

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

<b>IN RE:</b>	)	<b>Chapter 11</b>
<b>BUILDING MATERIALS HOLDING CORPORATION, et al.,<sup>1</sup></b>	)	<b>Case No. 09-12074 (KJC)</b>
	)	<b>Jointly Administered</b>
<b>Reorganized Debtors.</b>	)	<b>Requested Objection Deadline: January 25, 2010 at 10:00 a.m. (ET)</b>
	)	<b>Requested Hearing Date: January 27, 2010 at 3:00 p.m. (ET)</b>

**REORGANIZED DEBTORS' MOTION FOR ENTRY OF  
SECOND IMPLEMENTATION ORDER WITH RESPECT TO  
JOINT PLAN OF REORGANIZATION FOR THE DEBTORS UNDER  
CHAPTER 11 OF THE BANKRUPTCY CODE AMENDED DECEMBER 14, 2009  
(WITH TECHNICAL MODIFICATIONS)**

Building Materials Holding Corporation and its affiliates, as reorganized debtors (collectively, the "*Reorganized Debtors*"), submit this motion (the "*Motion*") for entry of a second implementation order, substantially in the form annexed hereto as *Exhibit A*, which clarifies certain provisions and effects of the order confirming the Reorganized Debtors' plan of reorganization. In support thereof, the Reorganized Debtors respectfully represent:

**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.

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<sup>1</sup> The Reorganized Debtors, along with the last four digits of each Reorganized 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 Reorganized Debtors is 720 Park Boulevard, Suite 200, Boise, Idaho 83712.

## BACKGROUND

2. On June 16, 2009 (the "*Petition Date*"), each of the now Reorganized Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the "*Chapter 11 Cases*"). 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 Reorganized Debtors are one of the largest providers of residential building products and construction services in the United States. The Reorganized 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 Reorganized Debtors operate under two brand names: BMC West® and SelectBuild®.

- ***BMC West.*** Under the BMC West brand, the Reorganized 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 Reorganized 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 Reorganized 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

Reorganized Debtors currently offer these services in major metropolitan markets in California, Arizona, Nevada and Illinois.

5. On the Petition Date, the now Reorganized Debtors filed their proposed chapter 11 plan (as amended and/or supplemented, the "**Plan**") and accompanying disclosure statement (as amended and/or supplemented, the "**Disclosure Statement**"). The Reorganized Debtors filed amended versions of the Plan and Disclosure Statement since that time. The Court approved the Disclosure Statement by order entered on October 22, 2009.

6. On December 17, 2009 the Court entered an *Order Confirming Joint Plan of Reorganization for the Debtors Under Chapter 11 of the Bankruptcy Code Amended December 14, 2009 (With Technical Modifications)* [Docket No. 1182] (the "**Confirmation Order**") confirming the Reorganized Debtors' Plan. The Effective Date of the Plan occurred on January 4, 2010.

### **RELIEF REQUESTED**

7. Pursuant to paragraph 39 of the Confirmation Order, the Court has "jurisdiction to hear and determine all matters arising from the implementation of" the Confirmation Order. For the reasons set forth below, the Reorganized Debtors request that the Court enter an implementation order which clarifies that the assets contained in the Reorganized Debtors' Supplemental Employee Retirement Programs<sup>2</sup> and deferred compensation programs (collectively, the "**SERP and Deferred Compensation Assets**"), including, without limitation, the assets subject to (i) that certain Building Materials Holding Corporation Executive and Director Supplemental Retirement Income Trust Agreement by and Building Materials Holding

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<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Plan, whether set forth expressly therein or by reference to other documents.

Corporation and U.S. Bank Institutional Trust and Custody, Idaho dated as of August 1, 2005 (attached hereto as *Exhibit B*); (ii) that certain Building Materials Holding Corporation 1999 Deferred Compensation Plan for Directors Trust by and between Building Materials Holding Corporation and Prudential Bank & Trust FSB dated as of May 1, 2008 (attached hereto as *Exhibit C*); (iii) that certain Building Materials Holding Corporation 1999 Deferred Compensation Plan for Executives Trust by and between Building Materials Holding Corporation and Prudential Bank & Trust FSB dated as of May 1, 2008 (attached hereto as *Exhibit D*); (iv) that certain Building Materials Holding Corporation 2005 Deferred Compensation Plan for Directors Trust by and between Building Materials Holding Corporation and Prudential Bank & Trust FSB dated as of May 1, 2008 (attached hereto as *Exhibit E*); and (v) that certain Building Materials Holding Corporation 2005 Deferred Compensation Plan for Executives Trust by and between Building Materials Holding Corporation and Prudential Bank & Trust FSB dated as of May 1, 2008 (attached hereto as *Exhibit F*) (collectively, the “*Rabbi Trust Agreements*”), are assets that were property of the Debtors' estates which vested in the Reorganized Debtors on the Effective Date and which directs U.S. Bank Institutional Trust and Custody, Idaho (“*U.S. Bank Idaho*”) and Prudential Bank & Trust FSB (“*Prudential*”) to liquidate those assets and to remit the proceeds to the Reorganized Debtors.

**A. The SERP and Deferred Compensation Assets Are Property of the Estate**

8. The Rabbi Trust Agreements with respect to the SERP and Deferred Compensation Assets created grantor trusts within the meaning of section 671 of the Internal Revenue Code. *See* Sections 2.3 or 1(c) of the Rabbi Trust Agreements, as applicable. Grantor trusts, commonly referred to as “Rabbi Trusts,” allow companies such as the Debtors to offer their key employees an option to defer the constructive or actual receipt (and the corresponding inclusion in taxable income) of compensation earned in a particular year until some future

period. To get treatment as a grantor trust under the Internal Revenue Code, the assets of a Rabbi Trust must be owned by the grantor, in this case Debtor BMHC. *See, e.g., Resolution Trust Corp. v. MacKenzie*, 60 F.3d 972, 976-77 (2d Cir. 1995) ("Assets held in a [Rabbi Trust] are considered the property of the grantor. Section 671 of the Internal Revenue Code treats the grantor as the owner of the trust assets, thus making the trust assets taxable to the grantor, until those trust assets are distributed to the grantee. Therefore, under the tax code, it is the act of distribution which conveys the assets held in a [Rabbi Trust] from the grantor to the grantee.").

9. In addition, to qualify as a Rabbi Trust under the Internal Revenue Code, the trust agreement must provide, as do the Rabbi Trust Agreements with respect to the SERP and Deferred Compensation Assets, that the trust's assets are subject to the general claims of the grantor's creditors in the event of the insolvency or bankruptcy of the grantor. Thus, both by virtue of the trust agreements themselves and to accomplish the underlying purpose for creating the Trusts, the various Rabbi Trust Agreements with respect to the SERP and Deferred Compensation Assets provide that such assets are subject to the claims of the Debtors' general creditors in the event of bankruptcy or insolvency. *See* Section 2.3 and 2.4 ("the Trust...is subject to the rights of general creditors of the Company in the event of the Company's insolvency [which includes a bankruptcy filing]"; "the Trust Beneficiaries' rights to payments created under the Plans and this Trust Agreement shall be no greater than the rights of unsecured general creditors of the Company") or 1(d) ("Any rights created under the Plan and this Trust Agreement shall be mere unsecured contractual rights of Plan participants and their beneficiaries against Company. Any assets held by the Trust will be subject to the claims of the Company's general creditors under federal and state law in the event of insolvency [which includes a bankruptcy filing]....") of each Rabbi Trust Agreement, as applicable, attached hereto as

Exhibits B-F. Accordingly, the SERP and Deferred Compensation Assets are property of the Debtors' estates. *See, e.g., Resolution Trust Corp. v. MacKenzie*, 60 F.3d 972, 976 (2d Cir. 1995) ("Assets held in a grantor trust are considered the property of the grantor.").

**B. The Liquidation of the SERP and Deferred Compensation Assets Was Contemplated Under the Plan and Described in the Disclosure Statement**

10. The Reorganized Debtors' liquidation of the SERP and Deferred Compensation Assets was contemplated under the Plan and Confirmation Order and was described in the Disclosure Statement. As disclosed in the Disclosure Statement, these Assets were to be used as a source of funding the Reorganized Debtors' operations and satisfying the Reorganized Debtors' obligations under the Plan.

**1. Confirmation Order and Plan Provisions**

11. Pursuant to paragraph 9 of the Confirmation Order (and Section 7.5 of the Plan), "all property and assets of the Debtors and their Estates" vested in the Reorganized Debtors "free and clear of any and all Liens, Claims, Interests, charges, or other encumbrances" on the Effective Date. The definition of "Assets" in both the Plan and Disclosure Statement includes "all property in which the Debtors hold a legal or equitable interest, including all property described in section 541 of the Bankruptcy code **and all property disclosed in Debtors' respective Schedules and the Disclosure Statement.**" (emphasis added). The Debtors' schedules listed the SERP and Deferred Compensation Assets as assets of the Debtors' estates. *See* Building Materials Holding Corporation Schedule B, at questions 9 and 12 (relevant excerpt attached as *Exhibit G*).

12. Moreover, pursuant to paragraph 17 of the Confirmation Order (and Section 9.1 of the Plan), "the Confirmation of the Plan shall, as of the Effective Date: (i) discharge the Debtors, the Reorganized Debtors or any of its or their Assets from all Claims, demands,

liabilities, other debts and Interests that arose on or before the Effective Date," unless otherwise expressly provided in the Confirmation Order or Plan. Under the Plan, the participants in the Debtors' Supplemental Employee Retirement Programs and deferred compensation programs are Holders of General Unsecured Claims and are classified in Classes 6 and 8. Those Classes receive their share of the Unsecured Cash Fund of \$5.5 million or, if applicable, of the Small Unsecured Claim distribution, and, pursuant to the Plan, have no claim whatsoever to any portion of the SERP and Deferred Compensation Assets.<sup>3</sup>

## 2. Disclosure Statement Provisions

13. In addition to being contemplated by the Plan and Confirmation Order, the SERP and Deferred Compensation Assets were described in the Disclosure Statement as assets of the Debtors' estates that would be liquidated for use by the Debtors' for general corporate purposes.

14. The description of the process for liquidating the SERP and Deferred Compensation Assets and the Debtors' use of those assets was well-vetted with the Creditors' Committee, with several emails being exchanged between counsel for the Creditors' Committee and Debtors' counsel regarding the description. Further, the Creditors' Committee filed an objection to the Disclosure Statement based upon the Creditors' Committee's view that the description of the Debtors' intentions with respect to such assets was initially inadequate. *See Objection of the Official Committee of Unsecured Creditors to the Disclosure Statement With Respect to Joint Plan of Reorganization for the Debtors Under Chapter 11 of the Bankruptcy*

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<sup>3</sup> Pursuant to paragraph 4 of the Confirmation Order, "the classification of Claims and Interests for purposes of the distributions to be made under the Plan shall be governed solely by the terms of the Plan" and no creditor has a right to any fund unless such right is explicitly provided in the Plan.

*Code Amended July 27, 2009* [Docket No. 564], para. 26. The Debtors revised the Disclosure Statement to resolve this objection.

15. Thus, on page 5 of the Disclosure Statement, the SERP and Deferred Compensation Assets were listed in the table of Sources and Uses of Cash as two of just six sources of cash on the Effective Date, accounting for nearly 25% of the Reorganized Debtors' available cash. Moreover, the liquidation and feasibility analyses attached to the Disclosure Statement both contemplate liquidation of the SERP and Deferred Compensation Assets and use of those assets as a funding source for Plan distributions and the company's operations. *See* Disclosure Statement Exhibits E and F. Indeed, the Debtors' Revolving Credit Agreement that was contemplated by the Plan requires the Debtors to liquidate the SERP and Deferred Compensation Assets and the Debtors' failure to do so is a default thereunder. *See* Revolving Credit Agreement § 5.03. Finally, the Disclosure Statement included the following language:

The assets that fund the SERP are the Life Insurance Policies held by BMHC in a "rabbi" trust. The Life Insurance Policies have a cash surrender value of approximately \$16.3 million. While the Agent on behalf of the Prepetition Lenders has asserted a security interest in the rabbi trust, the Company believes that, under applicable law, the assets of the rabbi trust are available to pay all BMHC creditors. The Debtors could realize the value of the Life Insurance Policies by tendering the Life Insurance Policies to the relevant insurers in exchange for a payment equal to the cash surrender value. However, the Debtors believe that, though a sale of the Life Insurance Policies to a third party investor, the Debtors may receive greater value from the Life Insurance Policies. **The cash surrender value shall be used by the Reorganized Debtors for operations and to fund their obligations under the Plan.**<sup>9</sup> ... These obligations include, without limitation, obligations due on the Effective Date to fund the distributions required to be made on account of General Unsecured Claims.

Disclosure Statement at 32-33 (emphasis added).

### **C. Terms of Implementation Order**

16. The Debtors submit that the proposed implementation Order merely implements the provisions of the Confirmation Order and the Plan. However, Prudential has

indicated that the implementation Order is necessary in order to authorize Prudential to liquidate the SERP and Deferred Compensation Assets under its control and to remit those Assets to the Reorganized Debtors. Accordingly, the proposed implementation Order authorizes U.S. Bank Idaho and Prudential to liquidate the SERP and Deferred Compensation Assets, which are unencumbered and belong to the Reorganized Debtors pursuant to the Plan, and to remit the proceeds to the Reorganized Debtors.

**NOTICE**

17. No trustee or examiner has been appointed in the Chapter 11 Cases. The Reorganized Debtors have provided notice of filing of the Motion to: (a) the Office of the United States Trustee for the District of Delaware; (b) counsel to the former 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) DK Acquisition Partners, L.P.; (e) Wells Fargo Foothill, LLC; (f) the participants in the Debtors' Supplemental Employee Retirement Programs and deferred compensation programs; and (g) 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**

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

**CONCLUSION**

WHEREFORE, the Reorganized 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  
January 15, 2010

YOUNG CONAWAY STARGATT &  
TAYLOR, LLP



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ATTORNEYS FOR REORGANIZED DEBTORS

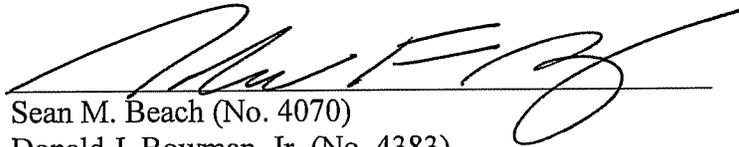


BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 NORTH MARKET STREET, 5TH FLOOR, COURTROOM NO. 5, WILMINGTON, DELAWARE 19801.

**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  
January 15, 2010

YOUNG CONAWAY STARGATT & TAYLOR, LLP



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ATTORNEYS FOR REORGANIZED DEBTORS

**EXHIBIT A**  
**Proposed Implementation Order**



Order as if set forth fully herein; and the Court having found that the assets contained in the Debtors' Supplemental Employee Retirement Programs<sup>2</sup> and deferred compensation programs, including, without limitation, the assets subject to (i) that certain Building Materials Holding Corporation Executive and Director Supplemental Retirement Income Trust Agreement by and Building Materials Holding Corporation and U.S. Bank Institutional Trust and Custody, Idaho dated as of August 1, 2005; (ii) that certain Building Materials Holding Corporation 1999 Deferred Compensation Plan for Directors Trust by and between Building Materials Holding Corporation and Prudential Bank & Trust FSB dated as of May 1, 2008; (iii) that certain Building Materials Holding Corporation 1999 Deferred Compensation Plan for Executives Trust by and between Building Materials Holding Corporation and Prudential Bank & Trust FSB dated as of May 1, 2008; (iv) that certain Building Materials Holding Corporation 2005 Deferred Compensation Plan for Directors Trust by and between Building Materials Holding Corporation and Prudential Bank & Trust FSB dated as of May 1, 2008; and (v) that certain Building Materials Holding Corporation 2005 Deferred Compensation Plan for Executives Trust by and between Building Materials Holding Corporation and Prudential Bank & Trust FSB dated as of May 1, 2008 (collectively, the "*SERP and Deferred Compensation Assets*") are assets that were property of the Debtors' estates which vested in the Reorganized Debtors on the Effective Date free and clear of liens, claims and interests; and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED:**

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<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Joint Plan of Reorganization For The Debtors Under Chapter 11 of the Bankruptcy Code Amended December 14, 2009 (With Technical Modifications) [Docket No. 1134] (the "*Plan*"), whether set forth expressly therein or by reference to other documents.

1. U.S. Bank Institutional Trust and Custody, Idaho, Prudential Bank & Trust FSB, and any other person or entity with control over the SERP and Deferred Compensation Assets are hereby authorized and directed to timely liquidate the SERP and Deferred Compensation Assets in a manner consistent with the instructions of Paul Street or any other authorized officer of the Reorganized Debtors and to remit the proceeds of the SERP and Deferred Compensation Assets to the Reorganized Debtors in a manner consistent with the instructions of Paul S. Street, Chief Executive Officer of the Reorganized Debtors, or any other authorized officer of the Reorganized Debtors.

2. U.S. Bank Institutional Trust and Custody, Idaho, Prudential Bank & Trust FSB, and any other person or entity with control over the SERP and Deferred Compensation Assets shall be entitled to rely on this Implementation Order to effectuate the liquidation and distribution of the SERP and Deferred Compensation Assets to the Reorganized Debtors in a manner consistent with the instructions of Paul S. Street or any other authorized officer of the Reorganized Debtors.

Dated: Wilmington, Delaware  
January \_\_, 2010

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Kevin J. Carey  
Chief United States Bankruptcy Judge

# **EXHIBIT B**

**Building Materials Holding Corporation Executive and  
Director Supplemental Retirement Income Trust Agreement**

**Building Materials Holding Corporation**  
**Executive and Director Supplemental Retirement Income**  
**TRUST AGREEMENT**

This Agreement made this first day of August, 2005 by and between Building Materials Holding Corporation (Company), and U. S. Bank Institutional Trust and Custody, Idaho (Trustee).

**WHEREAS**, the Company has established the Executives' Supplemental Retirement Income Plans, both Old and New Plans (the "Plans"), attached hereto as Exhibit A and B, to encourage the participants in the Plans (the "Participants") to continue to render services to the Company by providing for the Participants' security after their retirement from service with the Company; and,

**WHEREAS**, the Plans provide for payments to be made under the conditions and on the terms contained therein to the Participants and/or their beneficiaries (hereinafter individually and collectively the "Trust Beneficiaries"); and,

**WHEREAS**, the Company desires to establish this Trust Agreement to provide in whole or in part, for the payment of the benefits due under the Plans and accordingly to discharge its obligations thereunder, and to transfer to the Trust certain property which shall be held herein until paid to the Trust Beneficiaries in accordance with and pursuant to the Plans, subject however, to the claims of the Company's creditors in the event of the Company's insolvency as defined herein; and,

**WHEREAS**, it is the intention of the Company to make such contributions to the Trust as it may from time to time determine to be necessary or appropriate, to discharge its obligations to the Trust Beneficiaries under the Plans subject to Section 3 hereof;

**NOW, THEREFORE**, the Company hereby establishes with the Trustee this Trust to hold all property acceptable to the Trustee, together with the income thereon, as shall be transferred to it hereunder for the uses and purposes and upon the terms and conditions set forth herein.

## SECTION I - DEFINITIONS

- 1.1 **Plans.** The plans covered by this Trust are those attached hereto as Exhibit A and B. The Company may at any time, by written notice to the Trustee, add additional plans to become subject to this Trust. Any such additional plans shall become Plans subject to this Trust only upon receipt and acceptance by the Trustee of the additional plan documents.
- 1.2 **Board of Directors.** The Board of Directors of Building Materials Holding Corporation.
- 1.3 **Compensation Committee.** The Committee established by the Board of Directors to evaluate, recommend and administer compensation programs of the Company for the Board of Directors.
- 1.4 **Trust Beneficiaries.** The Participants under the Plans covered by this agreement and/or their Beneficiaries who become eligible for the benefit payments under the Plans.
- 1.5 **Insolvency.** The Company is insolvent for purposes of this Trust if Company is unable to pay its debts as they become due or the Company is subject to insolvency or bankruptcy proceedings under federal, state or local law.
- 1.6 **Insolvency Creditors.** The general creditors of the Company as designated by a court of competent jurisdiction, or person appointed by such court having jurisdiction over Company's insolvency proceedings.

