFF for its WFF Out-of-Pocket Expenses.
6. The Debtors are authorized to pay the WFF Indemnification Expenses pursuant to the terms of the WFF Expense Agreement Letter.
7. No recipient of any Expense Reimbursement shall be required to file an application to be employed pursuant to any section of the Bankruptcy Code or to file any interim or final fee application with the Court in connection with the receipt of such Expense Reimbursement, provided, however, that the Debtors shall file with Court, as soon as practicable

after payment of the Expense Reimbursement, a notice that reflects the amount of Expense Reimbursement paid and the recipient thereof.

8. Any claim of DKAP or WFF resulting from the Debtors' failure to pay any Expense Reimbursement as set forth in the Motion and Order shall be afforded administrative expense priority under sections 503(b) and 507(a) of the Bankruptcy Code.

9. The Court retains jurisdiction to enforce and implement the terms and provisions of this Order.

10. To the extent Bankruptcy Rule 6004(h) is applicable, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

11. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such motion and the requirements of Bankruptcy Rule 6004(a).

12. This Court shall retain jurisdiction with respect to all matters arising from or relating to the interpretation or implementation of this Order.

Dated: Wilmington, Delaware
December _____, 2009

Kevin J. Carey
Chief United States Bankruptcy Judge

EXHIBIT B
DKAP Expense Agreement Letter

December 14, 2009

Building Materials Holding Corporation
Four Embarcadero Center, Suite 3200
San Francisco, CA 94111
Attn.: Bill Smartt, Senior Vice President and
Chief Financial Officer

Re: Financing Commitment

Ladies and Gentlemen:

In accordance with our recent discussions, you have advised DK Acquisition Partners, L.P. ("DKAP") that Building Materials Holding Corporation and its subsidiaries, as debtors-in-possession ("BMHC" or the "Company"), as such entities are reorganized pursuant to their pending chapter 11 cases (the "Chapter 11 Cases") under Chapter 11 of Title 11 of the United States Bankruptcy Code, will require financing in the form of a senior secured term loan in the principal amount of \$40,000,000 (such financing, the "Requested Financing"). The Requested Financing would be secured on a perfected first lien, "first out" basis by any Tax Refunds (defined below), and on a perfected first lien, "last out" basis by all other Collateral (defined below). You have further advised DKAP that the proceeds from the Requested Financing will be used by BMHC (together with the proceeds of the ABL Facility (defined below)) to: (i) facilitate consummation of the plan of reorganization of the Company (the "Plan of Reorganization"), (ii) refinance amounts outstanding under the Company's debtor-in-possession credit facility (the "DIP Facility"), (iii) provide working capital to BMHC, (iv) provide for fees and expenses associated with the transaction, and (v) provide for general corporate purposes.

DKAP is pleased to advise you that DKAP is willing to provide BMHC with the Requested Financing, on the terms and conditions set forth in the December 14, 2009 draft of the Senior Secured Credit Agreement attached hereto as Exhibit A (the "Draft Credit Agreement"), to be entered into by Building Materials Holding Corporation as borrower ("Borrower"), the subsidiaries of Borrower named therein as guarantors ("Guarantors"), WFF (defined below) as revolving credit lender, DKAP as term loan lender and WFF as administrative agent and collateral agent, provided that, in addition to satisfaction of the conditions precedent set forth in Sections 5.01 and 5.02 of the Draft Credit Agreement, DKAP's commitment is subject to satisfaction of the conditions precedent set forth in paragraph 3 of this letter. In connection with DKAP's commitment as to the Requested Financing, BMHC agrees with DKAP as follows:

1. Acknowledgment. Each of BMHC and DKAP acknowledges that:

(a) the Requested Financing is to be advanced concurrently with a \$50 million senior secured revolving credit facility from Wells Fargo Foothill, LLC ("WFF"), which would be secured on a perfected first lien, "first out" basis by all Collateral other than Tax Refunds and on a perfected first lien, "last out" basis by any Tax Refunds (the "ABL Facility"),

(b) the definitive loan documentation for the Requested Financing and the ABL Facility will be a credit agreement in the form of the Draft Credit Agreement, together with the other Loan Documents (as defined in the Draft Credit Agreement) listed below, each in the form attached hereto:

(i) the Notes (as defined in the Draft Credit Agreement) in the form attached as Exhibit G;

(ii) the Collateral Documents (as defined in the Draft Credit Agreement), including the Security Agreement and Form of Mortgage referred to below and the Collateral Documents in the form attached as Exhibit G;

(iii) the Intercreditor Agreement referred to below; and

(iv) each control agreement executed in respect of the Cash Collateral Account (as defined in the Draft Credit Agreement), the Tax Proceeds Collateral Account (as defined in the Draft Credit Agreement) or any other deposit account, trust account or securities account of the Borrower and the Guarantors in the form attached as **Exhibit G**,

(c) the Draft Credit Agreement provides, among other things, for the priority of payments as between the Requested Financing, on the one hand, and the ABL Facility, on the other-hand; in addition, WFF and DKAP will enter into an agreement among lenders with respect to certain matters, which shall be the form of the draft Agreement Among Lenders dated December 14, 2009 (the "**Draft Agreement Among Lenders**"),

(d) all schedules to the Draft Credit Agreement and the other Loan Documents, dated as of the date hereof, which have been provided to and received by DKAP and WFF, and are attached as **Exhibit H**, will be the schedules attached to the definitive credit agreement and the Collateral Documents,

(e) among the Loan Documents will be (i) an intercreditor agreement in the form of the draft Intercreditor Agreement dated December 14, 2009 attached hereto as **Exhibit B** (the "**Draft Intercreditor Agreement**"), to be entered into by WFF, as collateral agent for WFF and DKAP, and Wells Fargo Bank, N.A. ("**WFB**"), as collateral agent under the Second Lien Term Loan Credit Agreement (as defined in the Draft Credit Agreement), (ii) a security agreement, in the form of the draft Security Agreement dated December 14, 2009 attached hereto as **Exhibit C** (the "**Draft Security Agreement**"), to be executed by Borrower and each Guarantor in favor of WFF, as collateral agent for WFF and DKAP, and (iii) mortgages, deeds of trust and similar instruments to be recorded against the real property assets of the Borrower and Guarantors, each in substantially the form of the draft Mortgage dated December 14, 2009 attached hereto as **Exhibit D** (the "**Draft Form of Mortgage**"), conformed for the specific real property asset and for state specific requirements,