## SECTION II - TRUST FUND

- 2.1 **Company's Obligations to Participants.** The Company shall continue to be liable to the Participants to make all payments required under the terms of the Plans to the extent such payments are not made from this Trust. Distributions made from this Trust to Participants or their beneficiaries shall, to the extent of such distributions, satisfy the Company's obligations to pay benefits to Participants and their beneficiaries under the Plans.
- 2.2 **Contributions.** The Company shall make contributions to the Trust as it deems appropriate in its sole discretion to provide funds to satisfy Company's contractual obligations under the Plans. Such contributions may be in cash or other property acceptable to the Trustee.
- 2.3 **Irrevocable Trust.** The Company and the Trustee agree that the Trust hereby created has been established to pay obligations of the Company pursuant to the Plans and is subject to the rights of general creditors of the Company in the event of the Company's insolvency as defined herein, and accordingly is a grantor trust under the provisions of Sections 671 through 677 of the Internal Revenue Code of 1986, as amended (the "Code"). The Company hereby agrees to report all items of income and deduction of the Trust on its own income tax returns. It shall be impossible at any time prior to satisfaction of all liabilities with respect to Trust Beneficiaries under the Plans and to Insolvency Creditors, if any, for any part of the corpus or income of the Trust to be transferred to the Company other than such part as is required to pay taxes and administration expenses or the reimburse the Company for payments made under the Plan as herein provided. No contribution to or income of the Trust is intended to be taxable to the Participants until benefits are distributed to them.
- 2.4 **Rights to Trust Assets.** The property of the Trust shall be held separate and apart from other funds of the Company and shall be used exclusively for the purposes herein set forth. The Trust Beneficiaries shall not have any preferred claim on, or any beneficial ownership interest in, any assets of the Trust prior to the time such assets are paid to the Trust Beneficiaries as provided in Section 3 hereof, and the Trust Beneficiaries' rights to payments created under the Plans and this Trust Agreement shall be no greater than the rights of unsecured general creditors of the Company.

All Trust assets remaining after all amounts due under the Plans and all amounts then due Insolvency Creditors are paid shall be paid to the company.

2.5 **ERISA Considerations.** The Plans attached hereto as Exhibit A and B are intended to be “unfunded” and maintained “Primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees” for purposes of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”) and as such are intended not to be covered by Parts 2 through 4 of Subtitle B of Title I of ERISA. The existence of this Trust is not intended to alter this characterization of the Plans.

### SECTION III - PAYMENTS TO TRUST BENEFICIARIES

3.1 **Payments Except During Insolvency.** The Trustee shall make payments of benefits to the Trust Beneficiaries from the assets of the Trust, if and to the extent such assets are available for distribution, in accordance with the Plans, so long as the Company is not insolvent, as defined herein. Unless such insolvency is deemed to exist, the Trustee shall hold the Trust Fund exclusively to pay fees and expenses of the Trust and Plans’ benefits until all such benefits have been paid. Unless insolvency exists as herein defined, creditors of the Company shall not be paid from the Trust Fund. The Company may not hypothecate the assets of the Trust nor create any security interest in the Trust Fund in favor of any of its creditors.

3.2 **Determination of Benefits Due.** The Compensation Committee will be responsible for notifying the Trustee of amounts due to the Trust Beneficiaries and the dates such payments are due. If the Trustee has cause to believe that a payment is due and has not received notice from the Compensation Committee, the Trustee will request confirmation from the Compensation Committee and if no response is received may take such steps as Trustee deems appropriate and necessary to fulfill his obligations hereunder to determine what payment is actually due to make payments accordingly.

3.3 **Insufficient Funds in Trust.** If the property of the Trust is not sufficient to make payments under the Plans to the Trust Beneficiaries, upon notice from the Trustee to that effect, the Company shall make the balance of each such payment as it falls due.

3.4 **Facility of Payment.** Any payments made by the Trustee hereunder to the Trust Beneficiaries shall be in discharge of the Company’s obligations under the Plans, provided, however, that the Company shall remain liable to the Trust Beneficiaries for all amounts due under the Plans to the extent not paid hereunder.

### SECTION IV - INSOLVENCY

4.1 **Determination of Insolvency.** The Company shall promptly give notice to the Trustee upon becoming insolvent. The Chief Executive Officer and/or the Board of Directors of the Company and/or the Compensation Committee shall be obligated to give such notice. If the Trustee receives such notice or receives from any other person claiming to be a creditor of the Company a written allegation that the Company is insolvent, the Trustee shall independently determine whether such insolvency exists. The expenses of such determination shall be allowed as administrative expenses of the Trust.

4.2 **Suspension of Payments.** The Trustee shall cease making any payments due from the Trust Fund to the Trust Beneficiaries while it is determining the existence of insolvency. Such payments shall cease and the Trustee shall commence insolvency Administration under Section 4.5 upon receipt of any notice of insolvency as provided in Section 4.1.

4.3 **Obligation of Trustee.** The Trustee shall have no obligation to investigate the financial condition of the Company prior to receiving a notice or allegation of insolvency. The Trustee may, in all events rely on such evidence concerning the Company’s solvency as may be furnished to the Trustee which will

give the Trustee a reasonable basis for making the determination concerning the Company's solvency.

**4.4 Insolvency Administration.** During Insolvency Administration, the Trustee shall hold the Trust Fund for the benefit of the general creditors of the Company and make payments only in accordance with this Section 4.4. The Trustee shall continue the investment of the Trust Fund in accordance with Section 5.

(A) After payment of Trustee fees authorized herein, the Trustee shall make payments out of the Trust Fund only as follows:

- (i) To general creditors in accordance with instructions from a court of competent jurisdiction, or a person appointed by such court, having jurisdiction over the Company's condition of insolvency, and/or
- (ii) To the Trust Beneficiaries in accordance with instructions of such persons or entities specified in subparagraph A(i) above.

(B) The Trustee shall be a secured creditor with a priority claim to the Trust Fund with respect to its own fees and expenses.

**4.5 Termination of Insolvency Administration.** Insolvency Administration shall terminate when the Trustee determines that the Company is not insolvent, in response to a notice or allegation of insolvency under Section 4.1 or Company is no longer insolvent or a court of competent jurisdiction determines that the Company is no longer insolvent.

**4.6 Resumption of Benefits.** Upon termination of Insolvency Administration, the Trust Fund shall continue to be held for the benefit of the Trust Beneficiaries. Benefit payments due but not paid during the period of Insolvency Administration shall be made as soon as practicable.

## **SECTION V - INVESTMENT OF TRUST ASSETS**

**5.1 Types of Investments.** Except for money and other property subject to the investment responsibility of an investment manager as provided in Section 5.5 hereof, and subject to Section 5.2 the Trustee shall, in its discretion, invest and reinvest the assets of the Trust without distinction between principal and income, in any property, real, personal or mixed, wherever situated, and whether or not productive of income or consisting of wasting assets, including, without limitation, common and preferred stocks, mutual funds, common trust funds, bonds, notes, debentures, securities convertible into common stock, leaseholds, mortgages (including, without limitation, any collective or part interest in any bond and mortgage or note and mortgage), interest bearing accounts and certificates of deposit, oil, mineral or gas properties, royalties, interests or rights (including equipment pertaining thereto), equipment trust certificates, investment trust certificates, savings bank deposits, commercial paper, and insurance contracts (including those to which amounts may be deposited and withdrawn). The Trustee may invest in certificates of deposit or savings accounts which bear a reasonable interest rate in a federally insured institution which may be affiliated with the Trustee. The Trustee shall, on the direction of the Company, purchase life insurance and/or annuity contracts including group annuity contracts providing for flexible funding or similar vehicles or for the investment of assets in separate accounts, invested in any securities and other property including real estate, regardless of whether or not the insurance carrier shall have assumed any contractual or other liability as to the benefits to be provided thereunder, the value thereof, or the return therefrom. Such life insurance and/or annuity contracts shall be considered investments of the Trust Fund and, together with all rights, privileges, options and elections contained therein, shall vest in the Trustee but shall be exercised, assigned or otherwise disposed of as directed by the Company. The insurance carrier under any such contract shall have full responsibility for the management and control of the assets held thereunder.

- 5.2 Investment Policies.** The Board of Directors of the Company shall have the right at any time and in its discretion to formulate investment policies and standards for the investment of the Trust Fund. Such policies and standards may include, among other things, the percentage of the Trust Fund which may be invested in fixed income securities, the percentage of the Trust Fund which may be invested in common stocks, and the percentage of the Trust Fund which may be invested in the securities of any one company. Such policies may be changed from time to time by resolution of the Board.
- 5.3 Investment Funds.** The Trustee shall maintain separate investment funds as the Company may direct. Contributions to the Trust shall be allocated among the funds by the Trustee in accordance with the directions of the Company. Each separate investment fund shall be invested only in types of investments consistent with guidelines established by the Company for such fund. Pending such investment and reinvestment, or transfers as herein provided, the Trustee may temporarily invest and reinvest the funds in any marketable short and medium term fixed income securities, United States Treasury Bills, other short and medium term government obligations, commercial paper, other money market instruments and part interest in any one of more of the foregoing, or may maintain cash balances consistent with the liquidity needs of the Plans as communicated to the Trustee by the Company. In addition, the Trustee shall have full power and authority to invest and reinvest all or any part of any investment fund through the medium of any pooled investment fund or group trust which is invested principally in property of the kind authorized for investment of the respective investment funds. To the extent of investment of the Trust's assets in such a pooled fund or group trust, the terms of the instrument establishing such pooled fund or group trust are made a part hereof as fully as if set forth at length herein. The Trustee shall make transfers between each of the funds in accordance with the directions of the Company and may dispose of such investments in the particular investment fund as may be necessary to enable it to make any such transfer.
- 5.4 Powers of the Trustee.** The Trustee shall be authorized and empowered, in its discretion (except as provided in Section 5.5) to exercise any and all of the following rights, powers and privileges with respect to any cash, securities or other properties held by the Trustee in Trust hereunder:
- (A) To sell any such property at such time and upon such terms and conditions as the Trustee deems appropriate. Such sales may be public or private, for cash or credit, or partly for cash and partly for credit, and may be made without notice of advertisement of any kind.
  - (B) To exchange, mortgage, or lease any such property and to convey, transfer or dispose of any such property on such terms and conditions as the Trustee deems appropriate.
  - (C) To grant options for the sale, transfer exchange or disposal of any such property.
  - (D) To exercise all voting rights pertaining to any securities and to consent to or request any action on the part of the issuer of any such securities and to give general or special proxies or powers of attorney with or without power of substitution.
  - (E) To consent to or participate in amalgamations, reorganizations, re-capitalizations, consolidations, mergers, liquidations, or similar transactions with respect to any securities, and to accept and to hold any other securities issued in connection therewith.
  - (F) To exercise any subscription rights or conversion privileges with respect to any securities held in the Trust Fund.
  - (G) To collect and receive any and all money and other property of whatsoever kind or nature due or owing to belonging to the Trust Fund and to give full discharge and acquaintance therefore and to extend the time of payment of any obligation at any time owing to the Trust Fund, as long as such extension is for a reasonable period, and continues at reasonable interest.
  - (H) To cause any securities or other property to be registered in, or transferred to, the individual name of the Trustee or in the name of one or more of its nominees, or one or more nominees

of any system for the centralized handling of securities, or it may retain them unregistered and in form permitting transferability by delivery, but the books and records of the Trust shall at all times show that all such investments are a part of the Trust Fund.

- (I) To organize under the laws of any State a Company for the purpose of acquiring the holding title to any property which it is authorized to acquire under this Trust Agreement and to exercise with respect thereto any or all of the powers set forth in this Trust Agreement.
- (J) To manage, operate, repair, improve, develop, preserve, mortgage or lease for any period any real property or any oil, mineral or gas properties, royalties, interest or rights held by it directly or through any Company, either alone or by joining with others, using other Trust assets for any of such purposes; to modify, extend, renew, waive or otherwise adjust any or all of the provisions of any such mortgage or lease and to make provision for amortization of the investment in or depreciation of the value of such property.
- (K) To settle, compromise, or submit to arbitration any claims, debts or damages due or owing to or from the Trust; to commence or defend suits or legal proceedings whenever, in its judgment any interest of the Trust requires it; and to represent the Trust in all suits or legal proceedings in any court of law or equity or before any other body or tribunal, insofar as such suits or proceedings relate to any property forming part of the Trust Fund or to the administration of the Trust Fund.
- (L) To borrow money from others for the purposes of the Trust, but the Trustee shall not be authorized to borrow any money from its banking department or from the Company or any subsidiary or associated company.
- (M) The Trustee may, for the purpose of investing in and holding title to real or personal property or part interests therein located outside the state of Idaho, appoint one or more individuals or Companies as a co-trustee or subtrustee or join with one or more individuals or Companies (including itself) in the establishment of one or more than one or all of the powers, authorities, discretions, duties and functions of the Trustee under this Trust Agreement and the amendments hereto as shall be designated in the instrument establishing such subtrust including without limitation by the reference thereto power to receive and hold property, real or personal, or part interest therein, oil, mineral or gas properties, royalty interests or rights, including equipment pertaining thereto, leaseholds, mortgages and other interests in realty, situated in any state in which the co-trustee or subtrustee is authorized to act as trustee and pay the reasonable expenses and compensation of such co-trustee or subtrustee.
- (N) To purchase, hold and sell interests or units of participation in any collective or common trust fund established by the Trustee, including any such funds which may be established in the future.
- (O) Generally to do all acts, whether or not expressly authorized, which the Trustee deems necessary or desirable, but acting at all times according to the principles expressed in Section 9.

**5.5 Investment Responsibilities.** The Company may (but need not) appoint an Investment Manager or Managers to manage (including the power to acquire and dispose of) all or any of the assets of the trust Fund. In the event of any such appointment, the Company shall establish the portion of the assets of the Trust Fund which shall be subject to the management of the Investment Manager and shall so notify the Trustee in writing. Likewise, the Company may establish that all or a portion of the assets of the Trust Fund shall be subject to the investment jurisdiction of the Company itself (through the Compensation Committee or other designee) and shall advise the Trustee of such determination. With respect to such assets over which either an Investment Manager or the Company has investment responsibility, the Investment Manager or the Company shall possess all of the investment and administrative power and responsibilities granted to the Trustee hereunder, including the power to

hold the indicia of ownership of any investment in a collective trust fund, and the Trustee shall invest and reinvest such assets pursuant to the written directions of the Investment Manager or the Company. If the Company so directs, an Investment Manager shall have the power to acquire and dispose of assets in the name of the Trust. The investment jurisdiction of the Company may be exercised in any manner consonant with its duties as a fiduciary including:

- (A) directing the Investment Manager or the Trustee that certain investments or types of investments be made or liquidated;
- (B) directing the Investment Manager or the Trustee that certain investments not be made;
- (C) requiring that the Trustee or the Investment Manager obtain approval prior to acquiring or disposing of any asset. The Trustee shall have no investment responsibility with respect to the assets subject to the investment responsibility of an Investment Manager or the Company, and shall have no duty to inquire into the direction of such Investment Manager or the Company, to solicit such directions nor to review and follow the investments made pursuant to any such direction, other than to the extent provided by law.

## **SECTION VI - RESPONSIBILITY OF TRUSTEE**

**6.1 Accounting.** The Trustee shall keep accurate and detailed records of all investments, receipts, disbursements and all other transactions required hereunder. All such accounts, books and records shall be open to inspection at all reasonable times by the Company and by the Trust Beneficiaries. Within 60 days following the close of each calendar year and within 60 days after the removal or resignation of the Trustee, the Trustee shall deliver to the Company and the Trust Beneficiaries a written account of its administration of the Trust during such year or during the period from the close of the last preceding year to the date of such removal or resignation, setting forth all investments, receipts, disbursements and other transactions effected by the Trustee.

### **6.2 General Responsibilities.**

- (A) The Trustee shall act with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims provided, however, that the Trustee shall have no liability for any action taken pursuant to a direction given by the Company contemplated by and complying with the terms of the Trust Agreement.
- (B) The Trustee shall not be responsible for determining the required amount or frequency of contributions made by Company nor shall the Trustee be responsible for the adequacy of the Trust Fund to meet and discharge all liabilities under the Plans.
- (C) The Trustee shall not be required to undertake or to defend any litigation arising in connection with this Trust Agreement, unless it is first indemnified by the company against its costs, and the Company hereby agrees to indemnify the Trustee for such costs.
- (D) The Trustee may consult with legal counsel with respect to any of its duties or obligations hereunder and shall be fully protected in acting or refraining from action in accordance with such advice of counsel.
- (E) The Trustee may hire agents, accountants, actuaries and financial consultants to assist it in the performance of its duties hereunder.
- (F) The Trustee shall have, without exclusion, all powers conferred on Trustees by applicable law unless expressly provided otherwise herein.

**6.3 Trustee Fees and Expenses.** The Trustee shall be entitled to be reimbursed for all expenses and receive such reasonable compensation for its services hereunder as shall be agreed upon, from time to time, by the Company and the Trustee. Such expenses, compensation and fees shall be payable by the Company. If such expenses, compensation and fees are not so paid, they shall be paid out of the Trust Fund, and shall be a charge against such Trust Fund until paid. The Company shall be obligated to reimburse the Trust Fund for any such expenses, compensation and fees paid out of the Trust Fund.

## **SECTION VII - OTHER TRUSTEE MATTERS**

**7.1 Resignation and Removal of Trustee.** The Trustee may be removed upon 30 days written notice to the Trustee at any time by the Company. The Trustee may resign at any time, upon 30 days written notice to the Company. In the event of such resignation or removal, a new corporate Trustee shall be appointed by the Company which shall be independent and not subject to the control of either the Company or the Trust Beneficiaries. Notwithstanding the foregoing, an individual may be appointed, serve, resign, or be removed as a successor Trustee in the same manner as a corporate trustee, provided that in no event may an individual Trustee be a Participant, or a spouse thereof. Any Trustee hereunder that is removed, or any Trustee that resigns hereunder, is authorized, however, to reserve such sum of money, as to it may seem advisable, for the payment of any outstanding taxes or other liabilities of the Trust Fund and its reasonable fees and expenses in connection with the settlement of its accounts. Any balance of such reserve remaining after the payment of such taxes, liabilities, fees and expenses shall be paid over to the successor Trustee.

**7.2 Exoneration and Indemnification of Trustee.**

(A) The Trustee has no liability to any Trust Beneficiary or other party interested herein regarding the income tax consequences to any such person under the terms of the Plans, under the terms of this Trust Agreement as they affect the Plans, or otherwise occurring as a result of this Trust Agreement or any actions pertaining hereto. The company shall indemnify and hold harmless the Trustee, individually and as Trustee, from any costs, claims, losses, demands or liabilities (including reasonable attorney's fees incurred in defending against such matters) incurred by or brought against the Trustee in respect of any such actual or asserted income tax liability of any such interested party.

(B) The Company shall indemnify and hold harmless the Trustee, individually and as Trustee, against all costs, claims, losses, demands or liabilities (including reasonable attorney's fees in defending against such claims), incurred by or brought against the Trustee in respect of the acts, omissions, transactions, duties, obligations or responsibilities which the Trustee performs or undertakes on the direction of the Investment Manager, the Company or any other fiduciary given the power to direct the Trustee. In addition, such indemnity should include all claims and liabilities arising from any breach of fiduciary responsibility by a fiduciary other than the Trustee, unless the Trustee knowingly participates in or knowingly undertakes to conceal, an act or omission of such other fiduciary. The performance by the Trustee of trades, custody, reporting, recording and bookkeeping with respect to assets managed by another fiduciary shall not be deemed to give rights to any participation or knowledge on the part of the Trustee. The undertakings of this section shall survive the amendment or termination of this agreement of the Company and Trustee under the laws of the State of Idaho.

**SECTION VIII – MISCELLANEOUS**

- 8.1. **Amendment.** This Trust Agreement may not be amended except by a written instrument executed by the Trustee and the Company and consented to by a simple majority of the then Participants.
- 8.2. **Duration.** This Trust shall continue in effect and be irrevocable with respect to amounts contributed to it until all assets of the trust fund are exhausted through distribution of benefits to the Participants in accordance with the Plans, payment to general creditors in the event of insolvency, payment of fees and expenses of the Trustee, and return of remaining funds to the Company.
- 8.3. **Severability.** Any provision of this Trust Agreement prohibited by law shall be ineffective to the extent of any such prohibition without invalidating the remaining provisions hereof.
- 8.4. **Non Alienation.** To the extent permitted by law, benefits payable to the Trust Beneficiaries under this Agreement may not be assigned, alienated, or subject to attachment, garnishment, levy execution or any other legal or equitable process and no benefit actually paid to the Trust Beneficiaries shall be subject to any claim for repayment by the Company or the Trustee. The Trust Beneficiaries may not assign or transfer any interest in the benefits due hereinafter and shall have no direct interest in any Trust asset.
- 8.5. **Governing Law.** This Trust Agreement shall be construed and administered in accordance with the laws of the State of Idaho, except as preempted by ERISA.
- 8.6. **Taxes.** The Company shall from time to time pay taxes of any and all kinds whatsoever which at any time are lawfully levied or assessed upon or become payable in respect of the Trust Fund, the income or any property forming a part thereof, or any security transaction pertaining thereto. To the extent that any taxes levied or assessed upon the trust Fund are not paid by the Company or are contested by the Company, the Trustee shall pay such taxes out of the trust Fund. If requested by the company, the Trustee shall, at the company's expense, contest the validity of such taxes in any manner deemed appropriate by the Company or its counsel, but only if it has received an indemnity bond or other security satisfactory to it to pay an expenses of such contest.

IN WITNESS WHEREOF, the foregoing Trust Agreement has been duly executed by the Company and the Trustee.

**Building Materials Holding Corporation**

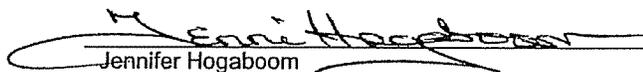
**U. S. Bank Institutional Trust and Custody, Idaho**



Paul S. Street  
Sr. Vice President, Chief Administrative Officer,  
General Counsel and Corporate Secretary

8-12-05

Date



Jennifer Hogaboom  
Vice President & Relationship Manager

8/16/05

Date



Steven H. Pearson  
Sr. Vice President - Human Resources

8-9-2005

Date

**EXHIBIT A**  
**EXECUTIVES' SUPPLEMENTAL RETIREMENT INCOME PLAN**  
**"NEW PLAN"**

**BUILDING MATERIALS HOLDING CORPORATION**

**EXECUTIVES' SUPPLEMENTAL  
RETIREMENT INCOME PLAN**

(Effective as of January 1, 2005)

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**BUILDING MATERIALS HOLDING CORPORATION  
2005 EXECUTIVES' SUPPLEMENTAL RETIREMENT INCOME PLAN**

Building Materials Holding Corporation, a Delaware corporation (the "Company") hereby establishes an unfunded "supplemental executive retirement plan" ("SERP") for the purpose of providing deferred compensation for a select group of management and highly compensated employees in compliance with Section 409A of the Internal Revenue Code, as amended (the "Code").

**RECITALS**

WHEREAS, the Participants identified by the Compensation Committee of the Board of Directors of the Company, or any other committee designated by the Board of Directors of the Company to administer the Plan in accordance with Article 8 of the Plan (the "Committee"), as eligible to participate in the Plan (each a "Participant," or collectively the "Participants") provide services to the Company; and

WHEREAS, the Company desires to establish an unfunded deferred compensation plan in accordance with Code Section 409A and related Regulations and the Participants desire the Company to pay certain deferred compensation and/or related benefits to or for the benefit of the Participants, or a designated Beneficiary, or both;

NOW, THEREFORE, the Company hereby establishes this supplemental executive retirement plan to take the place of the prior Executives' Supplemental Retirement Income Plan with respect to any compensation earned on or after January 1, 2005.

**ARTICLE 1. DEFINITIONS**

- 1.1 **Account** means the separate account established under the Plan and the Trust for each participating Participant comprised of Company Contributions to the Plan plus Interest Credits. Interest Credits are applied to the Account before adding the Company Contributions for the current year.
- 1.2 **Base Salary** means a Participant's regular annual compensation for a Plan Year, determined as of the first day of that year, excluding bonuses, commissions, overtime, incentive payments, non-monetary awards, and other special compensation, before reduction for compensation deferred pursuant to all qualified and non-qualified plans of the Company. For any Participant whose compensation is composed of a Base Salary plus commissions, and whose Base Salary is less than \$50,000, the Participant's Base Salary will be deemed to equal \$50,000.
- 1.3 **Beneficiary** means the beneficiary designated by the Participant to receive the Participant's deferred compensation benefits in the event of his or her death.
- 1.4 **Board of Directors** means the Board of Directors of the Company.
- 1.5 **Change in Control** means the occurrence of any of the following, limited to the extent any such occurrence is consistent with the definition of a "change in control" or similar event described in Code Section 409A or related Regulations:

- (a) when any “person,” as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934 as amended (“Exchange Act”) (other than the Company, a Subsidiary or a Company benefit plan, including any trustee of such plan acting as trustee) is or becomes the “beneficial owner” (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company representing fifty percent (50%) or more of the combined voting power of the Company’s then outstanding securities, where such person’s beneficial ownership of the Company’s securities was not initiated by the Company or approved by the Company’s Board of Directors; or
- (b) the occurrence of a transaction requiring shareholder approval, and involving the sale of all or substantially all of the assets of the Company or the merger of the Company with or into another corporation, where such merger was not initiated by the Company and in which Company is not the surviving parent entity; or
- (c) a change in the composition of the Board of Directors of the Company in any 12-month period, as a result of which fewer than a majority of the directors are Incumbent Directors. “Incumbent Directors” means directors who are elected, or nominated for election, to the Board of Directors of the Company with the affirmative votes of at least a majority of the Incumbent Directors at the time of such election or nomination (but shall not include an individual whose election or nomination is in connection with an actual or threatened proxy contest relating to the election of directors to the Company); or
- (d) any liquidation or dissolution of the Company.

1.6 **Code** means the Internal Revenue Code of 1986, as amended from time to time. Reference to any Code section shall include any successor or comparable provision of the Code or application Regulations.

1.7 **Committee** means the Compensation Committee of the Board of Directors of the Company or any other committee designated by the Board of Directors of the Company to administer the Plan in accordance with Article 8.

1.8 **Company** means Building Materials Holding Corporation, a Delaware Corporation, any successor organization thereto, and any corporation or other entity that must be aggregated with Building Materials Holding Corporation pursuant to the Code or Regulations.

1.9 **Company Contributions** means the Company’s contribution to a Participant’s Account as determined in accordance with Section 3.1.

1.10 **Disability** means—

the condition of being unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, or

by reason of suffering from any medically determinable physical or mental impairment that is expected to result in death or can be expected to last for a continuous period of not less than 12 months, receiving income replacement benefits for a period of not less than 3 months under an accident and health plan covering employees of the Company.

- 1.11 **Early Retirement Date** means the date on which a Participant attains age 60 with at least 15 Years of Service or attains age 55 with at least 25 Years of Service.
- 1.12 **Effective Date** means January 1, 2005.
- 1.13 **Executive** means an Executive or highly compensated individual of the Company or of any division, subsidiary or affiliate of the Company who is eligible to become a Participant in the Plan under Section 3.1.
- 1.14 **Fiscal Year** means the fiscal year of the Company as established from time to time.
- 1.15 **Hardship** refers to a distribution made on account of an unforeseeable immediate and heavy financial need of the Participant and that is necessary to satisfy that financial need in accordance with Code Section 409A and the related Regulations.
- (a) **Amount.** The amounts distributed with respect to an emergency cannot exceed the amounts necessary to satisfy such emergency plus amounts necessary to pay taxes reasonably anticipated as a result of the distribution, after taking into account the extent to which such hardship is or may be relieved through reimbursement or compensation by insurance or otherwise or by liquidation of the Participant's assets (to the extent the liquidation of such assets would not itself cause severe financial hardship).
- (b) **Circumstances.** Whether a Participant has an immediate and heavy financial need shall be determined by the Committee based on all relevant facts and circumstances, and shall refer to a severe financial hardship to the Participant resulting from an illness or accident of the Participant, the Participant's spouse, or a dependent (as defined in Code Section 152(a)) of the Participant; loss of the Participant's property due to casualty; or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant.
- 1.16 **Interest Credit** means earnings credited to a Participant's Account as determined in accordance with Section 3.2.
- 1.17 **Key Employee** means—
- (a) an officer of the Company having an annual compensation greater than \$130,000 (as adjusted),
- (b) a 5% owner of the Company, or

- (c) a 1% owner of the Company having annual compensation from the Company of more than \$150,000.

For purposes of subsection (a), no more than 50 employees (or, if lesser, the greater of 3 employees or 10% of the employees) shall be treated as officers

- 1.18 **Normal Retirement Date** means the date on which the Participant attains age 65 or the date specified in his or her Participation Agreement.
- 1.19 **Participant** means a person who is selected to participate in the Plan and has satisfied the conditions of Section 2.1.
- 1.20 **Participation Agreement** means the election to participate in the Plan under certain terms as completed by a Participant.
- 1.21 **Plan** means the Executives' Supplemental Retirement Income Plan of Building Materials Holding Corporation, as amended from time to time.
- 1.22 **Regulations** means the rules, regulations, interpretations and procedures promulgated under the Code, as modified from time to time.
- 1.23 **Separation from Service** means the termination of the Participant's Service prior to his Normal Retirement Date. A Participant who is on temporary leave of absence, whether with or without pay, shall not be deemed to have terminated Service. "Separation from Service" shall be interpreted in accordance with the meaning of "separation from service" or similar term under Code Section 409A and related Regulations.
- 1.24 **Service** means the Participant's service with the Company that is not interrupted or terminated. The Committee, in its sole discretion, may determine whether Service shall be considered interrupted or terminated in any circumstance, including (but not limited to) in the case of any leave of absence approved by the Company, including sick leave, military leave or any other personal leave.
- 1.25 **Trust** or **Trust Agreement** means the Trust Agreement applicable to the Plan, as amended from time to time, entered into between the Company and the Trustee to carry out the provisions of the Plan.
- 1.26 **Trust Fund** means the cash and other assets and/or properties held and administered by Trustee pursuant to the Trust to carry out the provisions of the Plan.
- 1.27 **Trustee** means the designated Trustee acting at any time under the Trust.
- 1.28 **Year of Service** means any 12-consecutive-month period in which a Participant is in Service, commencing with the Participant's date of hire, as determined by the Committee in its sole discretion.

## ARTICLE 2. ELIGIBILITY

- 2.1 **ELIGIBILITY REQUIREMENTS.** In order to participate in the Plan, the Executives of the Company selected to participate by the Company must—
- belong to a select group of highly compensated or management employees within the meaning of ERISA and related Regulations;
  - execute a Participation Agreement in the form provided by the Committee; and
  - if the Company desires to purchase key man life insurance on the Participant's life for its sole benefit, cooperate so that the Company may obtain a valid insurance contract.
- 2.2 **NON-COMPETITION REQUIREMENT.** If a Participant has a Separation from Service with the Company and, without the specific written consent of the Company, accepts a position of employment with a competitor of the Company within 12 months of Separation from Service, Plan benefits will be limited to the lesser of (a) the Retirement Account Balance at the date of termination, and (b) the sum of Company Contributions attributable to the Participant without interest or other appreciation. If, in the sole discretion of the Committee, conditions warrant, the Committee may grant permission in the form of a general waiver rather than applied to a specific position.

## ARTICLE 3. DEFERRED COMPENSATION

- 3.1 **COMPANY CONTRIBUTIONS.**
- (a) ***Allocation to Plan.*** The Company Contributions allocated to the Plan shall be determined as follows:
    - (1) Subject to subsection (b), the Company shall allocate a portion of a percentage of after-tax earnings of the Company; as determined from time to time by the Board of Directors in its sole discretion. As of the Effective Date, this amount is 65% of 5.5% of after-tax earnings.
    - (2) The amounts to be allocated to the Plan may be changed by the Board of Directors at any time. The method of allocation of the funds among Participant Accounts may be changed as deemed necessary to maintain equity among Participants, as determined by the Committee with the approval of the Board of Directors. Participants will be notified of changes as soon as practicable after the change is adopted.
  - (b) ***Allocation Among Participants.*** The benefit allocation to each Participant's Account in accordance with the following calculation:
    - (1) The portion of the Base Salary of each Participant that is in excess of \$40,000 will be added to obtain the total of all Participants' Base Salaries, each only with respect to the portion in excess of \$40,000, which shall be the denominator.

- (2) The portion of the Base Salary of each Participant that is in excess of \$40,000 will be divided by the denominator calculated in subsection (b)(1) to obtain a percentage, calculated to the nearest one-hundred thousandth.
- (3) A Participant's allocation to the Plan shall equal the percentage obtained in subsection (b) multiplied by the Company Contributions determined in Section 3.1, up to a maximum of 30% of the Participant's Base Salary, or such other percentage as determined by the Committee from time to time.

3.2 **INTEREST CREDITS AND METHOD OF PAYMENT.** Subject to Article 4, Interest Credits shall be determined according to the Participant's Years of Service and the applicable method of payment, as determined under this section.

- (a) ***Prior to Commencement of Payment.*** The Company shall credit each Participant's Account with a simple interest rate, expressed as an annual rate, as of January 1 of each year, which rate may be changed by the Committee from time to time. As of the Effective Date, with respect to Accounts that have not yet commenced payment under Article 4, the rates applicable to Account accruals are as follows:

Participant Classification	Years of Service	Interest Credit Rate
Active Employees	—	7.0%
Inactive Employees	Fewer than 5	0.0%
	At least 5, but fewer than 10	1.5%
	At least 10, but fewer than 15	3.0%
	At least 15, but fewer than 20	4.0%
	At least 20, but fewer than 25	5.0%
	25 or more	6.0%

The rates will be reviewed by the Committee each February. Any changes will be effective for the January 1 balance of the same year.

- (b) ***After Commencement of Payment.*** After the payment of installments has commenced under Article 4, the Company shall continue to credit each affected Participant's Account with a simple interest rate, expressed as an annual rate, as of January 1 of each year. As of the Effective Date, the rates applicable to the method of payment elected are as follows:

- (1) ***General Rule.*** Subject to subsection (b)(2), the Interest Credit rate applicable to each method of payment shall be determined by the number of Years of Service completed by the Participant prior to his or her Separation from Service and the method of payment elected by the Participant pursuant to Section 3.3, as follows:

Participant Classification or Event	Monthly Installment Period Available	Corresponding Interest Credit Rate
Participants having a Separation from Service— – after completing <i>at least</i> 25 Years of Service, or – after the Participant’s Normal Retirement Date	15 years	9.0%
	10 years	8.0%
– after completing <i>at least</i> 25 Years of Service	5 years	7.0%
	15 years	6.0%
– prior to completing 25 Years of Service	10 years	5.0%
	5 years	4.0%

- (2) *Disability or Death.* In the event of the Participant’s Disability or death prior to the commencement of Plan payments, the Participant’s Account shall be payable in monthly installments over 5 years, and the applicable Interest Credit rate shall be determined as follows:

Participant Classification or Event	Monthly Installment Period Available	Corresponding Interest Credit Rate
Participant’s Disability or death— – while in Service, or – after completing <i>at least</i> 25 Years of Service	5 years	9.0%
	5 years	6.0%

- (c) *Interest Calculations.* The computations of future values, present values or installment payments shall use the “end of period” assumption for the first payment.

### 3.3 ELECTION OF PAYMENT TERMS.

- (a) *Initial Election – Method of Distribution.* By the later of December 31, 2005 and the date that is 30 days after becoming eligible for the Plan, or such later date as permitted under Code Section 409A, each Participant (or Beneficiary) will submit an election of the method of distribution applicable to the

Participant's entire Account. Participants may choose among the following methods of distribution in accordance with the form provided by the Committee:

- (1) a lump sum payment, or
- (2) monthly installments over a designated period of 5, 10 or 15 years, which election shall affect the Interest Credits that may be credited to the Participant's Account in accordance with Section 3.2.

In the event the Participant fails properly to designate the method of distribution, subject to a subsequent election made under subsection (c), such amounts shall be payable in the form of monthly installments over 5 years, beginning as of the Participant's Early Retirement Date, if the Participant is eligible, or if not, the Participant's Normal Retirement Date.

- (b) ***Subsequent Elections to Change Timing or Method of Distribution.*** A Participant (or Beneficiary) may not accelerate the time or schedule of any payment under the Plan, except as provided in Regulations. Any change to an election regarding the timing or method of distribution must satisfy the following conditions to be effective:

- (1) the subsequent election to delay a payment must be made no later than 12 months prior to the date of the first scheduled payment; and
- (2) the first payment must be deferred for a period of at least 5 years from the date the payment would otherwise have been made.

If such subsequent election does not satisfy the conditions specified in this subsection, the prior election shall be used to determine the timing and form of payment. The last effective election accepted and acknowledged by the Committee shall govern the payment of the Participant's Account. Elections under this subsection will not affect the timing of distributions made on account of Disability, death or Hardship except as provided in Article 4.

#### **ARTICLE 4. PAYMENT OF BENEFITS**

- 4.1 **PAYMENT UPON DISTRIBUTION EVENT.** Subject to the provisions of this article, the Company shall commence distributions in accordance with the terms of a Participant's elections under Article 3 upon the earliest to occur of the following events:

- (a) upon the Participant's Separation from Service following his or her Early Retirement Date;
- (b) upon the Participant's Separation from Service following his or her Normal Retirement Date;
- (c) upon such other date as specified by the Participant in the applicable Participation Agreement, provided that such date is one of the following:

- (1) a specific date, including a specified age of the Participant,
- (2) the beginning of the Plan Year following the passage of a specified number of years, or
- (3) the Participant's Separation from Service, or, in the case of Key Employees, a date that is 6 months after the date of Separation from Service (or, if earlier, the Participant's date of death), if the Separation from Service is later than the Participant's Early Retirement Date.

4.2 **CONDITIONS ON PAYMENT.** No payment shall be due under the Plan if (a) the Participant has a Separation from Service prior to his Normal Retirement Date by reason of fraudulent or dishonest conduct, or (b) the Participant has violated the non-compete provisions of Section 2.2, each as determined according to the Committee in its sole discretion. In the case of a Participant who has had a Separation from Service prior to his Normal Retirement Date by reason of fraudulent or dishonest conduct, and who has not violated the non-compete provisions of Section 2.2, the Committee may, in its sole discretion, provide for payment to the Participant in a lump sum equal to the sum of the Company Contributions attributable to the Participant without Interest Credits.

4.3 **WITHDRAWAL FOR HARDSHIP.** A Participant may apply for distributions from his or her Account to the extent that the Participant demonstrates to the reasonable satisfaction of the Committee that he or she needs the funds due to Hardship. The Committee may deny a withdrawal for Hardship for any reason or approve a upon any terms permitted under the Code and Regulations, as determined in its sole discretion.

4.4 **PAYMENT FOLLOWING A CHANGE IN CONTROL.**

(a) ***Benefits Following an Approved Change of Control.***

- (1) In the event a Participant's has a Separation from Service for any reason within a 5-year period following a Change of Control, and the transaction constituting the Change of Control was approved in writing prior to its consummation by a majority vote of the members of the Company's incumbent Board of Directors (an "Approved Change of Control"), then the Participant shall be entitled to receive monthly installment payments of his or her Account over a period of 5 years applying a 9% Interest Credit during the period of payment.
- (2) Following an Approved Change of Control, any Participant (or Beneficiary) already receiving benefit payments under the Plan shall continue to receive benefit payments under the Plan for the lesser of—
  - (A) the remainder of the current installment schedule, or
  - (B) a 5-year period commencing upon the consummation of the Approved Change of Control.

(b) ***Benefits Following an Unapproved Change of Control.***

- (1) In the event a Participant's has a Separation from Service for any reason within a 5-year period following a Change of Control, and the Change of Control was *not* approved in writing prior to its consummation by a majority vote of the members of the Company's incumbent Board of Directors (an "Unapproved Change of Control"), then the Participant shall be entitled to receive payment of his or her Account balance in a lump sum payment.
- (2) Following an Unapproved Change of Control, any Participant (or Beneficiary thereof) already receiving payments under the Plan shall receive the remainder of his or her benefit under the Plan in the form of a lump sum payment.

(c) ***Delayed Payment.*** In the case of a Key Employee, any payment made on account of a Separation of Service following a Change in Control shall not be made until a date that is 6 months after the date of Separation from Service.