(f) the Plan of Reorganization previously filed by BMHC with the Bankruptcy Court will be amended to provide for the Requested Financing, the ABL Facility and the other documents referred to in this paragraph 1, and

(g) on the Closing Date, Borrower and Guarantors will enter into the Second Lien Term Loan Documents (as such term is defined in the Draft Credit Agreement, and as such documents have been filed in accordance with the Plan of Reorganization, as supplemented to this date (including the documents filed on this date with the Bankruptcy Court), each in the form attached hereto as **Exhibit I**.

2. **Expense Letter; Fee Letter.** (a) Prior to the date hereof, DKAP and BMHC entered into an Expense Deposit letter agreement, a copy of which is attached hereto as **Exhibit E** (the "**Expense Letter**"), which Expense Letter, among other things, (i) governs an expense deposit previously paid to DKAP by BMHC, (ii) sets forth BMHC's agreement to reimburse DKAP for its expenses in connection with the Requested Financing, (iii) sets forth BMHC's indemnification obligations in connection with the Requested Financing and (iv) sets forth BMHC's agreement to work exclusively with DKAP as to the Requested Financing, in each case subject to the terms set forth therein. The terms of the Expense Letter are incorporated herein as if fully set forth herein and shall remain in effect following execution of this letter and whether or not definitive documentation is executed for the Requested Financing.

(b) Concurrently with its execution and delivery of this letter, BMHC will execute and deliver to DKAP that certain fee letter dated the date hereof (the "Fee Letter"). The Fee Letter shall remain in effect following execution of this letter and whether or not definitive documentation is executed for the Requested Financing.

3. **Certain Conditions.** (a) This letter shall not become effective unless, on or prior to December 14, 2009, (i) BMHC shall have executed and delivered a counterpart to this letter, (ii) BMHC shall have executed and delivered a counterpart to the Fee Letter, and (iii) WFF and BMHC shall have executed and delivered the ABL Commitment Letter, which shall be in form attached hereto as **Exhibit F**.

(b) This letter and the commitment of DKAP set forth herein will terminate on December 17, 2009 unless, on or prior to such date, the Bankruptcy Court (defined below) shall have (i) approved BMHC's execution, delivery and performance of the Expense Letter and the Fee Letter and (ii) issued an order confirming the Plan of Reorganization (amended as set forth in paragraph 1(f) above), in each case in form and substance reasonably satisfactory to DKAP.

(c) This letter and the commitment of DKAP set forth herein will terminate on January 4, 2010 unless, on or prior to such date, the funding of the Requested Financing and the initial funding under the ABL Facility shall have occurred and the Plan of Reorganization shall have become effective (the "Closing Date").

(d) The commitment of DKAP to provide the Requested Financing is subject to:

(i) the execution and delivery of a credit agreement in the form of the Draft Credit Agreement by Borrower, Guarantors, DKAP and WFF,

(ii) the execution and delivery of the other Loan Documents in forms attached hereto,

(iii) the determination to DKAP's reasonable satisfaction that since the date of this letter, there has not occurred or become known to BMHC or DKAP any material adverse change with respect to the condition (financial or otherwise), business, operations, assets or liabilities of BMHC or its subsidiaries (taken as a whole), other than the filing of the Chapter 11 Cases and the events resulting from the filing of the Chapter 11 Cases (a "Material Adverse Change"),

(iv) the ABL Commitment Letter, and the commitment for the ABL Facility provided therein, remains in effect, and

(v) satisfaction of the other conditions set forth in Sections 5.01 and 5.02 of Draft Credit Agreement.

If at any time DKAP shall determine (in its reasonable business judgment) that (i) BMHC will be unable to fulfill any condition set forth in this letter or in the Draft Credit Agreement, or (ii) any Material Adverse Change has occurred, DKAP may terminate its obligations under this letter by giving notice thereof to BMHC (it being understood that BMHC's obligations under the Expense Letter, the Fee Letter and Annex II shall survive the termination of this letter).

(e) "Collateral" shall mean (i) the right of Borrower and Guarantors to receive any tax refund (whether local, state, federal, foreign or otherwise), including without limitation, tax refunds anticipated to be received by BMHC as a result of the expanded five year carry-back of

net operating losses for the tax years 2008 and 2009 in accordance with the Worker, Homeownership and Business Assistance Act of 2009 (H.R. 3548), and all cash and non-cash proceeds of any such tax refund ("Tax Refunds"), and (ii) all other existing and future assets of the Borrower and Guarantors, tangible and intangible, including, but not limited to cash and cash equivalents, accounts receivable, inventories, other current assets, investments (capital stock and loans and accounts receivable), property plant and equipment, vessels, trademarks, tradenames, insurance claims, litigation claims and other assets, subject only to the exceptions set forth in the Draft Security Agreement.