4.5 **PAYMENT UPON DISABILITY.** Upon a Participant's Disability, as determined by the Committee in its sole discretion, prior to the date when payment of his or her Accounts would otherwise commence under Article 3, the Participant will be entitled to receive all amounts credited to the Accounts as of the date of Disability according to the method of payment elected by the Participant.

4.6 **PAYMENT UPON DEATH.** Upon a Participant's Separation from Service by reason of death, prior to the date when payment of his or her Accounts would otherwise commence, the Participant's Beneficiary will be entitled to receive all amounts credited to the Accounts of the Participant as of the date of death according to the method of payment elected by the Participant, or to the extent permissible under Code Section 409A, according to the method of payment elected by the Beneficiary. Upon the death of the Participant following the commencement of distribution, but prior to complete distribution of the entire balance of the Participant's Accounts, the balance of the Participant's Accounts on the date of death shall continue to be paid in the elected form of payment to the Participant's Beneficiary; provided, however, that if the Participant has received at least all of the scheduled monthly installments prior to his or her death, no further benefits shall be due under the Plan.

4.7 **DESIGNATION OF BENEFICIARY.** The Participant may designate a Beneficiary or Beneficiaries to receive any amount due hereunder by the Participant by written notice thereof to the Company at any time prior to his or her death and may revoke or change the Beneficiary so designated without the Beneficiary's consent by written notice delivered to Company at any time and from time to time prior to the Participant's death. If the Participant is married and a resident of a community property state, one half of any amount due under the Plan which is the result of an amount contributed to the Plan during the Participant's marriage is the community property of the Participant's spouse and the Participant may designate a Beneficiary or Beneficiaries to receive only the Participant's one-half interest. If the Participant shall have failed to designate a

Beneficiary, or if no such Beneficiary shall survive him, then such amount shall be paid to his or her estate. Designations of Beneficiaries shall be in the form provided by the Committee.

- 4.8 **CASH-OUT OF SMALL ACCOUNTS.** Upon the Participant's Separation from Service, if the Participant's Account balance as of such date is less than \$10,000, as determined by the Committee, the Company shall make a lump sum distribution to the Participant following his or her Separation from Service; provided that, in the case of a Key Employee, payment shall not be made prior to the date that is 6 months after the date of his or her Separation from Service.
- 4.9 **ADMINISTRATION OF PAYMENTS.** Distribution of the lump sum or the first installment shall be made or commence within 45 days following the date of the distribution event or the proper identification of the Beneficiary, if later, as applicable. Subsequent installments, if any, shall be made on the first day of each month following the first installment as determined by Company. The amount of each installment shall be calculated by dividing the Account balance as of the date of the distribution by the number of installments remaining pursuant to the Participant's distribution election. Each such installment, if any, shall take into account Interest Credits credited to the balance of the Account remaining unpaid.
- 4.10 **PERMITTED ACCELERATION OF PAYMENTS.** To the extent permitted by Code Section 409A and related Regulations, the Company may, in the sole discretion of the Committee, commence distribution to Participant, Participant's Beneficiary or other appropriate payee the portion of Participant's Account authorized for distribution in accordance with Code Section 409A and related Regulations, including the following:
- (a) amounts payable to an individual other than the Participant under a domestic relations order approved by the Committee in its sole discretion;
  - (b) de minimis cashout payments that result in the termination of the entirety of a Participant's interest in the Plan, if the payment is made on or before the later of December 31 of the Plan Year in which occurs the Participant's Separation from Service or the date 2½ months after the Participant's Separation from Service and the payment is not greater than \$10,000. Such an amendment may be made with respect to previously deferred amounts under the plan as well as amounts to be deferred in the future; and
  - (c) payment to Participant to pay the Federal Insurance Contributions Act tax imposed under Code Section 3101 and 3121(v)(2) on Eligible Compensation deferred under the Plan, grossed up as permitted under applicable Regulations.
- 4.11 **COMPANY DISCRETION TO DECELERATE PAYMENTS.** To the extent permissible under Code Section 409A, the Committee, in its sole discretion, may determine to delay, decelerate or temporarily suspend payments under the Plan in consideration of the contractual limitations placed on insurance contracts used to pay Plan benefits, the liquidity of investments used to pay Plan benefits, the need to preserve capital to pay Plan benefits, or other factors as determined by the Committee. The Committee shall

exercise any such discretion in compliance with Code Section 409A and related Regulations.

#### ARTICLE 5. TRUST

- 5.1 **ACCOUNTS.** The Company shall establish separate Accounts for each Participant who participates in the Plan. No special fund shall be established nor shall any note or security be issued by the Company with respect to a Participant's Accounts.
- 5.2 **PARTICIPANTS' RIGHTS UNSECURED.** The right of the Participant or his or her Beneficiary to receive a distribution hereunder shall be an unsecured claim against the general assets of the Company, and neither the Participant nor his or her Beneficiary shall have any rights in or against any amount credited to his or her Account or any other specific assets of the Company, except as otherwise provided in the Trust. Nothing contained in the Plan, and no action taken pursuant to its provisions, shall create or be construed to create a trust of any kind or a fiduciary relationship between the Plan and the Company or any other person.
- 5.3 **TRUST AGREEMENT.** The Company may establish the Trust for the purpose of retaining assets set aside by the Company pursuant to the Trust Agreement for payment of all or a portion of the amounts payable pursuant to the Plan. Any benefits not paid from the Trust shall be paid solely from the Company's general funds, and any benefits paid from the Trust shall be credited against and reduced by a corresponding amount the Company's liability to the Participants under the Plan. No special or separate fund, other than the Trust Agreement, shall be established and no other segregation of assets shall be made to assure the payment of any benefits hereunder. All Trust Funds shall be subject to the claims of general creditors of the Company in the event the Company is insolvent (as that term is defined in the Trust Agreement). The obligations of the Company to pay benefits under the Plan constitute an unfunded, unsecured promise to pay and Participants shall have no greater rights than general creditors of the Company. Trust assets shall not, at any time, be located outside of the United States or be transferred outside of the United States, whether or not such assets are available to satisfy claims of general creditors.

#### ARTICLE 6. AMENDMENT AND TERMINATION

The Committee shall have the right to amend the Plan at any time and from time to time, including a retroactive amendment. Any such amendment shall become effective upon the date stated therein, and shall be binding on all Participants, except as otherwise provided in such amendment; provided, however, that said amendment shall not affect benefits adversely to the affected Participant without the Participant's written approval. Benefits accruing to a Participant pursuant to any employment agreement in effect between the Company and the Participant that entitles the Participant to participate in and to certain rights under the Plan shall not be affected by an amendment of the Plan.

## ARTICLE 7. ADMINISTRATION

- 7.1 **ADMINISTRATION.** The Committee shall administer and interpret the Plan in accordance with the provisions of the Plan and the Trust Agreement. Any determination or decision by the Committee shall be conclusive and binding on all persons who at any time have or claim to have any interest whatever under the Plan. To the extent required to avoid penalties under section 409A of the Internal Revenue Code, the Committee intends to interpret and operate the Plan in all respects in compliance with Code Section 409A and related Regulations.
- 7.2 **APPLYING FOR BENEFITS.** The following claims procedures are generally applicable to claims filed under the Plan. To the extent required by law and to the extent the Committee is ruling on a claim for benefits on account of a disability, the Plan will follow, with respect to that claim, claims procedures required by law for plans providing disability benefits.
- (a) ***General Procedures.*** Subject to the provisions of subsection (b), the following procedures shall apply in the determination of claims under the Plan.
- (1) ***Filing a Claim.*** All applications and claims for benefits shall be filed in writing by the Participant, his or her Beneficiary, or the authorized representative of the claimant, by completing the procedures required by the Committee. The procedures shall be reasonable and may include the completion of forms and the submission of documents and additional information.
- (2) ***Review of Claim.*** The Committee shall review all applications and claims for benefits and shall decide whether to approve or deny the claim in whole or in part. If a claim is denied in whole or in part, the Committee shall provide written notice of denial to the claimant within a reasonable period of time no later than 90 days after the Committee receives the claim, unless special circumstances require an extension of time for processing the claim. If an extension is required, the Committee shall notify the claimant in writing (including by electronic media) by the end of the initial 90-day period and indicate the special circumstances requiring an extension of time and the date by which the Committee expects to render a decision on the claim. The extension shall not exceed an additional 90 days. The notice of denial shall be written (including in electronic media) in a manner calculated to be understood by the claimant and shall include the following:
- (A) specific reasons for the denial;
- (B) specific references to pertinent Plan provisions;
- (C) description of any additional material or information necessary for the claimant to perfect his or her claim and an explanation of why such material or information is necessary; and

- (D) appropriate information as to the steps the claimant should take if he or she wishes to submit the denied claim for review, including any applicable time limits and including a statement of the claimant's right to bring a civil action under ERISA § 502(a) following a denied claim on review.
- (3) Appealing a Claims Denial. If the claimant wishes a review of the denied claim, he or she shall notify the Committee in writing within 60 days of the claimant's receipt of notification of the denied claim. The claimant or the claimant's representative may review pertinent Plan documents and may submit issues or comments to the Committee in writing. The claimant or the claimant's representative may provide the Committee with a written statement of the claimant's position and with written materials in support of his or her position, including documents, records and other information relating to the claim. The claimant or the claimant's representative may have, upon request and free of charge, reasonable access to, and copies of, all documents, records and other information relevant to the claim. A document, record or other information shall be considered relevant to the claim if such document, record or other information (A) was relied upon in making the benefit determination, (B) was submitted, considered or generated in the course of making the benefit determination, without regard to whether such document, record or other information was relied upon in making the benefit determination, or (C) demonstrates compliance with the administrative processes and safeguards designed to ensure and verify that benefit claim determinations are made in accordance with the Plan and that, where appropriate, the Plan provisions have been applied consistently with respect to similarly situated claimants.
- (4) Review of Appeal. The Committee shall forward all requests for review of a denied claim together with all associated documents to the Chairman of the Committee promptly after receipt. The Committee shall make its decision on review solely on the basis of the written record, including documents and written materials submitted by the claimant and/or the claimant's representative. The Committee shall make a decision on review within a reasonable period of time, not later than 60 days after the Committee receives the claimant's written request for review unless special circumstances require additional time for review of the claim. If the Committee needs an extension of time to review the claim, it shall notify the claimant in writing before the end of the initial 60-day period, and shall indicate the special circumstances requiring an extension of time and the date by which the Committee expects to render the determination on review. The extension shall not be longer than an additional 60 days. The decision on review will be written in a manner calculated to be understood by the claimant. If the claim is denied, the written notice shall include specific reasons for the decision as well as specific references to pertinent Plan provisions on which the decision is based, a statement of the claimant's right to bring an action under ERISA

§ 502(a) and a statement that the claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records and other information relevant to the claimant's claim for benefits, with "relevant" defined as provided in the previous subsection.

- (b) ***Determination of Disability.*** To the extent the Committee is determining a claims for benefits under the Plan on account of disability, the following procedures shall apply.
- (1) ***Notice of Denial.*** If any person claiming benefits under the Plan on account of disability is denied such benefits by the Committee, no later than 45 days after receipt of the claim by the Committee (or within 75 days if special circumstances require an extension and if written (including electronic) notice of such extension and circumstances is given to such person within the initial 45-day period), he or she shall be furnished with written notification from the Committee stating the following: The notice of denial shall be written (including in electronic media) in a manner calculated to be understood by the claimant and shall include the following:
- (A) specific reasons for the denial;
  - (B) specific references to pertinent Plan provisions on which the adverse determination is based;
  - (C) description of the Plan's review procedures and time limits applicable to such procedures, including a statement of the claimant's right to bring a civil action under ERISA Section 502(a) following an adverse benefit determination on review;
  - (D) if an internal rule, guideline, protocol or other similar criterion (a "Guideline") was relied upon in making the adverse determination, either (A) a copy of the Guideline, or (B) a statement that such Guideline was relied upon in making the adverse determination and a statement that a copy of such Guideline will be provided free of charge to the claimant upon request; and
  - (E) if the adverse benefit determination is based on a medical necessity or experimental treatment or similar exclusion or limit, either an explanation of the scientific or clinical judgment for the determination, applying the terms of the Plan to the claimant's medical circumstances, or a statement that such explanation will be provided free of charge upon request.

In the case of any extension, the notice of extension shall specifically explain the standards on which entitlement to a benefit is based, the

unresolved issues that prevent a decision on the claim, and the additional information needed to resolve those issues, and the claimant shall be afforded at least 45 days within which to provide the specified information.

In the event that a period of time is extended due to a claimant's failure to submit necessary information, the period for making the benefit determination shall be tolled from the date on which the notification of the extension is sent to the claimant until the date on which the claimant responds to the request for additional information.

- (2) Appeal Process. A claimant shall have 180 days following receipt of a notification of an adverse benefit determination within which to appeal the determination. A claimant shall be entitled to submit on appeal written comments, documents, records and other information relating to the claim. During the time the claimant has for filing an appeal, the claimant shall be provided, upon request and free of charge, reasonable access to and copies of all documents, records and other information relevant to the claim. The Committee shall forward all requests for review of a denied claim together with all associated documents to the Chair of the Committee promptly after receipt. The Committee's review of the claim shall take into account all comments, documents, records and other information submitted by the claimant relating to the claim, without regard to whether such information was submitted or considered in the initial benefit determination. The review shall not give deference to the initial adverse benefit determination. If the initial benefit determination was, in whole or in part, based on medical judgment (including determinations with regard to whether a particular treatment, drug or other item is experimental, investigational, or not medically necessary or appropriate), in deciding the appeal the Committee shall consult with a health care professional who has appropriate training and experience in the field of medicine involved in the medical judgment. Such professional shall be an individual who is neither an individual who was consulted in connection with the adverse benefit determination that is the subject of the appeal, nor the subordinate of any such individual. If the Plan obtained advice from any medical or vocational experts in making the initial benefit determination, the Committee shall identify such experts to the claimant, regardless of whether the advice was relied upon in making the initial benefit determination.

The Committee shall notify the claimant of the benefit determination on review within a reasonable period of time, not to exceed 45 days after receipt by the Plan of the claimant's request for review, unless the Committee determines that special circumstances (such as the need to hold a hearing, if the Plan's procedures provide for a hearing) require an extension of time for processing the claim. If the Committee determines that an extension of time for processing is required, written notice of the extension shall be furnished to the claimant prior to the termination of the

initial 45-day period. In no event shall such extension exceed a period of 45 days from the end of the initial period. The extension notice shall indicate the special circumstances requiring an extension of time and the date by which the Plan expects to render the determination on review.

Notwithstanding the previous paragraph, if the Committee holds regularly scheduled meetings at least quarterly, the Committee shall instead make a benefit determination no later than the date of such meeting that immediately follows the Plan's receipt of a request for review, unless the request for review is filed within 30 days preceding the date of such meeting. In such case, a benefit determination may be made by no later than the date of the second meeting following the Plan's receipt of the request for review. If special circumstances (such as the need to hold a hearing, if the Plan's procedures provide for a hearing) require a further extension of time for processing, a benefit determination shall be rendered not later than the third meeting of the Committee following the Plan's receipt of the request for review. If such an extension of time for review is required because of special circumstances, the Committee shall provide the claimant with written notice of the extension, describing the special circumstances and the date as of which the benefit determination will be made, prior to the commencement of the extension. The Committee shall notify the claimant of the benefit determination as soon as possible, but not later than 5 days after the benefit determination is made.

The period of time within which a benefit determination on review is required to be made shall begin at the time an appeal is filed in accordance with the reasonable procedures of the Plan, without regard to whether all the information necessary to make a benefit determination on review accompanies the filing. In the event that a period of time is extended due to a claimant's failure to submit information necessary to decide a claim, the period for making the benefit determination on review shall be tolled from the date on which the notification of the extension is sent to the claimant until the date on which the claimant responds to the request for additional information.

- (3) Notification of Benefit Determination on Review. The Committee shall provide the claimant with written notification of the Plan's benefit determination on review. If on review the initial denial of benefits is affirmed, the notification shall set forth, in a manner calculated to be understood by the claimant, the following:
- (A) specific reason for the adverse determination;
  - (B) specific references to pertinent Plan provisions on which the adverse determination is based;

- (C) statement that the claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claimant's claim for benefits;
  - (D) statement describing the Plan's voluntary appeal procedures, if any, and describing the claimant's right to obtain the information about such procedures, and a statement of the claimant's right to bring an action under ERISA Section 502(a);
  - (E) if a Guideline was relied upon in making the adverse determination, either (A) a copy of the Guideline, or (B) a statement that such Guideline was relied upon in making the adverse determination and a statement that a copy of such Guideline will be provided free of charge to the claimant upon request;
  - (F) if the adverse benefit determination is based on a medical necessity or experimental treatment or similar exclusion or limit, either an explanation of the scientific or clinical judgment for the determination, applying the terms of the Plan to the claimant's medical circumstances, or a statement that such explanation will be provided free of charge upon request; and
  - (G) the following statement: "You and your Plan may have other voluntary alternative dispute resolution options, such as mediation. One way to find out what may be available is to contact your local U.S. Department of Labor Office and your State insurance regulatory agency."
- (c) The Committee shall have full discretionary authority to consider claims filed under the Plan and to determine eligibility, status and rights of all individuals under the Plan and to construe any and all terms of the Plan.
  - (d) Following the approval of a claim for benefits under the Plan, pursuant to the claims procedure set forth in this section, the Committee shall have the authority to construe and administer the Plan in a manner that is consistent with the payment of benefits in accordance with the approved claim.

7.3 **LIABILITY OF COMMITTEE; INDEMNIFICATION.** To the extent permitted by law, the Committee shall not be liable to any person for any action taken or omitted in connection with the interpretation and administration of the Plan unless attributable to his or her own bad faith or willful misconduct. The Committee may employ legal counsel, consultants, actuaries and agents as they may deem desirable in the administration of the Plan and may rely on the opinion of such counsel or the computations of such consultant or other agent. The Committee shall provide for the keeping of detailed written minutes of its actions hereunder, which shall be reviewed by the legal counsel or the consultant engaged by the Committee prior to their finalization.

- 7.4 **EXPENSES.** The costs of the establishment of the Plan and the adoption of the Plan by the Company, including but not limited to legal and accounting fees, shall be borne by the Company. The expenses of administering the Plan shall be borne by the Trust; provided, however, that the Company shall bear, and shall not be reimbursed by, the Trust for any tax liability of the Company associated with the investment of assets by the Trust. All taxes associated with participation in the Plan, including any tax liability under Code Section 409A, shall be borne by the Participant.

## **ARTICLE 8. GENERAL AND MISCELLANEOUS**

- 8.1 **RIGHTS AGAINST THE COMPANY.** Except as expressly provided by the Plan, the establishment of the Plan shall not be construed as giving to any Participant or to any person whomsoever, any legal, equitable or other rights against the Company, or against its officers, directors, agents or shareholders, or as giving to any Participant or Beneficiary any equity or other interest in the assets, business or shares of Company stock or giving any Participant the right to be retained in the employment of the Company. All Participants shall be subject to discharge (with or without cause) to the same extent they would have been if the Plan had never been adopted. The rights of a Participant hereunder shall be solely those of an unsecured general creditor of the Company. Neither the Plan nor any action taken hereunder shall be construed as giving to any Participant the right to continue rendering services to or for the benefit of the Company or as affecting the right of the Company to dismiss any Participant. Any benefit payable under the Plan shall not be deemed salary or other compensation for the purpose of computing benefits under any Participant benefit plan or other arrangement of the Company for the benefit of its Participants.
- 8.2 **ASSIGNMENT OR TRANSFER.** No right, title or interest of any kind in the Plan shall be transferable or assignable by any Participant or Beneficiary or be subject to alienation, anticipation, encumbrance, garnishment, attachment, execution or levy of any kind, whether voluntary or involuntary, nor subject to the debts, contracts, liabilities, engagements, or torts of the Participant or Beneficiary. Any attempt to alienate, anticipate, encumber, sell, transfer, assign, pledge, garnish, attach or otherwise subject to legal or equitable process or encumber or dispose of any interest in the Plan shall be void.
- 8.3 **SEVERABILITY.** If any provision of the Plan shall be declared illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining provisions of the Plan but shall be fully severable, and the Plan shall be construed and enforced as if said illegal or invalid provision had never been inserted herein.
- 8.4 **CONSTRUCTION.** The article and section headings and numbers are included only for convenience of reference and are not to be taken as limiting or extending the meaning of any of the terms and provisions of the Plan. Whenever appropriate, words used in the singular shall include the plural or the plural may be read as the singular. When used herein, the masculine gender includes the feminine gender.
- 8.5 **GOVERNING LAW.** The validity and effect of the Plan and the rights and obligations of all persons affected hereby shall be construed and determined in accordance with the

laws of the State of Delaware unless superseded by federal law, which shall govern correspondingly.

- 8.6 **PAYMENT DUE TO INCOMPETENCE.** If the Committee receives evidence that a Participant or Beneficiary entitled to receive any payment under the Plan is physically or mentally incompetent to receive such payment, the Committee may, in its sole and absolute discretion, direct the payment to any other person or Trust which has been legally appointed by the courts or to any other person determined by the Company to be a proper recipient on behalf of such person otherwise entitled to payment, or any of them, in such manner and proportion as the Company may deem proper. Any such payment shall be in complete discharge of the Company's obligations under the Plan.
- 8.7 **TAXES.** All amounts payable hereunder shall be reduced by any and all federal, state, and local taxes imposed upon Participant or his or her Beneficiary, which are required to be paid or withheld by Company. The determination of Company regarding applicable income and employment tax withholding requirements shall be final and binding on Participant.
- 8.8 **INSURANCE.** In the event that any Participant elects, in his or her discretion, to independently purchase an insurance policy covering the inability of the Plan or the Trust to make any payments to which Participant is entitled under the Plan or the Trust, the Company shall use its best efforts to facilitate the payment by Participant of any applicable excise taxes which become due as the result of the payment of premiums under such policy. Nothing contained herein shall be construed as an endorsement by the Company of the purchase of such a policy or a recommendation by the Company that the purchase of such a policy is necessary or desirable as the result of Participant's participation in the Plan. In the event that such insurance would result in adverse tax consequences to the Participant, the Participant shall terminate such insurance.
- 8.9 **ATTORNEY'S FEES.** Company shall pay the reasonable attorney's fees incurred by any Participant in an action brought against Company to enforce Participant's rights under the Plan, provided that such fees shall only be payable in the event that the Participant prevails in such action.
- 8.10 **PLAN BINDING ON SUCCESSORS AND ASSIGNEES.** The Plan shall be binding upon and inure to the benefit of the Company and its successor and assigns and the Participant and the Participant's designee and estate.

**EXHIBIT B**  
**EXECUTIVES' SUPPLEMENTAL RETIREMENT INCOME PLAN**  
**"OLD PLAN"**

Building Materials Holding Corporation  
EXECUTIVES' SUPPLEMENTAL RETIREMENT INCOME PLAN  
(Revised and restated effective December 31, 2002)

ARTICLE I - Definitions:

1.1 "Plan" means the Executives' Supplemental Retirement Income Plan of Building Materials Holding Corporation (formerly known as the Executives' Supplemental Retirement Income Plan of BMC West Corporation), as described in this instrument, effective January 1, 1993 and thereafter.

1.2 "Company" means Building Materials Holding Corporation of San Francisco, California, a Delaware Corporation, or a successor corporation thereafter.

1.3 "Executive" means an Executive or highly compensated individual of the Company or of any division, subsidiary or affiliate of the Company who is eligible to become a participant in the Plan under Paragraph 3.1 hereof.

1.4 "Fiscal Year" means the fiscal year of the Company as established from time to time.

1.5 "Participant" means a person who is selected to participate in the Plan and has executed the Adoption Agreement as required by Paragraph 3L hereof.

1.6 "Deferred Compensation" means the portion of a participant's compensation for any fiscal year, or part thereof, that has been deferred pursuant to the Plan.

1.7 "Termination of Service" or similar expression means the termination of the Participant as an Executive or eligible employee of the Company or any division, subsidiary or affiliate thereof, and includes termination by way of resignation, removal, disability, or change in position prior to his Normal Retirement Date. A Participant who is on temporary leave of absence, whether with or without pay, shall not be deemed to have terminated his service.

1.8 "Normal Retirement Date" as used herein means the date on which the Participant attains age sixty-five (65) or the date specified in Paragraph E of the Adoption Agreement, if later.

1.9 "Early Retirement" as used herein refers to an election available to a terminated Participant upon attaining age sixty (60) with at least fifteen (15) years of service at the time of termination or upon attaining age fifty-five (55) with at least twenty-five years of service at the time of termination. Such Participant may begin receiving benefits by notifying the Plan Administrator at least six months prior to the requested benefit start date.

1.10 "Interest Credit" is a fixed percentage rate to be applied to the existing Retirement Account Balance as of January 1<sup>st</sup> each year. The rates will be reviewed by the Compensation Committee each February. Any changes will be effective for the January 1<sup>st</sup> balance of the same year. The rates to be effective for January 1, 2003 are as follows:

Active Employees	6.0%
Inactive Employees:	
Less than 5 years of service	0.0%
With 5 - 9 years of service	1.5%
With 10 - 14 years of service	3.0%
With 15 - 19 years of service	4.0%
With 20 - 24 years of service	5.0%
With 25 or more years of service	6.0%

1.11 "Retirement Account Balance" is the balance in an account maintained by the Company for each participant comprised of contributions to the plan by the Company plus Interest Credit applied each January 1<sup>st</sup>. The Interest credits are applied to the account balance before adding the contributions of the Company for the current year.

1.12 "Computation Convention" the computations of future values, present values, or periodic payments (annuity) use the "end of period" assumption for the first payment.

1.13 "Trust" means the grantor trust established by the Company pursuant to Section 6.2 of the Plan hereof, and evidenced by the Supplemental Retirement Income Plans Trust Agreement effective on January 1, 1993, as such Agreement is amended from time to time.

1.14 "Change of Control" The purchase or other acquisition by any person, entity or group of persons, within the meaning of section 13(d) or 14(d) of the Securities Exchange Act of 1934 ("Act"), or any comparable successor provisions, of beneficial ownership within the meaning of Rule 13c3 promulgated under the Act, of 30 percent or more of either the outstanding shares of common stock or the combined voting power of Company's then outstanding voting securities entitled to vote generally, or the approval by the stockholders of Company of a reorganization, merger, or consolidation (in each case, with respect to which persons who were stockholders of Company immediately prior to such reorganization, merger or consolidation) do not immediately thereafter own more than 50 percent of the consolidated Company's then outstanding securities, or a liquidation or dissolution of Company or of the sale of all or substantially all of Company's assets.

## ARTICLE II - CONTRIBUTIONS

**2.1 Contributions.** The Company shall allocate five and one half percent (5.5%) of the Company's net income for SERP Benefits. Sixty-five percent (65%) of the amount allocated will be directed to this plan.

**2.2 Allocation Among Participants.** The funds allocated will be distributed among the active participants in accordance with the following method:

1. The base salaries less \$40,000 for each active participant will be summed to provide the total benefit salary base.
2. The salaries for each individual in excess of \$40,000 are divided by the total benefit salary base producing the participant's percentage share, to five decimals, of the current funds allocated.
3. The percentage in step two above is applied to the total funds allocated to establish the value of the contribution to the participant. If the contribution exceeds twenty percent (20%) of base salary, twenty percent (20%) of base salary will be used.

**2.3 Equivalent Base Pay.** For participants whose pay is composed of a base salary plus commissions and whose base salary is less than fifty thousand dollars (\$50,000) the base pay that will be used in these calculations will be fifty thousand dollars (\$50,000).

**2.4 Changes In Contributions.** The amounts to be allocated to this plan may be changed by the Board of Directors at any time. The methods for allocating the funds among participants may be changed as deemed necessary to maintain equity by the Compensation Committee with the approval of the Board of Directors. Participants will be notified of changes as soon as practicable after such change is adopted.

### ARTICLE III - REQUIREMENTS FOR PARTICIPATION

**3.1 Requirements for Participants.** In order to participate herein, the Executives of the Company selected to participate by the Company must

- (a) Fit within the definition of highly compensated or select group of executives as that definition may be changed from time to time by ERISA or the IRS;
- (b) Execute an Adoption Agreement in the form attached hereto as Exhibit "I";
- (c) If the Company desires to purchase key man life insurance on the Participant's life for its sole benefit, cooperate so that the Company may obtain a valid insurance contract.

**3.2 Continued Service.** Each Participant in the Plan shall continue as an employee of the Company under terms mutually agreed upon between the Company and the Participant, from time to time, until the Participant reaches his Normal Retirement Date or until such date as may be mutually agreed upon, or until his Termination of Service, as herein defined. Any payments under this Plan shall be independent of, and in addition to, those under any other plan, program or agreement in effect between the Company and the Participant. This Plan and the Adoption Agreement attached hereto as Exhibit "I" shall not be construed as a contract of employment, nor does it restrict the right of the shareholders or Directors of the Company to remove the Participant as an Executive, or the right of the Participant to resign as an Executive.

**3.3 Early Termination.** If the Participant's service as an Executive of the Company is terminated for reasons other than death prior to his Normal Retirement Date, with or without cause or voluntarily or involuntarily, and if the Participant's termination was not due to fraudulent or dishonest conduct by the Participant, and Participant has not violated the Non Compete provision herein, the Company will disburse benefits in accordance with ARTICLE IV herein, or, at the sole discretion of the Company, the Company may fulfill its total obligations under the plan by making a Lump Sum Benefit distribution equal to Retirement Account Balance at the date of termination. In the event of a lump sum settlement, such distribution must be made within forty-five (45) days of the date of termination. Notwithstanding this article, the company shall distribute participant balances of less than ten thousand dollars (\$10,000) following termination.

If the termination is for fraudulent or dishonest conduct by the Participant, the benefit shall be paid in a lump sum equal to the lesser of the Retirement Account Balance or the sum of the company's contribution attributable to the participant without interest or other appreciation.

**3.4 Non-Compete.** If a participant terminates employment with Company and accepts employment with a competitor of Company within twelve months of termination the benefits under this Plan will be paid as a lump sum equal to the lesser of the Retirement Account Balance at the date of termination or the sum of the company's contribution attributable to the participant without interest or other appreciation, unless the participant receives permission in writing from the Company before accepting such position. If in the opinion of the Compensation Committee, conditions warrant, such permission may be granted as a general waiver rather than applied to a specific position.

## ARTICLE IV - BENEFITS

### 4.1 Pre-Retirement Death Benefits.

- (a) If a Participant who dies before his Normal Retirement Date had not Terminated Service or had served for at least twentyfive (25) years before terminating service and no settlement has been made under any other provision herein, the Company will pay to the Participant's beneficiary(ies) a monthly benefit for a total of sixty (60) months. The Pre-Retirement Death Benefit will be derived by using the Retirement Account Balance to solve for 60 monthly payments using an interest factor of 0.75% (9% annual rate).
- (b) If a Participant dies before the Normal Retirement Date but after terminating service, for any reason, with less than twentyfive (25) years of service and no settlement has been made under any other provision herein, the Company will pay the Participant's beneficiary(ies) a monthly benefit for a total of sixty (60) months. The Pre-Retirement Death Benefit will be derived by using the Retirement Account Balance to solve for sixty (60) monthly payments using an interest factor of 0.50% (6% annual rate).

All monthly payments to be made pursuant to this Paragraph 4.1 shall commence within forty-five (45) days following the death of the Participant or when the beneficiary is properly identified, if later.

### 4.2 Post-Retirement Income and Death Benefits.

- (a) For Participants with continuous service who retire on or after their Normal Retirement Date, or Participants eligible for Early Retirement who had at least twentyfive (25) years of service, or participants who terminated service with at least twentyfive (25) years of service, the Company will pay a monthly benefit for 180 months. The benefit due will be calculated using the Retirement Account Balance to solve for 180 monthly payments using an interest factor of 0.75% (9% annual rate).
- (b) For Participants who have terminated service with less than twenty five (25) years of service and no settlement has been made under any other provision herein and who have attained their Normal Retirement Date, the Company will pay a monthly benefit for 180 months. The benefit due will be calculated using the Retirement Account Balance to solve for 180 monthly payments using an interest factor of 0.50% (6% annual rate).
- (c) Following are optional retirement benefit pay out options available to the participants if elected in writing at least twelve months prior to the retirement date:
  - 1. A lump sum payment equal to the balance in the Retirement Income Account maintained for the participant at the time benefit payments are due to commence. This option requires approval by the compensation committee of the board.
  - 2. Monthly payments for 120 months with interest at 0.667% monthly (8% annual rate) with at least 25 years of service and 0.417% monthly (5% annual rate) with less than 25 years of service.

3. Monthly payments for 60 months with interest at 0.583% monthly (7% annual rate) with at least 25 years of service and 0.333% monthly (4% annual rate) with less than 25 years of service.

If the Participant dies prior to receiving all of the monthly payments scheduled under the option elected, the Participant's beneficiary(ies) shall continue to receive such monthly payments in a like amount until the benefits provided for therein have been paid in full. If such Participant has received at least all of the scheduled monthly payments prior to such Participant's death, no further benefits shall be due hereunder.

**4.3 Hardship Provision.** A participant may apply at any time to have the unpaid portion of the scheduled monthly benefits paid in a lump sum equal to the participant's Retirement Account Balance (which will be the present value of the unpaid benefits at the interest rate applicable to the participant's retirement schedule). To make application for this provision the participant must make the request in writing to the compensation committee stating the nature of the hardship and the need for commuting the payments. The committee will either approve or disallow the request and will notify the participant of its decision as soon as practicable after the request is received.

**4.4 Facility of Payment.** Payment hereunder to the Participant or his or her beneficiary pursuant to this Plan shall fully discharge the Company from all claims or liabilities with respect to such payments unless, before such payment is made, the Company has received, at its principal place of business, written notice by or on behalf of some other persons who claim to be entitled to such payments or some part thereof. In the event the Participant is deceased and a Court of competent jurisdiction has entered a final order with respect to his or her estate, payment of such money, or portions thereof, if any be due, pursuant to the terms of the judgment shall likewise fully protect the Company making such payment unless, before such payment is made, written notice of a claim or adverse claim is received in the manner provided above.

#### 4.5 Change of Control Benefits.

##### (a) Benefits Following an Approved Change of Control.

- (i) In the event a Participant's employment with the Company is terminated for any reason within a five-year period following a Change of Control, and the transaction constituting the Change of Control was approved in writing prior to its consummation by a majority vote of the members of the Company's incumbent Board of Directors (an "Approved Change of Control"), then the Participant shall be entitled to receive payment of his or her Retirement Account Balance over a period of sixty (60) months using a 9% interest factor compounded annually. The installment payments shall begin within forty-five (45) days of the termination of employment.
- (ii) Following an Approved Change of Control, any participant (or beneficiary thereof) already receiving benefit payments under the Plan shall continue to receive benefit payments under the Plan for the lesser of (1) the remainder of the current pay out schedule, or (2) a sixty (60) month period commencing upon the consummation of the Approved Change of Control.

##### (b) Benefits Following a Non-approved Change of Control.

- (i) In the event a Participant's employment with the Company is terminated for any reason within a five year period following a Change of Control, and the Change of Control was *not* approved in writing prior to its consummation by a majority vote of the members of the Company's incumbent Board of Directors (a "Non approved Change of Control"), then the Participant shall be entitled to receive payment of his or her Retirement Account Balance in a lump sum. The lump sum payment shall be made within fortyfive (45) days of the date of termination of employment.
- (ii) Following a Non-approved Change of Control, any participant (or beneficiary thereof) already receiving payments under the Plan shall receive the remainder of his or her benefit under the Plan in the form of a lump sum. Such lump sum payment shall be made within forty-five (45) days of the consummation of the Non approved Change of Control.

## ARTICLE V - RIGHTS OF PARTICIPANT

**5.1 Beneficiary.** Each Participant shall have the right to designate a Primary and Contingent Beneficiary entitled to receive the benefits payable upon death on behalf of such Participant under the provisions of this Plan. The Participant may change or revoke such designation in writing. A change of beneficiary notice received after the death of a deceased participant but bearing a postmark prior to the date of death will be deemed to be in force at time of death.

If the beneficiary is the spouse of the insured, the spouse must also sign any change of beneficiary that would remove or subordinate the spouse as beneficiary.

**5.2 Non-Assignability.** Neither the Participant nor the Participant's spouse, nor their heirs or legatees shall have any right to commute, encumber or dispose of the right to receive payments hereunder, which payments and the right thereto are expressly declared to be nonassignable and non-transferable.

**5.3 Bound by Plan Provisions.** Each Participant, whether active or terminated, surviving spouse or other beneficiary, as a condition to receiving any benefits under the Plan shall be conclusively deemed for all purposes to have assented to the Plan and shall be bound hereby with the same force and effect as if he had executed a consent to all the terms and provisions of the Plan.

**5.4 Claim Procedure.** If any former employee or any Beneficiary has not received a benefit under the Plan to which he thinks he is entitled, he or his authorized representative, within 180 days after the event that he thinks entitled him to the benefit, may file with the Compensation Committee a written claim for the benefit with sufficient detail to bring the nature of the claim to the attention of the Committee.

The Committee will notify the claimant of its decision in writing within 180 days of receipt of the claim. If the claim is denied wholly or in part the notice will set forth in a manner calculated to be understood by the claimant the specific reasons for the denial.

In the case of a denial the claimant may request a review of his claim by making a written request to the Committee within 90 days of receiving notice of the denial. The request may include issues and comments that the claimant feels the Committee should consider.

Within 90 days after receipt of the request for review, the Committee will notify the claimant of its final decision setting forth specific reasons. Subject to any rights to remedies accorded by applicable law the decision of the Committee shall be conclusive and binding upon Company, the claimant and all other persons interested in the claim.

## ARTICLE VI - FUNDING

**6.1 Un-funded Plan.** No Participant or any other person shall have any interest in any fund or in any specific asset or assets of the Company by reason of any amounts due him hereunder, nor any right to receive any distribution under the Plan except as and to the extent expressly provided in the Plan. Nothing in the Plan shall be deemed to give any subsidiary or affiliate of the Company rights to participate in the Plan, except in accordance with the provisions of the Plan. All benefits provided for hereunder and all other amounts deferred, if any, hereunder are completely unsecured and are payable only out of the general assets of the Company. The Company shall be under no obligation whatsoever to purchase or maintain any life insurance policy or annuity contract or in any other manner segregate assets to provide the benefits or fund its obligations under this Plan.

**6.2 Funds In Trust.** The Company will establish a Trust to hold such funds as the Company has allocated to the plan. The establishment of said Trust does not assign any rights of ownership to the assets in the Trust. The assets of the Trust are part of Company's general assets and are subject to the claims of the Company's creditors. The Company is under no obligation to assure that the assets in the Trust are adequate to provide the benefits promised under the Plan. The sole security of the benefits due under the plan is the Company's assurance under the provisions of this plan, which is specifically defined to be un-funded.

## ARTICLE VII - OTHER PROVISIONS

**7.1 Relation to Other Plans.** Any benefits payable under this Plan shall not be deemed salary or compensation to any Participant for the purpose of computing benefits to which he may be entitled under any pension or profit sharing plan or other similar plan or arrangement of the Company for the benefit of its Participants.

**7.2 Administration.** The Compensation Committee of the Company shall have full power and authority to administer this Plan. No member of the Compensation Committee or the Board of Directors shall be liable to any person for any action taken or omitted in connection with the administration of the Plan unless attributable to his own willful misconduct or lack of good faith. The Directors shall, from time to time, establish eligibility requirements for participation in the Plan and rules for the Administration of the Plan that are not inconsistent with the provisions of the Plan.

**7.3 Amendment.** The Board of Directors of the Company reserves the right to amend this Plan in such manner as it, in its sole discretion, may deem necessary and proper. Such amendments will apply to terminated and retired Participants to the same extent that they apply to active Participants.

**7.4 Rights of Company to Terminate the Plan.** The Company shall have the right to terminate this Plan at any time. Each Participant in the Plan shall receive future benefits in the same manner and amount as he would have received had his service as an Executive terminated with twenty-five (25) years of service on the date the Plan is terminated. Anything herein to the contrary notwithstanding, should the Company elect to terminate the Plan it shall be obligated to continue to pay all benefits provided for hereunder to all Participants or their beneficiaries, as the case may be, who have died or retired and who have become entitled to receive same in accordance with the terms of the Plan.