4. **Representation and Warranty.** BMHC, on behalf of itself and its subsidiaries, jointly and severally, represents and warrants that (i) no statement or information (other than projections, pro forma financial information and "forward-looking" statements) contained in this letter or any other document, certificate, written statement or formal presentation furnished to DKAP for use in connection with the transactions contemplated by this letter, when taken as a whole, contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein or therein not misleading, in any material respect, in light of the circumstances under which such statements were made and (ii) the projections, pro forma financial information and "forward-looking" statements contained in the materials referenced above are based upon good faith estimates and assumptions believed by management of BMHC to be reasonable at the time made, it being recognized by DKAP that such financial information as it relates to future events is not to be viewed as fact and that actual results during the period or periods covered by such financial information may differ from the projected or anticipated results set forth therein by a material amount. BMHC agrees that if at any time prior to the Closing Date, any of the representations in the preceding sentence would be incorrect in any material respect if the information and projections were being furnished, and such representations were being made, at such time, then the Companies will promptly supplement, or cause to be supplemented, the information and projections so that such representations will be correct in all material respects under those circumstances.
5. **Disclosure.** This letter is delivered to BMHC upon the condition that neither the existence of this letter, nor any of their contents, shall be disclosed by BMHC or any of its affiliates, except as follows: (i) following BMHC's execution of this letter, this letter and its attachments may be disclosed to the Bankruptcy Court, (ii) following prior notice to DKAP, as may be compelled to be disclosed in a judicial or administrative proceeding or as otherwise required by law, (iii) on a confidential and "need to know" basis, solely to the directors, officers, employees, advisors and agents of BMHC and its affiliates, or (iv) this letter and its attachments may be disclosed to WFF. In addition, BMHC agrees that it and its subsidiaries (and any affiliate acting on behalf of BMHC) will (i) consult with DKAP prior to the making of any filing in which reference is made to DKAP, its affiliates or the commitment contained in this letter, and (ii) obtain the prior approval of DKAP before releasing any public announcement (unless involving a filing with the Bankruptcy Court permitted above) in which reference is made to DKAP, its affiliates or to the commitment contained in this letter. Notwithstanding the foregoing, any party hereto may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the financing contemplated by the Requested Financing. BMHC acknowledges that DKAP and its affiliates may now or hereafter provide financing or obtain other interests in other companies in respect of which BMHC or its affiliates may be business competitors, and that DKAP and its affiliates will have no obligation to provide to BMHC or any of its affiliates any confidential information obtained from such other companies. This paragraph shall survive any termination of this letter.
6. **Miscellaneous.** This letter, including the attachments hereto, together with the Expense Letter and the Fee Letter (a) supersedes all prior discussions, agreements, commitments, arrangements, negotiations or understandings, whether oral or written, of the parties with respect thereto and

(b) shall be governed by the laws of the State of New York, without giving effect to the conflict of laws provisions thereof; the U.S. Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") shall have jurisdiction over any matter arising out of this letter, provided that on and after the Effective Date, or prior thereto, if the Bankruptcy Court does not have jurisdiction or refuses to exercise such jurisdiction, then BMHC agrees to the jurisdiction and venue of the federal and/or state courts located within the City of New York, (c) shall be binding upon the parties and their respective successors and assigns to the extent set forth in the next succeeding paragraph, (d) may not be relied upon or enforced by any other person or entity, and (e) may be signed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. **If this letter becomes the subject of a dispute, each of the parties hereto hereby waives its right to trial by jury to resolve such dispute.** This letter may be amended, modified or waived only in a writing signed by the parties hereto.

[This space intentionally left blank; signature page follows.]

Building Materials Holding Corporation
December 14, 2009
Page 6

If the foregoing correctly sets forth your understanding with respect to the subject matter hereof, kindly execute this letter and the Fee Letter where indicated and return both to the undersigned not later than 5:00 p.m. EST on December 14, 2009.

Very truly yours,

DK ACQUISITION PARTNERS, L.P.

By: M.H. Davidson & Co., its general partner

By: _____
Name:
Title:

Agreed and accepted on this
14 day of December, 2009:

BUILDING MATERIALS HOLDING CORPORATION

By: 
Name: PAUL S. STREET
Title: Chief Executive Officer

Exhibit A

Draft Credit Agreement

Exhibit B

Draft Intercreditor Agreement

Exhibit C

Draft Security Agreement

Exhibit D

Draft Form of Mortgage

Exhibit E

Expense Letter

December 10, 2009

Building Materials Holding Corporation
Four Embarcadero Center, Suite 3200
San Francisco, CA 94111
Attn.: Bill Smartt, Senior Vice President and
Chief Financial Officer

Re: Expense Deposit

Ladies and Gentlemen:

In accordance with our recent discussions, DK Acquisition Partners, L.P. ("DKAP") is considering providing financing to Building Materials Holding Corporation and its subsidiaries, as debtors-in-possession ("BMHC" or the "Company"), as such entities are reorganized pursuant to their pending chapter 11 cases (the "Chapter 11 Cases") under Chapter 11 of Title 11 of the United States Bankruptcy Code (such financing, the "Requested Financing"). The proceeds from the Requested Financing will be used by BMHC (together with the proceeds of certain other financing that BMHC is arranging) to: (i) facilitate consummation of the plan of reorganization of the Company (the "Plan of Reorganization"), (ii) refinance amounts outstanding under the Company's debtor-in-possession credit facility, (iii) provide working capital to BMHC, (iv) provide for fees and expenses associated with the transaction, and (v) provide for general corporate purposes. On November 27, 2009, BMHC paid DKAP an expense deposit of \$200,000 (the "Expense Deposit") which shall be governed by the terms of this letter.

1. **Expense Deposit.** In connection with the Requested Financing, BMHC understands that DKAP will need to make certain financial, legal and collateral investigations and various due diligence determinations. To enable DKAP to begin this process, BMHC paid the Expense Deposit. Upon termination of discussions, by either party, relative to the Requested Financing or the closing with respect thereto, DKAP shall return the Expense Deposit to BMHC net of DKAP's Expenses (defined below) that have not previously been reimbursed as provided in paragraph 2 below. The Expense Deposit need not be segregated and may be commingled by DKAP with other funds, and BMHC shall not be entitled to receive interest on the Expense Deposit. The Expense Deposit is neither an estimate of nor a cap on DKAP's Expenses and the Expense Deposit shall not be deemed to limit reimbursement obligations of BMHC hereunder, provided that such reimbursement obligations shall be limited to the extent set forth in the last sentence of paragraph 2 below. If at any time the balance of the Expense Deposit has been reduced to \$150,000 or less, BMHC will promptly pay to DKAP the amount necessary to increase the Expense Deposit to \$200,000, provided that the amount required to be paid by BMHC to increase the Expense Deposit shall not exceed the difference between (x) the Expense Cap (as defined below) and (y) the sum of (1) the original amount of the Expense Deposit, (2) each prior increase in the Expense Deposit and (3) the aggregate amount of DKAP's Expenses paid directly by BMHC in accordance with paragraph 2 below.