**7.5 Rights of Offset.** If the Participant has any indebtedness to the Company at the time benefits become due by virtue of retirement, death, or termination, the Company may apply the amounts due, less the minimum Federal Backup Withholding Tax required on such amounts, to reduce such indebtedness.

**7.6 Law Governing.** This Plan shall be construed in accordance with and governed by the laws of the State of Idaho.

# **EXHIBIT C**

**Building Materials Holding Corporation 1999 Deferred  
Compensation Plan for Directors Trust**

TRUST AGREEMENT

Establishing

the

BUILDING MATERIALS HOLDING CORPORATION 1999 DEFERRED COMPENSATION  
PLAN FOR DIRECTORS TRUST

by and between

BUILDING MATERIALS HOLDING CORPORATION

and

PRUDENTIAL BANK & TRUST, FSB

**Prudential Bank & Trust FSB**

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- (a) This Agreement made this 1st day of May, 2008 by and between Building Materials Holding Corporation (the "Company") and Prudential Bank & Trust, FSB, a federal savings bank with its principal office and place of business in Hartford, Connecticut (the "Trustee");
- (b) WHEREAS, Company has adopted the Building Materials Holding Corporation 1999 Deferred Compensation Plan for Directors (the "Plan");
- (c) WHEREAS, Company has incurred or expects to incur liability under the terms of such Plan with respect to the individuals participating in such Plan;
- (d) WHEREAS, Company wishes to establish the Building Materials Holding Corporation 1999 Deferred Compensation Plan for Directors Trust (hereinafter called "Trust" or "Trust Fund") and to contribute to the Trust assets that shall be held herein, subject to the claims of Company's creditors in the event of Company's insolvency, as herein defined, until paid to Plan participants and their beneficiaries in such manner and at such times as specified in the Plan;
- (e) WHEREAS, it is the intention of the parties that this Trust shall constitute an unfunded arrangement and shall not affect the status of the Plan as an unfunded plan maintained for the purpose of providing deferred compensation and/or benefits for a select group of management or highly compensated employees for purposes of Title I of the Employee Retirement Income Security Act of 1974;
- (f) WHEREAS, it is the intention of Company to make contributions to the Trust to provide itself with a source of funds to assist in the meeting of its liabilities under the Plan.

NOW, THEREFORE, the parties do hereby establish the Trust and agree that the Trust shall be comprised, held and disposed of as follows:

Section 1. Establishment of Trust.

- (a) Company hereby deposits with Trustee in trust certain good and valuable consideration, which shall become the principal of the Trust to be held, administered and disposed of by Trustee as provided in this Trust Agreement.
- (b) The Trust hereby established shall be irrevocable.

- (c) The Trust is intended to be a grantor trust, of which Company is the grantor, within the meaning of subpart E, part I, subchapter J, chapter 1, subtitle A of the Internal Revenue Code of 1986, as amended, and shall be construed accordingly.
- (d) The principal of the Trust, and any earnings thereon shall be held separate and apart from other funds of Company and shall be used exclusively for the uses and purposes of Plan participants and general creditors as herein set forth. Plan participants and their beneficiaries shall have no preferred claim on, or any beneficial ownership interest in, any assets of the Trust. Any rights created under the Plan and this Trust Agreement shall be mere unsecured contractual rights of Plan participants and their beneficiaries against Company. Any assets held by the Trust will be subject to the claims of Company's general creditors under federal and state law in the event of insolvency, as defined in Section 3(a) herein.
- (e) Company, in its sole discretion, may at any time, or from time to time, make additional deposits of cash or other property in trust with Trustee to augment the principal to be held, administered and disposed of by Trustee as provided in this Trust Agreement. Neither Trustee nor any Plan participant or beneficiary shall have any right to compel such additional deposits.

## Section 2. Payments to Plan Participants and Their Beneficiaries.

- (a) Company shall deliver to Trustee a schedule (the "Payment Schedule") that indicates the amounts payable in respect of each Plan participant (and his or her beneficiaries), that provides a formula or other instructions acceptable to Trustee for determining the amounts so payable, the form in which such amount is to be paid (as provided for or available under the Plan), and the time of commencement for payment of such amounts. Except as otherwise provided herein, Trustee shall make payments to the Plan participants and their beneficiaries in accordance with such Payment Schedule. The Trustee shall make provisions for reporting and withholding of any federal, state or local taxes that may be required to be withheld with respect to the payment of benefits pursuant to the terms of the Plan and shall pay amounts withheld to the appropriate taxing authorities or determine that such amounts have been reported, withheld and paid by Company.
- (b) The entitlement of a Plan participant or his or her beneficiaries to benefits under the Plan shall be determined by Company or such party as it shall designate under the Plan, and any claim for such benefits shall be considered and reviewed under the procedures set out in the Plan.

- (c) Company may make payment of benefits directly to Plan participants or their beneficiaries as they become due under the terms of the Plan. Company shall notify Trustee of its decision to make payment of benefits directly prior to the time amounts are payable to participants or their beneficiaries. Trustee shall require Company to provide reasonable written documentation that such payments have been made directly to such participant or beneficiary. In addition, if the principal of the Trust, and any earnings thereon, are not sufficient to make payments of benefits in accordance with the terms of the Plan, Company shall make the balance of each such payment as it falls due. Trustee shall notify Company where principal and earnings are not sufficient.

Section 3. Trustee Responsibility Regarding Payments to Trust Beneficiary When Company is Insolvent.

- (a) Trustee shall cease payment of benefits to Plan participants and their beneficiaries if the Company is insolvent. Company shall be considered "insolvent" for purposes of this Trust Agreement if (i) Company is unable to pay its debts as they become due, (ii) Company is subject to a pending proceeding as a debtor under the United States Bankruptcy Code, or (iii) Company is determined to be insolvent by a federal or state regulatory agency with jurisdiction to make that determination.
- (b) At all times during the continuance of this Trust, as provided in Section 1(d) hereof, the principal and income of the Trust shall be subject to claims of general creditors of Company under federal and state law as set forth below.
  - (1) The Board of Directors and the Chief Executive Officer of Company shall have the duty to inform Trustee in writing of Company's insolvency. If a person claiming to be a creditor of Company alleges in writing to Trustee that Company has become insolvent, Trustee shall determine whether Company is insolvent and, pending such determination, Trustee shall discontinue payment of benefits to Plan participants or their beneficiaries.
  - (2) Unless Trustee has actual knowledge of Company's insolvency, or has received notice from Company or a person claiming to be a creditor alleging that Company is insolvent, Trustee shall have no duty to inquire whether Company is insolvent. Trustee may in all events rely on such evidence concerning Company's solvency as may be furnished to Trustee and that provides Trustee with a reasonable basis for making a determination concerning Company's solvency.

- (3) If at any time Trustee has determined that Company is insolvent, Trustee shall discontinue payments to Plan participants or their beneficiaries and shall hold the assets of the Trust for the benefit of Company's general creditors. Nothing in this Trust Agreement shall in any way diminish any rights of Plan participants or their beneficiaries to pursue their rights as general creditors of Company with respect to benefits due under the Plan or otherwise.
  - (4) Trustee shall resume the payment of benefits to Plan participants or their beneficiaries in accordance with Section 2 of this Trust Agreement only after Trustee has determined that Company is not insolvent (or is no longer insolvent).
- (c) Provided that there are sufficient assets, if Trustee discontinues the payment of benefits from the Trust pursuant to Section 3(b) hereof and subsequently resumes such payments, the first payment following such discontinuance shall include the aggregate amount of all payments due to Plan participants or their beneficiaries under the terms of the Plan for the period of such discontinuance, less the aggregate amount of any payments made to Plan participants and their beneficiaries by Company in lieu of the payments provided for hereunder during any such period of discontinuance.

#### Section 4. Payments to Company.

Except as provided in Section 3 hereof, after the Trust has become irrevocable, Company shall have no right or power to direct Trustee to return to Company or to divert to others any of the Trust assets before all payment[s] of benefits have been made to Plan participants and their beneficiaries pursuant to the terms of the Plan.

#### Section 5. Investment Authority.

Trustee shall have the power to invest the assets of the Trust Fund in such investment vehicles as directed by the Company, including insurance policies or securities (including stock or rights to acquire stock) or obligations issued by Company. All rights associated with assets of the Trust shall be exercised by Trustee or the person designated by Trustee pursuant to the Company's direction, and shall in no event be exercisable by or rest with Plan participants.

#### Section 6. Disposition of Income.

During the term of this Trust, all income received by the Trust, net of expenses and taxes, shall be accumulated and reinvested.

Section 7. Accounting by Trustee.

The Trustee has accepted this Trust on the condition that the Company has entered or is entering into a service agreement with an affiliate of the Trustee whereby an affiliate of the Trustee will provide recordkeeping services for all assets held pursuant to this Trust Agreement. The Trustee shall be required to forward to the Company, or require an affiliate of the Trustee to forward to the Company, the recordkeeping reports and related financial information provided by an affiliate of the Trustee, but the Trustee shall not otherwise be required to provide Trust accounts.

Section 8. Responsibility of Trustee.

- (a) Trustee shall act with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, provided, however, that Trustee shall incur no liability to any person for any action taken pursuant to a direction, request or approval given by Company or any delegate appointed by the Company which is contemplated by, and in conformity with, the terms of the Plan or this Trust and is given in writing by Company or its delegate. In the event of a dispute between Company and a party, Trustee may apply to a court of competent jurisdiction to resolve the dispute.
- (b) If Trustee undertakes or defends any litigation arising in connection with this Trust, Company agrees to indemnify Trustee against Trustee's costs, expenses and liabilities (including, without limitation, attorneys' fees and expenses) relating thereto and to be primarily liable for such payments. If Company does not pay such costs, expenses and liabilities in a reasonably timely manner, Trustee may obtain payment from the Trust.
- (c) Trustee may hire agents, accountants, actuaries, investment advisors, financial consultants or other professionals to assist it in performing any of its duties or obligations hereunder, including recordkeeping, reporting, custody of assets or proxy voting. Such agents may include affiliates of the Trustee.
- (d) Trustee shall have, without exclusion, all powers conferred in Trustees in accordance with applicable law, unless expressly provided otherwise herein, provided, however, that if an insurance policy is held as an asset of the Trust, Trustee shall have no power to name a beneficiary other than the Trust, to assign the policy (as distinct from conversion of the policy to a different form) other than to a successor trustee, or to loan to any person the proceeds of any borrowing against such policy.

- (e) The Company shall indemnify and hold harmless the Trustee from and against any and all claims, losses, damages, expenses (including reasonable counsel fees) and liability to which the Trustee may be subject by reason of any act done or omitted to be done, except where the same is finally adjudicated to be due to the negligence or willful misconduct of the Trustee.
- (f) In addition to and in no way in limitation of the indemnification of paragraph (e) of this section, the Company hereby agrees to indemnify and hold harmless the Trustee from and against any claims, losses, damages, expenses (including reasonable counsel fees) and liability to which the Trustee may be subject by reason of any act or omission of any prior, subsequent or existing trustee of the Plan.
- (g) The Trustee shall be responsible only for such assets as are actually received by it as Trustee hereunder. The Trustee shall have no duty or authority to ascertain whether any contributions should be made to it pursuant to the Plan or to bring any action to enforce any obligation to make any such contribution, nor shall it have any responsibility concerning the amount of any contribution or the application of the Plan's contribution formula. The Trustee shall have no responsibility for any assets not held under this Trust, even if those assets are held as assets of the Plan under a separate trust agreement. Responsibility for any such assets shall be solely that of the trustees named in such separate trust agreement, or, in the event no such separate trust exists, the Company.

#### Section 9. Compensation and Expenses of Trustee.

Company shall pay all administrative and Trustees' fees and expenses in accordance with a fee schedule provided to the Company. In addition, Trustee shall be paid its reasonable expenses, including reasonable expenses of counsel and other agents employed by the Trustee, incurred in connection with administration of the Trust Fund. If the Trustee proposes an amended fee schedule and the Company fails to object thereto within ninety (90) days of its receipt, the amended fee schedule shall be deemed accepted by the Company. If not paid, the fees and expenses shall be paid from the Trust.

#### Section 10. Resignation and Removal of Trustee.

- (a) Trustee may resign at any time by written notice to Company, which shall be effective 120 (one hundred twenty) days after receipt of such notice unless Company and Trustee agree otherwise.

- (b) Trustee may be removed by Company on 120 (one hundred twenty) days notice or upon shorter notice accepted by Trustee.
- (c) The Trustee's service pursuant to this Agreement is conditioned upon the existence of one or more contracts between the Company and an affiliate of the Trustee providing for full Plan recordkeeping services. In the event the contract providing for such recordkeeping services is discontinued or terminated, this Trust Agreement shall be terminated as well with no further notice from either party to the other as of the date of discontinuance or termination of the contract providing for Plan recordkeeping services.
- (d) Upon resignation or removal of Trustee and appointment of a successor Trustee, all assets shall subsequently be transferred to the successor Trustee. The transfer shall be completed within 30 days after receipt of notice of resignation, removal or transfer, unless Company extends the time limit.
- (e) If Trustee resigns or is removed, a successor shall be appointed, in accordance with Section 11 hereof, by the effective date of resignation or removal under paragraph(s) (a), (b) or (c) of this section. If no such appointment has been made, Trustee may apply to a court of competent jurisdiction for appointment of a successor or for instructions. All expenses of Trustee in connection with the proceeding shall be allowed as administrative expenses of the Trust.

#### Section 11. Appointment of Successor.

If Trustee resigns or is removed in accordance with Section 10(a), (b) or (c) hereof, Company may appoint any third party, such as a bank trust department or other party that may be granted corporate trustee powers under state law, as a successor to replace Trustee upon resignation or removal. The appointment shall be effective when accepted in writing by the new Trustee, who shall have all of the rights and powers of the former Trustee, including ownership rights in the Trust assets. The former Trustee shall execute any instrument necessary or reasonably requested by Company or the successor Trustee to evidence the transfer.

Section 12. Amendment or Termination.

- (a) This Trust Agreement may be amended by a written instrument executed by Trustee and Company. Notwithstanding the foregoing, no such amendment shall conflict with the terms of the Plan or shall make the Trust revocable after it has become irrevocable in accordance with Section 1(b) hereof.
- (b) The Trust shall not terminate until the date on which Plan participants and their beneficiaries are no longer entitled to benefits pursuant to the terms of the Plan. Upon termination of the Trust any assets remaining in the Trust shall be returned to Company.

Section 13. Miscellaneous.

- (a) Any provision of this Trust Agreement prohibited by law shall be ineffective to the extent of any such prohibition, without invalidating the remaining provisions hereof.
- (b) Benefits payable to Plan participants and their beneficiaries under this Trust Agreement may not be anticipated, assigned (either at law or in equity), alienated, pledged, encumbered or subjected to attachment, garnishment, levy, execution or other legal or equitable process.
- (c) This Trust Agreement and the Trust hereby created shall be governed, construed, administered and regulated in all respects in accordance with the laws of Idaho.
- (d) This Trust Agreement shall be binding upon the respective successors and assigns of the Company and the Trustee.
- (e) In the event of any conflict between provisions of the Plan and those of this Trust Agreement, this Trust Agreement shall prevail.

Section 14. Effective Date.

The effective date of this Trust Agreement shall be May 1, 2008.

Witness:

Susan Reiners

BUILDING MATERIALS HOLDING  
CORPORATION

By Paul Street

Title PAUL S. STREET  
Sr. Vice President, Chief Administrative Officer  
General Counsel and Corporate Secretary

Date 5/12/08

Witness:

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PRUDENTIAL BANK & TRUST, FSB

By Michael G. Williamson

Title Michael G. Williamson  
Vice President and  
Chief Trust Officer

Date Prudential Bank & Trust, F.S.B.  
5-9-2008

# **EXHIBIT D**

**Building Materials Holding Corporation 1999 Deferred  
Compensation Plan for Executives Trust**

TRUST AGREEMENT

Establishing

the

BUILDING MATERIALS HOLDING CORPORATION 1999 DEFERRED COMPENSATION  
PLAN FOR EXECUTIVES TRUST

by and between

BUILDING MATERIALS HOLDING CORPORATION

and

PRUDENTIAL BANK & TRUST, FSB

**Prudential Bank & Trust FSB**

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- (a) This Agreement made this 1<sup>ST</sup> day of May, 2008 by and between Building Material Holding Corporation (the "Company") and Prudential Bank & Trust, FSB, a federal savings bank with its principal office and place of business in Hartford, Connecticut (the "Trustee");
- (b) WHEREAS, Company has adopted the Building Materials Holding Corporation 1999 Deferred Compensation Plan for Executives (the "Plan");
- (c) WHEREAS, Company has incurred or expects to incur liability under the terms of such Plan with respect to the individuals participating in such Plan;
- (d) WHEREAS, Company wishes to establish the Building Materials Holding Corporation 1999 Deferred Compensation Plan for Executives Trust (hereinafter called "Trust" or "Trust Fund") and to contribute to the Trust assets that shall be held herein, subject to the claims of Company's creditors in the event of Company's insolvency, as herein defined, until paid to Plan participants and their beneficiaries in such manner and at such times as specified in the Plan;
- (e) WHEREAS, it is the intention of the parties that this Trust shall constitute an unfunded arrangement and shall not affect the status of the Plan as an unfunded plan maintained for the purpose of providing deferred compensation and/or benefits for a select group of management or highly compensated employees for purposes of Title I of the Employee Retirement Income Security Act of 1974;
- (f) WHEREAS, it is the intention of Company to make contributions to the Trust to provide itself with a source of funds to assist in the meeting of its liabilities under the Plan.

NOW, THEREFORE, the parties do hereby establish the Trust and agree that the Trust shall be comprised, held and disposed of as follows:

Section 1. Establishment of Trust.

- (a) Company hereby deposits with Trustee in trust certain good and valuable consideration, which shall become the principal of the Trust to be held, administered and disposed of by Trustee as provided in this Trust Agreement.
- (b) The Trust hereby established shall be irrevocable.

- (c) The Trust is intended to be a grantor trust, of which Company is the grantor, within the meaning of subpart E, part I, subchapter J, chapter 1, subtitle A of the Internal Revenue Code of 1986, as amended, and shall be construed accordingly.
- (d) The principal of the Trust, and any earnings thereon shall be held separate and apart from other funds of Company and shall be used exclusively for the uses and purposes of Plan participants and general creditors as herein set forth. Plan participants and their beneficiaries shall have no preferred claim on, or any beneficial ownership interest in, any assets of the Trust. Any rights created under the Plan and this Trust Agreement shall be mere unsecured contractual rights of Plan participants and their beneficiaries against Company. Any assets held by the Trust will be subject to the claims of Company's general creditors under federal and state law in the event of insolvency, as defined in Section 3(a) herein.
- (e) Company, in its sole discretion, may at any time, or from time to time, make additional deposits of cash or other property in trust with Trustee to augment the principal to be held, administered and disposed of by Trustee as provided in this Trust Agreement. Neither Trustee nor any Plan participant or beneficiary shall have any right to compel such additional deposits.

Section 2. Payments to Plan Participants and Their Beneficiaries.

- (a) Company shall deliver to Trustee a schedule (the "Payment Schedule") that indicates the amounts payable in respect of each Plan participant (and his or her beneficiaries), that provides a formula or other instructions acceptable to Trustee for determining the amounts so payable, the form in which such amount is to be paid (as provided for or available under the Plan), and the time of commencement for payment of such amounts. Except as otherwise provided herein, Trustee shall make payments to the Plan participants and their beneficiaries in accordance with such Payment Schedule. The Trustee shall make provisions for reporting and withholding of any federal, state or local taxes that may be required to be withheld with respect to the payment of benefits pursuant to the terms of the Plan and shall pay amounts withheld to the appropriate taxing authorities or determine that such amounts have been reported, withheld and paid by Company.
- (b) The entitlement of a Plan participant or his or her beneficiaries to benefits under the Plan shall be determined by Company or such party as it shall designate under the Plan, and any claim for such benefits shall be considered and reviewed under the procedures set out in the Plan.

- (c) Company may make payment of benefits directly to Plan participants or their beneficiaries as they become due under the terms of the Plan. Company shall notify Trustee of its decision to make payment of benefits directly prior to the time amounts are payable to participants or their beneficiaries. Trustee shall require Company to provide reasonable written documentation that such payments have been made directly to such participant or beneficiary. In addition, if the principal of the Trust, and any earnings thereon, are not sufficient to make payments of benefits in accordance with the terms of the Plan, Company shall make the balance of each such payment as it falls due. Trustee shall notify Company where principal and earnings are not sufficient.