2. **Reimbursement.** BMHC agrees, on behalf of itself and each of its subsidiaries, jointly and severally, to pay on demand all reasonable, actual and documented third-party fees and expenses incurred by or on behalf of DKAP in connection with the Requested Financing and the transactions contemplated thereby, including, but not limited to, those incurred in connection with the negotiation, preparation, execution and delivery of a proposal letter and/or commitment letter, any term sheet and any and all definitive documentation relating thereto, DKAP's reasonable legal fees and expenses (for outside counsel), costs and expenses incurred by DKAP's examiners and appraisers (including agents for DKAP), audit fees, documentation fees and any filing and search fees (collectively, "DKAP's Expenses"). DKAP's Expenses shall not include DKAP's internal costs or expenses (including those for in-house counsel). The incurrence of DKAP's Expenses shall be evidenced by invoices presented by DKAP's outside counsel and other advisors or service providers ("Invoices") that are provided to BMHC, provided

that Invoices provided to BMHC need not contain detailed time entries or narratives. BMHC authorizes DKAP, and DKAP agrees, to pay the Invoices directly from the Expense Deposit, provided that DKAP may decline to apply the Expense Deposit to any Invoice if, at such time or after giving effect to such application, the remaining balance of the Expense Deposit is, or would be, less than \$150,000. Except as provided in the last sentence of this paragraph, any Invoice which is not paid by DKAP from the Expense Deposit shall promptly be paid by BMHC. Invoices may be presented on a weekly basis as well as at closing. BMHC's obligations under this paragraph shall remain effective whether or not (i) DKAP or any of its affiliates issues a commitment for the Requested Financing or (ii) definitive documentation is executed. Notwithstanding the foregoing, so long as the closing for the Requested Financing has not occurred, BMHC's obligation to reimburse DKAP for DKAP's Expenses (whether paid from the Expense Deposit or directly by BMHC) shall not exceed \$500,000 (the "Expense Cap"), provided that the Expense Cap shall not limit BMHC's obligations under paragraph 3 below.

3. Indemnification. BMHC agrees, on behalf of itself and each of its subsidiaries, jointly and severally, to indemnify and hold harmless DKAP, any party designated by DKAP to act as agent under the Requested Financing ("Agent") and their respective affiliates, and each of their respective assignees, subsidiaries, directors, officers, employees and agents (each an "Indemnified Party") from and against any and all expenses, losses, claims, damages and liabilities to which such Indemnified Party may become subject, insofar as such expenses, losses, claims, damages and liabilities or actions or other proceedings commenced or threatened in respect thereof arise out of or in any way relate to or result from, this letter, the terms set forth herein, any proposal letter or commitment letter issued in connection herewith or the terms thereof, or in any way arise from any use or intended use of this letter, any such proposal letter or commitment letter or the proceeds of the Requested Financing, and BMHC agrees to reimburse each Indemnified Party for any legal or other expenses incurred by such Indemnified Party in connection with investigating, defending or participating in any such loss, claim, damage, liability or action or other proceeding as such expenses are incurred (whether or not such Indemnified Party is a party to any action or proceeding out of which indemnified expenses arise), but excluding therefrom all expenses, losses, claims, damages and liabilities which are finally determined in a non-appealable decision of a court of competent jurisdiction to have resulted solely from the gross negligence or willful misconduct of an Indemnified Party. If for any reason the foregoing indemnification is unavailable to the Indemnified Parties or insufficient to hold an Indemnified Party harmless, then BMHC agrees, on behalf of itself and each of its subsidiaries, jointly and severally, to contribute to the amount paid or payable by such Indemnified Party as a result of such loss, claim, damage or liability in such proportion as is appropriate to reflect the relative economic interests of (i) BMHC, its subsidiaries and their respective affiliates, stockholders, members, partners, or other equity holders on the one hand and (ii) the Indemnified Parties on the other hand in the matters contemplated by this letter as well as the relative fault of (i) the Companies and their respective affiliates, stockholders, members, partners or other equity holders and (ii) the Indemnified Parties with respect to such loss, claim, damage or liability and any other relevant equitable considerations. In the event of any litigation or dispute involving this letter, any proposal letter or commitment letter issued in connection herewith or the Requested Financing, neither DKAP, Agent nor any other Indemnified Party shall be responsible or liable to BMHC or any subsidiaries of the Company, or any other person for any special, indirect, consequential, incidental or punitive damages. The obligations of BMHC and its subsidiaries under this paragraph shall remain effective whether or not a commitment is issued by DKAP or any of its affiliates for the Requested Financing or definitive documentation is executed and notwithstanding any termination of this letter.

4. Acknowledgments. The parties acknowledge that BMHC's and its subsidiaries' obligations under paragraphs 1, 2 and 3 above are subject to the approval of the bankruptcy court in which the Chapter 11 Cases are currently pending (the "Bankruptcy Court"). BMHC agrees to use good faith efforts to promptly obtain such approval. BMHC and its subsidiaries acknowledge that, until such approval is obtained, DKAP may direct its counsel and other third-party advisors and agents to cease work in connection with the Requested Financing (whether or not a commitment is issued by DKAP) if DKAP determines that the amount of DKAP's Expenses that has not yet been paid and has been incurred or is

reasonably anticipated to be incurred would exceed the remaining amount of the Expense Deposit unless BMHC increases the Expense Deposit by such amount. Whether or not such approval is obtained, DKAP may direct its counsel and other third-party advisors and agents to cease work in connection with the Requested Financing (whether or not a commitment is issued by DKAP) if DKAP determines that the amount of DKAP's Expenses that has not yet been paid and has been incurred or is reasonably anticipated to be incurred, plus the amount of DKAP's Expenses previously paid (whether from the Expense Deposit or by BMHC) would exceed the Expense Cap unless BMHC (i) agrees in writing to increase the Expense Cap by the amount necessary to cover such unpaid DKAP's Expenses and (ii) (A) increases the Expense Deposit by such amount or (B) obtains court approval for the increase in the Expense Cap. Nothing in this paragraph shall limit DKAP's right to direct its counsel and other third-party advisors and agents to cease work in connection with the Requested Financing prior to its issuance of a commitment or, thereafter, if any condition to such commitment is not satisfied.

5. **Exclusivity.** On or prior to February 28, 2010, BMHC agrees to work exclusively with DKAP to consummate the Requested Financing contemplated hereby and agrees that it will not and will not permit any subsidiary or affiliate on behalf of BMHC to (a) engage in any discussions with any other lender or funding source regarding a financing alternative to the Requested Financing (an "Alternative Financing"), (b) provide any deposit to any other lender or funding source in connection with an Alternative Financing, (c) solicit or accept a proposal or commitment from another lender or funding source in connection with an Alternative Financing, or (d) otherwise permit or encourage another person to solicit a financing proposal or conduct due diligence in connection with an Alternative Financing, provided that the foregoing shall not restrict concurrent discussions and negotiations as to the terms of the ABL Facility, the Second Lien Facility or the Existing Exit Facility. For purposes of this paragraph: (a) the "ABL Facility" means the revolving credit facility of \$50 million to be provided by Wells Fargo Foothill, LLC on a first lien, "first out" basis (as to all collateral other than tax refunds) and on a first lien, "last out" basis as to tax refunds; (b) the "Second Lien Facility" means the second lien term loan credit facility with BMHC's pre-petition lenders; and (c) "Existing Exit Facility" means the exit credit facilities described in the Plan of Reorganization previously filed with the Bankruptcy Court.

6. **Further Acknowledgment.** This letter is not intended to be, nor shall it be deemed to be or construed as, a binding commitment by DKAP or any of its affiliates to provide the Requested Financing or to provide any other financial accommodation to the Company.

7. **Miscellaneous.** This letter (a) supersedes all prior discussions, agreements, commitments, arrangements, negotiations or understandings, whether oral or written, of the parties with respect thereto, (b) shall be governed by the laws of the State of New York, without giving effect to the conflict of laws provisions thereof; the Bankruptcy Court shall have jurisdiction over any matter arising out of this letter, provided that, if the Bankruptcy Court does not have jurisdiction or refuses to exercise such jurisdiction, then BMHC agrees to the jurisdiction and venue of the federal and/or state courts located within the City of New York, (c) shall be binding upon the parties and their respective successors and assigns, (d) may not be relied upon or enforced by any other person or entity, and (e) may be signed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. If this letter becomes the subject of a dispute, each of the parties hereto hereby waives its right to trial by jury to resolve such dispute. This letter may be amended, modified or waived only in a writing signed by the parties hereto.

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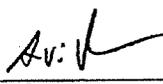
Building Materials Holding Corporation
December 10, 2009
Page 4

If the foregoing correctly sets forth your understanding with respect to the subject matter hereof, kindly execute this letter where indicated and return it to the undersigned.

Very truly yours,

DK ACQUISITION PARTNERS, L.P.

By: M.H. Davidson & Co., its general partner

By: 

Name: Avi Friedman
Title: Managing Member

Agreed and accepted on this
____ day of December, 2009:

BUILDING MATERIALS HOLDING CORPORATION

By: _____
Name:
Title:

Building Materials Holding Corporation
December 10, 2009
Page 4

If the foregoing correctly sets forth your understanding with respect to the subject matter hereof, kindly execute this letter where indicated and return it to the undersigned.

Very truly yours,

DK ACQUISITION PARTNERS, L.P.
By: M.H. Davidson & Co., its general partner

By: _____
Name:
Title:

Agreed and accepted on this
____ day of December, 2009:

BUILDING MATERIALS HOLDING CORPORATION

By: William M. Smart
Name: William M. Smart
Title: SVP & CEO

Exhibit F

ABL Commitment Letter

Exhibit G

Other Loan Documents

Exhibit H

Schedules

Exhibit I

Second Lien Documents

EXHIBIT C
WFF Expense Agreement Letter

December 14, 2009

Building Materials Holding Corporation
Four Embarcadero Center, Suite 3200
San Francisco, CA 94111
Attn.: Bill Smartt, Senior Vice President and
Chief Financial Officer

Re: Financing Commitment

Ladies and Gentlemen:

In accordance with our recent discussions, you have advised Wells Fargo Foothill, LLC, a Delaware limited liability company ("WFF"), that Building Materials Holding Corporation, a Delaware corporation, and its subsidiaries, as debtors-in-possession ("BMHC" or the "Company"), as such entities are reorganized pursuant to their pending chapter 11 cases (the "Chapter 11 Cases") under Chapter 11 of Title 11 of the United States Bankruptcy Code, will require financing in the form of a senior secured revolving credit facility of \$50,000,000 (such financing, the "Requested Financing"). The Requested Financing would be secured on a perfected first lien, "first out" basis by all Collateral (as defined below) other than Tax Refunds (as defined in the Draft Credit Agreement) and on a perfected first lien, "last out" basis by any Tax Refunds. You have further advised WFF that the proceeds from the Requested Financing will be used by BMHC (together with the proceeds of the Term Loan Facility (as defined below)) to: (i) facilitate consummation of the plan of reorganization of the Company (the "Plan of Reorganization"), (ii) refinance amounts outstanding under the Company's debtor-in-possession credit facility (the "DIP Facility"), (iii) provide working capital to BMHC, (iv) provide for fees and expenses associated with the transaction, and (v) provide for general corporate purposes.