**Section 3. Trustee Responsibility Regarding Payments to Trust Beneficiary When Company is Insolvent.**

- (a) Trustee shall cease payment of benefits to Plan participants and their beneficiaries if the Company is insolvent. Company shall be considered "insolvent" for purposes of this Trust Agreement if (i) Company is unable to pay its debts as they become due, (ii) Company is subject to a pending proceeding as a debtor under the United States Bankruptcy Code, or (iii) Company is determined to be insolvent by a federal or state regulatory agency with jurisdiction to make that determination.
- (b) At all times during the continuance of this Trust, as provided in Section 1(d) hereof, the principal and income of the Trust shall be subject to claims of general creditors of Company under federal and state law as set forth below.
  - (1) The Board of Directors and the Chief Executive Officer of Company shall have the duty to inform Trustee in writing of Company's insolvency. If a person claiming to be a creditor of Company alleges in writing to Trustee that Company has become insolvent, Trustee shall determine whether Company is insolvent and, pending such determination, Trustee shall discontinue payment of benefits to Plan participants or their beneficiaries.
  - (2) Unless Trustee has actual knowledge of Company's insolvency, or has received notice from Company or a person claiming to be a creditor alleging that Company is insolvent, Trustee shall have no duty to inquire whether Company is insolvent. Trustee may in all events rely on such evidence concerning Company's solvency as may be furnished to Trustee and that provides Trustee with a reasonable basis for making a determination concerning Company's solvency.

- (3) If at any time Trustee has determined that Company is insolvent, Trustee shall discontinue payments to Plan participants or their beneficiaries and shall hold the assets of the Trust for the benefit of Company's general creditors. Nothing in this Trust Agreement shall in any way diminish any rights of Plan participants or their beneficiaries to pursue their rights as general creditors of Company with respect to benefits due under the Plan or otherwise.
  - (4) Trustee shall resume the payment of benefits to Plan participants or their beneficiaries in accordance with Section 2 of this Trust Agreement only after Trustee has determined that Company is not insolvent (or is no longer insolvent).
- (c) Provided that there are sufficient assets, if Trustee discontinues the payment of benefits from the Trust pursuant to Section 3(b) hereof and subsequently resumes such payments, the first payment following such discontinuance shall include the aggregate amount of all payments due to Plan participants or their beneficiaries under the terms of the Plan for the period of such discontinuance, less the aggregate amount of any payments made to Plan participants and their beneficiaries by Company in lieu of the payments provided for hereunder during any such period of discontinuance.

#### Section 4. Payments to Company.

Except as provided in Section 3 hereof, after the Trust has become irrevocable, Company shall have no right or power to direct Trustee to return to Company or to divert to others any of the Trust assets before all payment[s] of benefits have been made to Plan participants and their beneficiaries pursuant to the terms of the Plan.

#### Section 5. Investment Authority.

Trustee shall have the power to invest the assets of the Trust Fund in such investment vehicles as directed by the Company, including insurance policies or securities (including stock or rights to acquire stock) or obligations issued by Company. All rights associated with assets of the Trust shall be exercised by Trustee or the person designated by Trustee pursuant to the Company's direction, and shall in no event be exercisable by or rest with Plan participants.

#### Section 6. Disposition of Income.

During the term of this Trust, all income received by the Trust, net of expenses and taxes, shall be accumulated and reinvested.

#### Section 7. Accounting by Trustee.

The Trustee has accepted this Trust on the condition that the Company has entered or is entering into a service agreement with an affiliate of the Trustee whereby an affiliate of the Trustee will provide recordkeeping services for all assets held pursuant to this Trust Agreement. The Trustee shall be required to forward to the Company, or require an affiliate of the Trustee to forward to the Company, the recordkeeping reports and related financial information provided by an affiliate of the Trustee, but the Trustee shall not otherwise be required to provide Trust accounts.

#### Section 8. Responsibility of Trustee.

- (a) Trustee shall act with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, provided, however, that Trustee shall incur no liability to any person for any action taken pursuant to a direction, request or approval given by Company or any delegate appointed by the Company which is contemplated by, and in conformity with, the terms of the Plan or this Trust and is given in writing by Company or its delegate. In the event of a dispute between Company and a party, Trustee may apply to a court of competent jurisdiction to resolve the dispute.
- (b) If Trustee undertakes or defends any litigation arising in connection with this Trust, Company agrees to indemnify Trustee against Trustee's costs, expenses and liabilities (including, without limitation, attorneys' fees and expenses) relating thereto and to be primarily liable for such payments. If Company does not pay such costs, expenses and liabilities in a reasonably timely manner, Trustee may obtain payment from the Trust.
- (c) Trustee may hire agents, accountants, actuaries, investment advisors, financial consultants or other professionals to assist it in performing any of its duties or obligations hereunder, including recordkeeping, reporting, custody of assets or proxy voting. Such agents may include affiliates of the Trustee.
- (d) Trustee shall have, without exclusion, all powers conferred in Trustees in accordance with applicable law, unless expressly provided otherwise herein, provided, however, that if an insurance policy is held as an asset of the Trust, Trustee shall have no power to name a beneficiary other than the Trust, to assign the policy (as distinct from conversion of the policy to a different form) other than to a successor trustee, or to loan to any person the proceeds of any borrowing against such policy.

- (e) The Company shall indemnify and hold harmless the Trustee from and against any and all claims, losses, damages, expenses (including reasonable counsel fees) and liability to which the Trustee may be subject by reason of any act done or omitted to be done, except where the same is finally adjudicated to be due to the negligence or willful misconduct of the Trustee.
- (f) In addition to and in no way in limitation of the indemnification of paragraph (e) of this section, the Company hereby agrees to indemnify and hold harmless the Trustee from and against any claims, losses, damages, expenses (including reasonable counsel fees) and liability to which the Trustee may be subject by reason of any act or omission of any prior, subsequent or existing trustee of the Plan.
- (g) The Trustee shall be responsible only for such assets as are actually received by it as Trustee hereunder. The Trustee shall have no duty or authority to ascertain whether any contributions should be made to it pursuant to the Plan or to bring any action to enforce any obligation to make any such contribution, nor shall it have any responsibility concerning the amount of any contribution or the application of the Plan's contribution formula. The Trustee shall have no responsibility for any assets not held under this Trust, even if those assets are held as assets of the Plan under a separate trust agreement. Responsibility for any such assets shall be solely that of the trustees named in such separate trust agreement, or, in the event no such separate trust exists, the Company.

#### Section 9. Compensation and Expenses of Trustee.

Company shall pay all administrative and Trustees' fees and expenses in accordance with a fee schedule provided to the Company. In addition, Trustee shall be paid its reasonable expenses, including reasonable expenses of counsel and other agents employed by the Trustee, incurred in connection with administration of the Trust Fund. If the Trustee proposes an amended fee schedule and the Company fails to object thereto within ninety (90) days of its receipt, the amended fee schedule shall be deemed accepted by the Company. If not paid, the fees and expenses shall be paid from the Trust.

#### Section 10. Resignation and Removal of Trustee.

- (a) Trustee may resign at any time by written notice to Company, which shall be effective 120 (one hundred twenty) days after receipt of such notice unless Company and Trustee agree otherwise.

- (b) Trustee may be removed by Company on 120 (one hundred twenty) days notice or upon shorter notice accepted by Trustee.
- (c) The Trustee's service pursuant to this Agreement is conditioned upon the existence of one or more contracts between the Company and an affiliate of the Trustee providing for full Plan recordkeeping services. In the event the contract providing for such recordkeeping services is discontinued or terminated, this Trust Agreement shall be terminated as well with no further notice from either party to the other as of the date of discontinuance or termination of the contract providing for Plan recordkeeping services.
- (d) Upon resignation or removal of Trustee and appointment of a successor Trustee, all assets shall subsequently be transferred to the successor Trustee. The transfer shall be completed within 30 days after receipt of notice of resignation, removal or transfer, unless Company extends the time limit.
- (e) If Trustee resigns or is removed, a successor shall be appointed, in accordance with Section 11 hereof, by the effective date of resignation or removal under paragraph(s) (a), (b) or (c) of this section. If no such appointment has been made, Trustee may apply to a court of competent jurisdiction for appointment of a successor or for instructions. All expenses of Trustee in connection with the proceeding shall be allowed as administrative expenses of the Trust.

#### Section 11. Appointment of Successor.

If Trustee resigns or is removed in accordance with Section 10(a), (b) or (c) hereof, Company may appoint any third party, such as a bank trust department or other party that may be granted corporate trustee powers under state law, as a successor to replace Trustee upon resignation or removal. The appointment shall be effective when accepted in writing by the new Trustee, who shall have all of the rights and powers of the former Trustee, including ownership rights in the Trust assets. The former Trustee shall execute any instrument necessary or reasonably requested by Company or the successor Trustee to evidence the transfer.

Section 12. Amendment or Termination.

- (a) This Trust Agreement may be amended by a written instrument executed by Trustee and Company. Notwithstanding the foregoing, no such amendment shall conflict with the terms of the Plan or shall make the Trust revocable after it has become irrevocable in accordance with Section 1(b) hereof.
- (b) The Trust shall not terminate until the date on which Plan participants and their beneficiaries are no longer entitled to benefits pursuant to the terms of the Plan. Upon termination of the Trust any assets remaining in the Trust shall be returned to Company.

Section 13. Miscellaneous.

- (a) Any provision of this Trust Agreement prohibited by law shall be ineffective to the extent of any such prohibition, without invalidating the remaining provisions hereof.
- (b) Benefits payable to Plan participants and their beneficiaries under this Trust Agreement may not be anticipated, assigned (either at law or in equity), alienated, pledged, encumbered or subjected to attachment, garnishment, levy, execution or other legal or equitable process.
- (c) This Trust Agreement and the Trust hereby created shall be governed, construed, administered and regulated in all respects in accordance with the laws of Idaho.
- (d) This Trust Agreement shall be binding upon the respective successors and assigns of the Company and the Trustee.
- (e) In the event of any conflict between provisions of the Plan and those of this Trust Agreement, this Trust Agreement shall prevail.

Section 14. Effective Date.

The effective date of this Trust Agreement shall be May 1, 2008.

Witness:

Susan Korman

BUILDING MATERIALS HOLDING  
CORPORATION

By Paul S. Street

Title PAUL S. STREET  
Sr. Vice President, Chief Administrative Officer  
General Counsel and Corporate Secretary

Date 5/2/08

Witness:

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PRUDENTIAL BANK & TRUST, FSB

By Michael G. Williamson

Title Michael G. Williamson  
Vice President and  
Chief Trust Officer

Date Prudential Bank & Trust, F.S.B.  
5-9-2008

# **EXHIBIT E**

**Building Materials Holding Corporation 2005 Deferred  
Compensation Plan for Directors Trust**

TRUST AGREEMENT

Establishing

the

BUILDING MATERIALS HOLDING CORPORATION 2005 DEFERRED COMPENSATION  
PLAN FOR DIRECTORS TRUST

by and between

BUILDING MATERIALS HOLDING CORPORATION

and

PRUDENTIAL BANK & TRUST, FSB

**Prudential Bank & Trust FSB**

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- (a) This Agreement made this 1<sup>st</sup> day of May 2008 by and between Building Materials Holding Corporation (the "Company") and Prudential Bank & Trust, FSB, a federal savings bank with its principal office and place of business in Hartford, Connecticut (the "Trustee");
- (b) WHEREAS, Company has adopted the Building Materials Holding Corporation 2005 Deferred Compensation Plan for Directors (the "Plan");
- (c) WHEREAS, Company has incurred or expects to incur liability under the terms of such Plan with respect to the individuals participating in such Plan;
- (d) WHEREAS, Company wishes to establish the Building Materials Holding Corporation 2005 Deferred Compensation Plan for Directors Trust (hereinafter called "Trust" or "Trust Fund") and to contribute to the Trust assets that shall be held herein, subject to the claims of Company's creditors in the event of Company's insolvency, as herein defined, until paid to Plan participants and their beneficiaries in such manner and at such times as specified in the Plan;
- (e) WHEREAS, it is the intention of the parties that this Trust shall constitute an unfunded arrangement and shall not affect the status of the Plan as an unfunded plan maintained for the purpose of providing deferred compensation and/or benefits for a select group of management or highly compensated employees for purposes of Title I of the Employee Retirement Income Security Act of 1974;
- (f) WHEREAS, it is the intention of Company to make contributions to the Trust to provide itself with a source of funds to assist in the meeting of its liabilities under the Plan.

NOW, THEREFORE, the parties do hereby establish the Trust and agree that the Trust shall be comprised, held and disposed of as follows:

Section 1. Establishment of Trust.

- (a) Company hereby deposits with Trustee in trust certain good and valuable consideration, which shall become the principal of the Trust to be held, administered and disposed of by Trustee as provided in this Trust Agreement.
- (b) The Trust hereby established shall be irrevocable.

- (c) The Trust is intended to be a grantor trust, of which Company is the grantor, within the meaning of subpart E, part I, subchapter J, chapter 1, subtitle A of the Internal Revenue Code of 1986, as amended, and shall be construed accordingly.
- (d) The principal of the Trust, and any earnings thereon shall be held separate and apart from other funds of Company and shall be used exclusively for the uses and purposes of Plan participants and general creditors as herein set forth. Plan participants and their beneficiaries shall have no preferred claim on, or any beneficial ownership interest in, any assets of the Trust. Any rights created under the Plan and this Trust Agreement shall be mere unsecured contractual rights of Plan participants and their beneficiaries against Company. Any assets held by the Trust will be subject to the claims of Company's general creditors under federal and state law in the event of insolvency, as defined in Section 3(a) herein.
- (e) Company, in its sole discretion, may at any time, or from time to time, make additional deposits of cash or other property in trust with Trustee to augment the principal to be held, administered and disposed of by Trustee as provided in this Trust Agreement. Neither Trustee nor any Plan participant or beneficiary shall have any right to compel such additional deposits.

## Section 2. Payments to Plan Participants and Their Beneficiaries.

- (a) Company shall deliver to Trustee a schedule (the "Payment Schedule") that indicates the amounts payable in respect of each Plan participant (and his or her beneficiaries), that provides a formula or other instructions acceptable to Trustee for determining the amounts so payable, the form in which such amount is to be paid (as provided for or available under the Plan), and the time of commencement for payment of such amounts. Except as otherwise provided herein, Trustee shall make payments to the Plan participants and their beneficiaries in accordance with such Payment Schedule. The Trustee shall make provisions for reporting and withholding of any federal, state or local taxes that may be required to be withheld with respect to the payment of benefits pursuant to the terms of the Plan and shall pay amounts withheld to the appropriate taxing authorities or determine that such amounts have been reported, withheld and paid by Company.
- (b) The entitlement of a Plan participant or his or her beneficiaries to benefits under the Plan shall be determined by Company or such party as it shall designate under the Plan, and any claim for such benefits shall be considered and reviewed under the procedures set out in the Plan.

- (c) Company may make payment of benefits directly to Plan participants or their beneficiaries as they become due under the terms of the Plan. Company shall notify Trustee of its decision to make payment of benefits directly prior to the time amounts are payable to participants or their beneficiaries. Trustee shall require Company to provide reasonable written documentation that such payments have been made directly to such participant or beneficiary. In addition, if the principal of the Trust, and any earnings thereon, are not sufficient to make payments of benefits in accordance with the terms of the Plan, Company shall make the balance of each such payment as it falls due. Trustee shall notify Company where principal and earnings are not sufficient.

Section 3. Trustee Responsibility Regarding Payments to Trust Beneficiary When Company is Insolvent.

- (a) Trustee shall cease payment of benefits to Plan participants and their beneficiaries if the Company is insolvent. Company shall be considered "insolvent" for purposes of this Trust Agreement if (i) Company is unable to pay its debts as they become due, (ii) Company is subject to a pending proceeding as a debtor under the United States Bankruptcy Code, or (iii) Company is determined to be insolvent by a federal or state regulatory agency with jurisdiction to make that determination.
- (b) At all times during the continuance of this Trust, as provided in Section 1(d) hereof, the principal and income of the Trust shall be subject to claims of general creditors of Company under federal and state law as set forth below.
  - (1) The Board of Directors and the Chief Executive Officer of Company shall have the duty to inform Trustee in writing of Company's insolvency. If a person claiming to be a creditor of Company alleges in writing to Trustee that Company has become insolvent, Trustee shall determine whether Company is insolvent and, pending such determination, Trustee shall discontinue payment of benefits to Plan participants or their beneficiaries.
  - (2) Unless Trustee has actual knowledge of Company's insolvency, or has received notice from Company or a person claiming to be a creditor alleging that Company is insolvent, Trustee shall have no duty to inquire whether Company is insolvent. Trustee may in all events rely on such evidence concerning Company's solvency as may be furnished to Trustee and that provides Trustee with a reasonable basis for making a determination concerning Company's solvency.

- (3) If at any time Trustee has determined that Company is insolvent, Trustee shall discontinue payments to Plan participants or their beneficiaries and shall hold the assets of the Trust for the benefit of Company's general creditors. Nothing in this Trust Agreement shall in any way diminish any rights of Plan participants or their beneficiaries to pursue their rights as general creditors of Company with respect to benefits due under the Plan or otherwise.
  - (4) Trustee shall resume the payment of benefits to Plan participants or their beneficiaries in accordance with Section 2 of this Trust Agreement only after Trustee has determined that Company is not insolvent (or is no longer insolvent).
- (c) Provided that there are sufficient assets, if Trustee discontinues the payment of benefits from the Trust pursuant to Section 3(b) hereof and subsequently resumes such payments, the first payment following such discontinuance shall include the aggregate amount of all payments due to Plan participants or their beneficiaries under the terms of the Plan for the period of such discontinuance, less the aggregate amount of any payments made to Plan participants and their beneficiaries by Company in lieu of the payments provided for hereunder during any such period of discontinuance.

#### Section 4. Payments to Company.

Except as provided in Section 3 hereof, after the Trust has become irrevocable, Company shall have no right or power to direct Trustee to return to Company or to divert to others any of the Trust assets before all payment[s] of benefits have been made to Plan participants and their beneficiaries pursuant to the terms of the Plan.

#### Section 5. Investment Authority.

Trustee shall have the power to invest the assets of the Trust Fund in such investment vehicles as directed by the Company, including insurance policies or securities (including stock or rights to acquire stock) or obligations issued by Company. All rights associated with assets of the Trust shall be exercised by Trustee or the person designated by Trustee pursuant to the Company's direction, and shall in no event be exercisable by or rest with Plan participants.

#### Section 6. Disposition of Income.

During the term of this Trust, all income received by the Trust, net of expenses and taxes, shall be accumulated and reinvested.

#### Section 7. Accounting by Trustee.

The Trustee has accepted this Trust on the condition that the Company has entered or is entering into a service agreement with an affiliate of the Trustee whereby an affiliate of the Trustee will provide recordkeeping services for all assets held pursuant to this Trust Agreement. The Trustee shall be required to forward to the Company, or require an affiliate of the Trustee to forward to the Company, the recordkeeping reports and related financial information provided by an affiliate of the Trustee, but the Trustee shall not otherwise be required to provide Trust accounts.

#### Section 8. Responsibility of Trustee.

- (a) Trustee shall act with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, provided, however, that Trustee shall incur no liability to any person for any action taken pursuant to a direction, request or approval given by Company or any delegate appointed by the Company which is contemplated by, and in conformity with, the terms of the Plan or this Trust and is given in writing by Company or its delegate. In the event of a dispute between Company and a party, Trustee may apply to a court of competent jurisdiction to resolve the dispute.
- (b) If Trustee undertakes or defends any litigation arising in connection with this Trust, Company agrees to indemnify Trustee against Trustee's costs, expenses and liabilities (including, without limitation, attorneys' fees and expenses) relating thereto and to be primarily liable for such payments. If Company does not pay such costs, expenses and liabilities in a reasonably timely manner, Trustee may obtain payment from the Trust.
- (c) Trustee may hire agents, accountants, actuaries, investment advisors, financial consultants or other professionals to assist it in performing any of its duties or obligations hereunder, including recordkeeping, reporting, custody of assets or proxy voting. Such agents may include affiliates of the Trustee.
- (d) Trustee shall have, without exclusion, all powers conferred in Trustees in accordance with applicable law, unless expressly provided otherwise herein, provided, however, that if an insurance policy is held as an asset of the Trust, Trustee shall have no power to name a beneficiary other than the Trust, to assign the policy (as distinct from conversion of the policy to a different form) other than to a successor trustee, or to loan to any person the proceeds of any borrowing against such policy.