WFF is pleased to advise you that WFF is willing to provide BMHC with the Requested Financing, on the terms and conditions set forth in the December 14, 2009 draft of the Senior Secured Credit Agreement attached hereto as Exhibit A (the "Draft Credit Agreement"), to be entered into by Building Materials Holding Corporation, a Delaware corporation, as borrower ("Borrower"), the subsidiaries of Borrower named therein as guarantors ("Guarantors"), WFF, as agent for the Lenders (in such capacity, the "Agent"), and the various lenders from time to time party thereto (including DKAP (as defined below)) (collectively, the "Lenders"), provided that, in addition to satisfaction of the conditions precedent set forth in Sections 5.01 and 5.02 of the Draft Credit Agreement, WFF's commitment is subject to satisfaction of the conditions precedent set forth in paragraph 3 of this letter. In connection with WFF's commitment as to the Requested Financing, BMHC agrees with WFF as follows:

1. **Acknowledgment.** Each of BMHC and WFF acknowledges that:

- (a) the Requested Financing is to be advanced concurrently with a senior secured term loan in the principal amount of \$40,000,000 from DK Acquisition Partners, L.P. ("DKAP"), which would be secured on a perfected first lien, "first out" basis by any Tax

Refunds (as defined in the Draft Credit Agreement), and on a perfected first lien, "last out" basis by all other Collateral (as defined below) (the "**Term Loan Facility**"),

(b) the definitive loan documentation for the Requested Financing and the Term Loan Facility will be a credit agreement in the form of the Draft Credit Agreement, together with the other Loan Documents (as such term is defined in the Draft Credit Agreement) listed below, each in the form attached hereto:

(i) the Collateral Documents (as such term is defined in the Draft Credit Agreement), including the Security Agreement and Form of Mortgage referred to below and the Collateral Documents in the form attached as **Exhibit G**;

(ii) the Intercreditor Agreement referred to below; and

(iii) each control agreement executed in respect of the Cash Collateral Account (as such term is defined in the Draft Credit Agreement), the Tax Proceeds Collateral Account (as such term is defined in the Draft Credit Agreement) or any other deposit account, trust account or securities account of the Borrower and the Guarantors,

(c) the Draft Credit Agreement provides, among other things, for the priority of payments as between the Requested Financing, on the one hand, and the Term Loan Facility, on the other-hand; in addition, WFF and DKAP will enter into an agreement among lenders with respect to certain matters, which shall be the form of the draft Agreement Among Lenders dated December 14, 2009,

(d) all schedules to the Draft Credit Agreement and the other Loan Documents, dated as of the date hereof, which have been provided to and received by WFF and DKAP, and are attached as **Exhibit H**, will be the schedules attached to the definitive credit agreement and the Collateral Documents,

(e) among the Loan Documents will be (i) an intercreditor agreement in the form of the draft Intercreditor Agreement dated December 14, 2009 attached hereto as **Exhibit B** (the "**Draft Intercreditor Agreement**"), to be entered into by WFF, as First Lien Agent (as such term is defined in the Draft Intercreditor Agreement), and Wells Fargo Bank, National Association ("**WFB**"), as Second Lien Agent (as such term is defined in the Draft Intercreditor Agreement), (ii) a security agreement, in the form of the draft Security Agreement dated December 14, 2009 attached hereto as **Exhibit C** (the "**Draft Security Agreement**"), to be executed by Borrower and each Guarantor in favor of WFF, as agent for the Secured Parties (as such term is defined in the Draft Security Agreement), and (iii) mortgages, deeds of trust and similar instruments to be recorded against the real property assets of the Borrower and Guarantors, each in the form of the draft Mortgage dated December 14, 2009 attached hereto as **Exhibit D** (the "**Draft Form of Mortgage**"), conformed for the specific real property asset and for state specific requirements, and

(f) the Plan of Reorganization previously filed by BMHC with the Bankruptcy Court (as defined below) will be amended to provide for the Requested Financing, the Term Loan Facility and the other documents referred to in this paragraph 1.

WFF acknowledges that the Second Lien Term Loan Documents (as such term is defined in the Draft Credit Agreement, and as such documents have been filed in accordance with the Plan of Reorganization, as supplemented to this date (including the documents filed on this date with the Bankruptcy Court (as defined below)) are in form and substance satisfactory to WFF.

2. Expenses and Indemnity; Fee Letter.

(a) BMHC agrees (i) to pay or reimburse, all reasonable, out-of-pocket fees, costs, and expenses (including, without limitation, reasonable fees and disbursements of counsel, reasonable consultant costs and expenses, filing and recording fees, and reasonable costs and expenses associated with due diligence, travel, appraisals, valuations, audits, and syndication) incurred by or on behalf of WFF (whether before, on, or after the date hereof) in connection with (A) legal and business due diligence, (B) the preparation, negotiation, execution, and delivery of this letter and any and all documentation for the Requested Financing, and (C) the enforcement of any of WFF's rights and remedies under this letter, in each case irrespective of whether the Requested Financing is consummated, and (ii) to indemnify, defend, and hold harmless WFF, each of its affiliates, and each of their officers, directors, employees, agents, advisors, attorneys, and representatives (each, an "Indemnified Person") as set forth on Exhibit E hereto.

(b) Concurrently with its execution and delivery of this letter, BMHC will execute and deliver to WFF that certain fee letter dated the date hereof (the "Fee Letter"). The Fee Letter shall remain in effect following execution of this letter and whether or not definitive documentation is executed for the Requested Financing.

The parties acknowledge that BMHC's obligations under this paragraph 2 are subject to the approval of the Bankruptcy Court. BMHC agrees to use good faith efforts to promptly obtain such approval.

3. Certain Conditions.

(a) This letter shall not become effective unless, on or prior to December 14, 2009, (i) BMHC shall have executed and delivered a counterpart to this letter, (ii) BMHC shall have executed and delivered a counterpart to the Fee Letter, and (iii) DKAP and BMHC shall have executed and delivered the Term Loan Commitment Letter, which shall be in form attached hereto as Exhibit F (the "Term Loan Commitment Letter").

(b) This letter and the commitment of WFF set forth herein will terminate on December 17, 2009 unless, on or prior to such date, the Bankruptcy Court shall have (i) approved BMHC's execution, delivery and performance of this letter and the Fee Letter and (ii) issued an order confirming the Plan of Reorganization (amended as set forth in

paragraph 1(f) above), in each case in form and substance reasonably satisfactory to WFF.

(c) This letter and the commitment of WFF set forth herein will terminate on January 4, 2010 unless, on or prior to such date, the funding of the Requested Financing and the initial funding under the Term Loan Facility shall have occurred and the Plan of Reorganization shall have become effective (the "Closing Date").

(d) The commitment of WFF to provide the Requested Financing is subject to:

(i) the execution and delivery of a credit agreement in the form of the Draft Credit Agreement by Borrower, Guarantors, WFF and the lenders signatory thereto (including DKAP),

(ii) the execution and delivery of the other Loan Documents in forms attached hereto,

(iii) the determination to WFF's reasonable satisfaction that since the date of this letter, there has not occurred or become known to BMHC or WFF any material adverse change with respect to the condition (financial or otherwise), business, operations, assets or liabilities of BMHC or its subsidiaries (taken as a whole), other than the filing of the Chapter 11 Cases and the events directly resulting from the filing of the Chapter 11 Cases (a "Material Adverse Change"),

(iv) the Term Loan Commitment Letter, and the commitment for the Term Loan Facility provided therein, remains in effect, and

(v) satisfaction of the other conditions set forth in Sections 5.01 and 5.02 of Draft Credit Agreement.

If at any time WFF shall determine (in its reasonable business judgment) that (i) BMHC will be unable to fulfill any condition set forth in this letter or in the Draft Credit Agreement, or (ii) any Material Adverse Change has occurred or could reasonably be expected to occur, WFF may terminate its obligations under this letter by giving notice thereof to BMHC (it being understood that BMHC's obligations under the Expenses and Indemnity section of this letter (including Exhibit E), and the Fee Letter shall survive the termination of this letter).

(e) "Collateral" shall mean (i) the right of Borrower and Guarantors to receive any tax refund (whether local, state, federal, foreign or otherwise), including without limitation, tax refunds anticipated to be received by BMHC as a result of the expanded five year carry-back of net operating losses for the tax years 2008 and 2009 in accordance with the Worker, Homeownership and Business Assistance Act of 2009 (H.R. 3548), and all cash and non-cash proceeds of any such tax refund, and (ii) all other existing and future assets of the Borrower and Guarantors, tangible and intangible, including, but not limited to cash and cash equivalents, accounts receivable, inventory, other current assets,

investments (capital stock and loans and accounts receivable), machinery, property plant and equipment, real property, vessels, trademarks, tradenames, insurance claims, litigation claims and other assets, subject only to the exceptions set forth in the Draft Credit Agreement or the Draft Security Agreement.

4. **Representations and Warranties.** BMHC, on behalf of itself and its subsidiaries, jointly and severally, represents and warrants that (i) no statement or information (other than projections, pro forma financial information and "forward-looking" statements) contained in this letter or any other document, certificate, written statement or formal presentation furnished to WFF for use in connection with the transactions contemplated by this letter, when taken as a whole, contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein or therein not misleading, in any material respect, in light of the circumstances under which such statements were made and (ii) the projections, pro forma financial information and "forward-looking" statements contained in the materials referenced above are based upon good faith estimates and assumptions believed by management of BMHC to be reasonable at the time made, it being recognized by WFF that such financial information as it relates to future events is not to be viewed as fact and that actual results during the period or periods covered by such financial information may differ from the projected or anticipated results set forth therein by a material amount. BMHC agrees that if at any time prior to the Closing Date, any of the representations in the preceding sentence would be incorrect in any material respect if the information and projections were being furnished, and such representations were being made, at such time, then the Companies will promptly supplement, or cause to be supplemented, the information and projections so that such representations will be correct in all material respects under those circumstances.
5. **Disclosure.** This letter is delivered to BMHC upon the condition that neither the existence of this letter, nor any of their contents, shall be disclosed by BMHC or any of its affiliates, except as follows: (i) following BMHC's execution of this letter, this letter and its attachments may be disclosed to the Bankruptcy Court, (ii) following prior notice to WFF, as may be compelled to be disclosed in a judicial or administrative proceeding or as otherwise required by law, (iii) on a confidential and "need to know" basis, solely to the directors, officers, employees, advisors and agents of BMHC and its affiliates, or (iv) this letter and its attachments may be disclosed to DKAP. In addition, BMHC agrees that it and its subsidiaries (and any affiliate acting on behalf of BMHC) will (i) consult with WFF prior to the making of any filing in which reference is made to WFF, its affiliates or the commitment contained in this letter, and (ii) obtain the prior approval of WFF before releasing any public announcement (unless involving a filing with the Bankruptcy Court permitted above) in which reference is made to WFF, its affiliates or to the commitment contained in this letter. Notwithstanding the foregoing, any party hereto may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the financing contemplated by the Requested Financing. BMHC acknowledges that WFF and its affiliates may now or hereafter provide financing or obtain other interests in other companies in respect of which BMHC or its affiliates may be business competitors, and that WFF and its affiliates will have no obligation to provide to BMHC or any of its

affiliates any confidential information obtained from such other companies. This paragraph shall survive any termination of this letter.

6. **Exclusivity.** On or prior to February 28, 2010, BMHC agrees to work exclusively with WFF to consummate the Requested Financing contemplated hereby and agrees that it will not and will not permit any subsidiary or affiliate on behalf of BMHC to (a) engage in any discussions with any other lender or funding source regarding a financing alternative to the Requested Financing (an "**Alternative Financing**"), (b) provide any deposit to any other lender or funding source in connection with an Alternative Financing, (c) solicit or accept a proposal or commitment from another lender or funding source in connection with an Alternative Financing, or (d) otherwise permit or encourage another person to solicit a financing proposal or conduct due diligence in connection with an Alternative Financing, provided that the foregoing shall not restrict concurrent discussions and negotiations as to the terms of the Term Loan Facility, the Second Lien Facility or the Existing Exit Facility. For purposes of this paragraph: (i) the "**Second Lien Facility**" means the second lien term loan credit facility with BMHC's pre-petition lenders; and (ii) "**Existing Exit Facility**" means the exit credit facilities described in the Plan of Reorganization previously filed with the Bankruptcy Court.

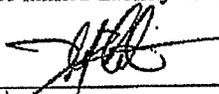
7. **Miscellaneous.** This letter, including the attachments hereto, together with the Fee Letter (a) supersedes all prior discussions, agreements, commitments, arrangements, negotiations or understandings, whether oral or written, of the parties with respect thereto and (b) shall be governed by the laws of the State of New York, without giving effect to the conflict of laws provisions thereof; until the Effective Date (as defined in the Draft Credit Agreement), the U.S. Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**") shall have jurisdiction over any matter arising out of this letter; from and after the Effective Date or if the Bankruptcy Court does not have jurisdiction or refuses to exercise jurisdiction over matters arising out of this letter, jurisdiction and venue over matters arising out of this letter shall be in the federal and/or state courts located within the City of New York, (c) shall be binding upon the parties and their respective successors and assigns to the extent set forth in the next succeeding paragraph, (d) may not be relied upon or enforced by any other person or entity, and (e) may be signed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. **If this letter becomes the subject of a dispute, each of the parties hereto hereby waives its right to trial by jury to resolve such dispute.** In the event that this letter is terminated or expires, the Expenses and Indemnity provisions, paragraph 5 and this paragraph shall survive such termination or expiration. This letter may be amended, modified or waived only in a writing signed by the parties hereto.

[This space intentionally left blank; signature page follows.]

If the foregoing correctly sets forth your understanding with respect to the subject matter hereof, kindly execute this letter and the Fee Letter where indicated and return both to the undersigned not later than 5:00 p.m. EST on December 14, 2009.

Very truly yours,

WELLS FARGO FOOTHILL, LLC,
a Delaware limited liability company

By: 
Name: TODD B. NAKAMOTO
Title: SENIOR VICE PRESIDENT

Agreed and accepted on this
____ day of December, 2009:

BUILDING MATERIALS HOLDING CORPORATION,
a Delaware corporation

By: _____
Name: _____
Title: _____

[SIGNATURE PAGE TO COMMITMENT LETTER]

If the foregoing correctly sets forth your understanding with respect to the subject matter hereof, kindly execute this letter and the Fee Letter where indicated and return both to the undersigned not later than 5:00 p.m. EST on December 14, 2009.

Very truly yours,

WELLS FARGO FOOTHILL, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

Agreed and accepted on this
14 day of December, 2009:

BUILDING MATERIALS HOLDING CORPORATION,
a Delaware corporation

By: 
Name: PAUL S. STREET
Title: Chief Executive Officer

[SIGNATURE PAGE TO COMMITMENT LETTER]

Exhibit A

Draft Credit Agreement

Exhibit B

Draft Intercreditor Agreement

Exhibit C

Draft Security Agreement

Exhibit D

Draft Form of Mortgage

Exhibit E

Indemnity

Capitalized terms used herein shall have the meanings ascribed to them in the commitment letter, dated December 14, 2009 (the "Commitment Letter") addressed to Building Materials Holding Corporation (the "Indemnifying Party") from Wells Fargo Foothill, LLC ("WFF").

To the fullest extent permitted by applicable law, the Indemnifying Party agrees that it will indemnify, defend, and hold harmless each of the Indemnified Persons from and against (i) any and all losses, claims, damages, obligations, penalties, judgments, awards, liabilities, costs, expenses and disbursements, (ii) any and all actions, suits, proceedings and investigations in respect thereof, and (iii) any and all legal or other costs, expenses or disbursements in giving testimony or furnishing documents in response to a subpoena or otherwise (including, without limitation, the costs, expenses and disbursements, as and when incurred, of investigating, preparing or defending any such action, proceeding or investigation (whether or not in connection with litigation in which any of the Indemnified Persons is a party) and including, without limitation, any and all losses, claims, damages, obligations, penalties, judgments, awards, liabilities, costs, expenses and disbursements, resulting from any act or omission of any of the Indemnified Persons), directly or indirectly, caused by, relating to, based upon, arising out of or in connection with (a) the Requested Financing, (b) the Chapter 11 Cases or the Plan of Reorganization, or (c) any untrue statement or alleged untrue statement of a material fact contained in, or omissions or alleged omissions in, information furnished by Indemnifying Party, or any of its subsidiaries or affiliates, or any other person in connection with the Requested Financing, the Commitment Letter or the Chapter 11 Cases; provided, however, such indemnity agreement shall not apply to any portion of any such loss, claim, damage, obligation, penalty, judgment, award, liability, cost, expense or disbursement of an Indemnified Person to the extent it is found in a final judgment by a court of competent jurisdiction (not subject to further appeal) to have resulted primarily and directly from the gross negligence or willful misconduct of such Indemnified Person.

These Indemnification Provisions shall be in addition to any liability which the Indemnifying Party may have to the Indemnified Persons.

If any action, suit, proceeding or investigation is commenced, as to which any of the Indemnified Persons proposes to demand indemnification, it shall notify the Indemnifying Party with reasonable promptness; provided, however, that any failure by any of the Indemnified Persons to so notify the Indemnifying Party shall not relieve the Indemnifying Party from its obligations hereunder. WFF, on behalf of the Indemnified Persons, shall have the right to retain counsel of its choice to represent the Indemnified Persons, and the Indemnifying Party shall pay the reasonable fees, expenses, and disbursement of such counsel, and such counsel shall, to the extent consistent with its professional responsibilities, cooperate with the Indemnifying Party and any counsel designated by the Indemnifying Party. The Indemnifying Party shall be liable for any settlement of any claim against any of the Indemnified Persons made with its written consent, which consent shall not be unreasonably withheld. Without the prior written consent of WFF, the Indemnifying Party shall not settle or compromise any claim, permit a default or consent to the entry of any judgment in respect thereof.

Neither expiration nor termination of WFF's commitments under the Commitment Letter or funding or repayment of the loans under the Requested Financing shall affect these Indemnification Provisions which shall remain operative and continue in full force and effect.

Exhibit F

Term Loan Commitment Letter

Exhibit G

Other Loan Documents

Exhibit H

Schedules