- (e) The Company shall indemnify and hold harmless the Trustee from and against any and all claims, losses, damages, expenses (including reasonable counsel fees) and liability to which the Trustee may be subject by reason of any act done or omitted to be done, except where the same is finally adjudicated to be due to the negligence or willful misconduct of the Trustee.
- (f) In addition to and in no way in limitation of the indemnification of paragraph (e) of this section, the Company hereby agrees to indemnify and hold harmless the Trustee from and against any claims, losses, damages, expenses (including reasonable counsel fees) and liability to which the Trustee may be subject by reason of any act or omission of any prior, subsequent or existing trustee of the Plan.
- (g) The Trustee shall be responsible only for such assets as are actually received by it as Trustee hereunder. The Trustee shall have no duty or authority to ascertain whether any contributions should be made to it pursuant to the Plan or to bring any action to enforce any obligation to make any such contribution, nor shall it have any responsibility concerning the amount of any contribution or the application of the Plan's contribution formula. The Trustee shall have no responsibility for any assets not held under this Trust, even if those assets are held as assets of the Plan under a separate trust agreement. Responsibility for any such assets shall be solely that of the trustees named in such separate trust agreement, or, in the event no such separate trust exists, the Company.

#### Section 9. Compensation and Expenses of Trustee.

Company shall pay all administrative and Trustees' fees and expenses in accordance with a fee schedule provided to the Company. In addition, Trustee shall be paid its reasonable expenses, including reasonable expenses of counsel and other agents employed by the Trustee, incurred in connection with administration of the Trust Fund. If the Trustee proposes an amended fee schedule and the Company fails to object thereto within ninety (90) days of its receipt, the amended fee schedule shall be deemed accepted by the Company. If not paid, the fees and expenses shall be paid from the Trust.

#### Section 10. Resignation and Removal of Trustee.

- (a) Trustee may resign at any time by written notice to Company, which shall be effective 120 (one hundred twenty) days after receipt of such notice unless Company and Trustee agree otherwise.

- (b) Trustee may be removed by Company on 120 (one hundred twenty) days notice or upon shorter notice accepted by Trustee.
- (c) The Trustee's service pursuant to this Agreement is conditioned upon the existence of one or more contracts between the Company and an affiliate of the Trustee providing for full Plan recordkeeping services. In the event the contract providing for such recordkeeping services is discontinued or terminated, this Trust Agreement shall be terminated as well with no further notice from either party to the other as of the date of discontinuance or termination of the contract providing for Plan recordkeeping services.
- (d) Upon resignation or removal of Trustee and appointment of a successor Trustee, all assets shall subsequently be transferred to the successor Trustee. The transfer shall be completed within 30 days after receipt of notice of resignation, removal or transfer, unless Company extends the time limit.
- (e) If Trustee resigns or is removed, a successor shall be appointed, in accordance with Section 11 hereof, by the effective date of resignation or removal under paragraph(s) (a), (b) or (c) of this section. If no such appointment has been made, Trustee may apply to a court of competent jurisdiction for appointment of a successor or for instructions. All expenses of Trustee in connection with the proceeding shall be allowed as administrative expenses of the Trust.

#### Section 11. Appointment of Successor.

If Trustee resigns or is removed in accordance with Section 10(a), (b) or (c) hereof, Company may appoint any third party, such as a bank trust department or other party that may be granted corporate trustee powers under state law, as a successor to replace Trustee upon resignation or removal. The appointment shall be effective when accepted in writing by the new Trustee, who shall have all of the rights and powers of the former Trustee, including ownership rights in the Trust assets. The former Trustee shall execute any instrument necessary or reasonably requested by Company or the successor Trustee to evidence the transfer.

Section 12. Amendment or Termination.

- (a) This Trust Agreement may be amended by a written instrument executed by Trustee and Company. Notwithstanding the foregoing, no such amendment shall conflict with the terms of the Plan or shall make the Trust revocable after it has become irrevocable in accordance with Section 1(b) hereof.
- (b) The Trust shall not terminate until the date on which Plan participants and their beneficiaries are no longer entitled to benefits pursuant to the terms of the Plan. Upon termination of the Trust any assets remaining in the Trust shall be returned to Company.

Section 13. Miscellaneous.

- (a) Any provision of this Trust Agreement prohibited by law shall be ineffective to the extent of any such prohibition, without invalidating the remaining provisions hereof.
- (b) Benefits payable to Plan participants and their beneficiaries under this Trust Agreement may not be anticipated, assigned (either at law or in equity), alienated, pledged, encumbered or subjected to attachment, garnishment, levy, execution or other legal or equitable process.
- (c) This Trust Agreement and the Trust hereby created shall be governed, construed, administered and regulated in all respects in accordance with the laws of Idaho.
- (d) This Trust Agreement shall be binding upon the respective successors and assigns of the Company and the Trustee.
- (e) In the event of any conflict between provisions of the Plan and those of this Trust Agreement, this Trust Agreement shall prevail.

Section 14. Effective Date.

The effective date of this Trust Agreement shall be May 1, 2008.

Witness:

Susan Rumrill

BUILDING MATERIALS HOLDING CORPORATION

By Paul S. Street  
PAUL S. STREET

Title Sr. Vice President, Chief Administrative Officer  
General Counsel and Corporate Secretary

Date \_\_\_\_\_

Witness:

\_\_\_\_\_

PRUDENTIAL BANK & TRUST, FSB

By Michael G. Williamson  
Michael G. Williamson

Title Vice President and  
Chief Trust Officer

Date Prudential Bank & Trust, F.S.B.  
5-1-2008

# **EXHIBIT F**

**Building Materials Holding Corporation 2005 Deferred  
Compensation Plan for Executives Trust**

TRUST AGREEMENT

Establishing

the

BUILDING MATERIALS HOLDING CORPORATION 2005 DEFERRED COMPENSATION  
PLAN FOR EXECUTIVES TRUST

by and between

BUILDING MATERIALS HOLDING CORPORATION

and

PRUDENTIAL BANK & TRUST, FSB

**Prudential Bank & Trust FSB**

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- (a) This Agreement made this 1st day of May, 2008 by and between Building Materials Holding Corporation (the "Company") and Prudential Bank & Trust, FSB, a federal savings bank with its principal office and place of business in Hartford, Connecticut (the "Trustee");
- (b) WHEREAS, Company has adopted the Building Materials Holding Corporation 2005 Deferred Compensation Plan for Executives (the "Plan");
- (c) WHEREAS, Company has incurred or expects to incur liability under the terms of such Plan with respect to the individuals participating in such Plan;
- (d) WHEREAS, Company wishes to establish the Building Materials Holding Corporation 2005 Deferred Compensation Plan for Executives Trust (hereinafter called "Trust" or "Trust Fund") and to contribute to the Trust assets that shall be held herein, subject to the claims of Company's creditors in the event of Company's insolvency, as herein defined, until paid to Plan participants and their beneficiaries in such manner and at such times as specified in the Plan;
- (e) WHEREAS, it is the intention of the parties that this Trust shall constitute an unfunded arrangement and shall not affect the status of the Plan as an unfunded plan maintained for the purpose of providing deferred compensation and/or benefits for a select group of management or highly compensated employees for purposes of Title I of the Employee Retirement Income Security Act of 1974;
- (f) WHEREAS, it is the intention of Company to make contributions to the Trust to provide itself with a source of funds to assist in the meeting of its liabilities under the Plan.

NOW, THEREFORE, the parties do hereby establish the Trust and agree that the Trust shall be comprised, held and disposed of as follows:

Section 1. Establishment of Trust.

- (a) Company hereby deposits with Trustee in trust certain good and valuable consideration, which shall become the principal of the Trust to be held, administered and disposed of by Trustee as provided in this Trust Agreement.
- (b) The Trust hereby established shall be irrevocable.

- (c) The Trust is intended to be a grantor trust, of which Company is the grantor, within the meaning of subpart E, part I, subchapter J, chapter 1, subtitle A of the Internal Revenue Code of 1986, as amended, and shall be construed accordingly.
- (d) The principal of the Trust, and any earnings thereon shall be held separate and apart from other funds of Company and shall be used exclusively for the uses and purposes of Plan participants and general creditors as herein set forth. Plan participants and their beneficiaries shall have no preferred claim on, or any beneficial ownership interest in, any assets of the Trust. Any rights created under the Plan and this Trust Agreement shall be mere unsecured contractual rights of Plan participants and their beneficiaries against Company. Any assets held by the Trust will be subject to the claims of Company's general creditors under federal and state law in the event of insolvency, as defined in Section 3(a) herein.
- (e) Company, in its sole discretion, may at any time, or from time to time, make additional deposits of cash or other property in trust with Trustee to augment the principal to be held, administered and disposed of by Trustee as provided in this Trust Agreement. Neither Trustee nor any Plan participant or beneficiary shall have any right to compel such additional deposits.

## Section 2. Payments to Plan Participants and Their Beneficiaries.

- (a) Company shall deliver to Trustee a schedule (the "Payment Schedule") that indicates the amounts payable in respect of each Plan participant (and his or her beneficiaries), that provides a formula or other instructions acceptable to Trustee for determining the amounts so payable, the form in which such amount is to be paid (as provided for or available under the Plan), and the time of commencement for payment of such amounts. Except as otherwise provided herein, Trustee shall make payments to the Plan participants and their beneficiaries in accordance with such Payment Schedule. The Trustee shall make provisions for reporting and withholding of any federal, state or local taxes that may be required to be withheld with respect to the payment of benefits pursuant to the terms of the Plan and shall pay amounts withheld to the appropriate taxing authorities or determine that such amounts have been reported, withheld and paid by Company.
- (b) The entitlement of a Plan participant or his or her beneficiaries to benefits under the Plan shall be determined by Company or such party as it shall designate under the Plan, and any claim for such benefits shall be considered and reviewed under the procedures set out in the Plan.

- (c) Company may make payment of benefits directly to Plan participants or their beneficiaries as they become due under the terms of the Plan. Company shall notify Trustee of its decision to make payment of benefits directly prior to the time amounts are payable to participants or their beneficiaries. Trustee shall require Company to provide reasonable written documentation that such payments have been made directly to such participant or beneficiary. In addition, if the principal of the Trust, and any earnings thereon, are not sufficient to make payments of benefits in accordance with the terms of the Plan, Company shall make the balance of each such payment as it falls due. Trustee shall notify Company where principal and earnings are not sufficient.

**Section 3. Trustee Responsibility Regarding Payments to Trust Beneficiary When Company is Insolvent.**

- (a) Trustee shall cease payment of benefits to Plan participants and their beneficiaries if the Company is insolvent. Company shall be considered "insolvent" for purposes of this Trust Agreement if (i) Company is unable to pay its debts as they become due, (ii) Company is subject to a pending proceeding as a debtor under the United States Bankruptcy Code, or (iii) Company is determined to be insolvent by a federal or state regulatory agency with jurisdiction to make that determination.
- (b) At all times during the continuance of this Trust, as provided in Section 1(d) hereof, the principal and income of the Trust shall be subject to claims of general creditors of Company under federal and state law as set forth below.
  - (1) The Board of Directors and the Chief Executive Officer of Company shall have the duty to inform Trustee in writing of Company's insolvency. If a person claiming to be a creditor of Company alleges in writing to Trustee that Company has become insolvent, Trustee shall determine whether Company is insolvent and, pending such determination, Trustee shall discontinue payment of benefits to Plan participants or their beneficiaries.
  - (2) Unless Trustee has actual knowledge of Company's insolvency, or has received notice from Company or a person claiming to be a creditor alleging that Company is insolvent, Trustee shall have no duty to inquire whether Company is insolvent. Trustee may in all events rely on such evidence concerning Company's solvency as may be furnished to Trustee and that provides Trustee with a reasonable basis for making a determination concerning Company's solvency.

- (3) If at any time Trustee has determined that Company is insolvent, Trustee shall discontinue payments to Plan participants or their beneficiaries and shall hold the assets of the Trust for the benefit of Company's general creditors. Nothing in this Trust Agreement shall in any way diminish any rights of Plan participants or their beneficiaries to pursue their rights as general creditors of Company with respect to benefits due under the Plan or otherwise.
- (4) Trustee shall resume the payment of benefits to Plan participants or their beneficiaries in accordance with Section 2 of this Trust Agreement only after Trustee has determined that Company is not insolvent (or is no longer insolvent).
- (c) Provided that there are sufficient assets, if Trustee discontinues the payment of benefits from the Trust pursuant to Section 3(b) hereof and subsequently resumes such payments, the first payment following such discontinuance shall include the aggregate amount of all payments due to Plan participants or their beneficiaries under the terms of the Plan for the period of such discontinuance, less the aggregate amount of any payments made to Plan participants and their beneficiaries by Company in lieu of the payments provided for hereunder during any such period of discontinuance.

#### Section 4. Payments to Company.

Except as provided in Section 3 hereof, after the Trust has become irrevocable, Company shall have no right or power to direct Trustee to return to Company or to divert to others any of the Trust assets before all payment[s] of benefits have been made to Plan participants and their beneficiaries pursuant to the terms of the Plan.

#### Section 5. Investment Authority.

Trustee shall have the power to invest the assets of the Trust Fund in such investment vehicles as directed by the Company, including insurance policies or securities (including stock or rights to acquire stock) or obligations issued by Company. All rights associated with assets of the Trust shall be exercised by Trustee or the person designated by Trustee pursuant to the Company's direction, and shall in no event be exercisable by or rest with Plan participants.

#### Section 6. Disposition of Income.

During the term of this Trust, all income received by the Trust, net of expenses and taxes, shall be accumulated and reinvested.

Section 7. Accounting by Trustee.

The Trustee has accepted this Trust on the condition that the Company has entered or is entering into a service agreement with an affiliate of the Trustee whereby an affiliate of the Trustee will provide recordkeeping services for all assets held pursuant to this Trust Agreement. The Trustee shall be required to forward to the Company, or require an affiliate of the Trustee to forward to the Company, the recordkeeping reports and related financial information provided by an affiliate of the Trustee, but the Trustee shall not otherwise be required to provide Trust accounts.

Section 8. Responsibility of Trustee.

- (a) Trustee shall act with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, provided, however, that Trustee shall incur no liability to any person for any action taken pursuant to a direction, request or approval given by Company or any delegate appointed by the Company which is contemplated by, and in conformity with, the terms of the Plan or this Trust and is given in writing by Company or its delegate. In the event of a dispute between Company and a party, Trustee may apply to a court of competent jurisdiction to resolve the dispute.
- (b) If Trustee undertakes or defends any litigation arising in connection with this Trust, Company agrees to indemnify Trustee against Trustee's costs, expenses and liabilities (including, without limitation, attorneys' fees and expenses) relating thereto and to be primarily liable for such payments. If Company does not pay such costs, expenses and liabilities in a reasonably timely manner, Trustee may obtain payment from the Trust.
- (c) Trustee may hire agents, accountants, actuaries, investment advisors, financial consultants or other professionals to assist it in performing any of its duties or obligations hereunder, including recordkeeping, reporting, custody of assets or proxy voting. Such agents may include affiliates of the Trustee.
- (d) Trustee shall have, without exclusion, all powers conferred in Trustees in accordance with applicable law, unless expressly provided otherwise herein, provided, however, that if an insurance policy is held as an asset of the Trust, Trustee shall have no power to name a beneficiary other than the Trust, to assign the policy (as distinct from conversion of the policy to a different form) other than to a successor trustee, or to loan to any person the proceeds of any borrowing against such policy.

- (e) The Company shall indemnify and hold harmless the Trustee from and against any and all claims, losses, damages, expenses (including reasonable counsel fees) and liability to which the Trustee may be subject by reason of any act done or omitted to be done, except where the same is finally adjudicated to be due to the negligence or willful misconduct of the Trustee.
- (f) In addition to and in no way in limitation of the indemnification of paragraph (e) of this section, the Company hereby agrees to indemnify and hold harmless the Trustee from and against any claims, losses, damages, expenses (including reasonable counsel fees) and liability to which the Trustee may be subject by reason of any act or omission of any prior, subsequent or existing trustee of the Plan.
- (g) The Trustee shall be responsible only for such assets as are actually received by it as Trustee hereunder. The Trustee shall have no duty or authority to ascertain whether any contributions should be made to it pursuant to the Plan or to bring any action to enforce any obligation to make any such contribution, nor shall it have any responsibility concerning the amount of any contribution or the application of the Plan's contribution formula. The Trustee shall have no responsibility for any assets not held under this Trust, even if those assets are held as assets of the Plan under a separate trust agreement. Responsibility for any such assets shall be solely that of the trustees named in such separate trust agreement, or, in the event no such separate trust exists, the Company.

#### Section 9. Compensation and Expenses of Trustee.

Company shall pay all administrative and Trustees' fees and expenses in accordance with a fee schedule provided to the Company. In addition, Trustee shall be paid its reasonable expenses, including reasonable expenses of counsel and other agents employed by the Trustee, incurred in connection with administration of the Trust Fund. If the Trustee proposes an amended fee schedule and the Company fails to object thereto within ninety (90) days of its receipt, the amended fee schedule shall be deemed accepted by the Company. If not paid, the fees and expenses shall be paid from the Trust.

#### Section 10. Resignation and Removal of Trustee.

- (a) Trustee may resign at any time by written notice to Company, which shall be effective 120 (one hundred twenty) days after receipt of such notice unless Company and Trustee agree otherwise.

- (b) Trustee may be removed by Company on 120 (one hundred twenty) days notice or upon shorter notice accepted by Trustee.
- (c) The Trustee's service pursuant to this Agreement is conditioned upon the existence of one or more contracts between the Company and an affiliate of the Trustee providing for full Plan recordkeeping services. In the event the contract providing for such recordkeeping services is discontinued or terminated, this Trust Agreement shall be terminated as well with no further notice from either party to the other as of the date of discontinuance or termination of the contract providing for Plan recordkeeping services.
- (d) Upon resignation or removal of Trustee and appointment of a successor Trustee, all assets shall subsequently be transferred to the successor Trustee. The transfer shall be completed within 30 days after receipt of notice of resignation, removal or transfer, unless Company extends the time limit.
- (e) If Trustee resigns or is removed, a successor shall be appointed, in accordance with Section 11 hereof, by the effective date of resignation or removal under paragraph(s) (a), (b) or (c) of this section. If no such appointment has been made, Trustee may apply to a court of competent jurisdiction for appointment of a successor or for instructions. All expenses of Trustee in connection with the proceeding shall be allowed as administrative expenses of the Trust.

#### Section 11. Appointment of Successor.

If Trustee resigns or is removed in accordance with Section 10(a), (b) or (c) hereof, Company may appoint any third party, such as a bank trust department or other party that may be granted corporate trustee powers under state law, as a successor to replace Trustee upon resignation or removal. The appointment shall be effective when accepted in writing by the new Trustee, who shall have all of the rights and powers of the former Trustee, including ownership rights in the Trust assets. The former Trustee shall execute any instrument necessary or reasonably requested by Company or the successor Trustee to evidence the transfer.

Section 12. Amendment or Termination.

- (a) This Trust Agreement may be amended by a written instrument executed by Trustee and Company. Notwithstanding the foregoing, no such amendment shall conflict with the terms of the Plan or shall make the Trust revocable after it has become irrevocable in accordance with Section 1(b) hereof.
- (b) The Trust shall not terminate until the date on which Plan participants and their beneficiaries are no longer entitled to benefits pursuant to the terms of the Plan. Upon termination of the Trust any assets remaining in the Trust shall be returned to Company.

Section 13. Miscellaneous.

- (a) Any provision of this Trust Agreement prohibited by law shall be ineffective to the extent of any such prohibition, without invalidating the remaining provisions hereof.
- (b) Benefits payable to Plan participants and their beneficiaries under this Trust Agreement may not be anticipated, assigned (either at law or in equity), alienated, pledged, encumbered or subjected to attachment, garnishment, levy, execution or other legal or equitable process.
- (c) This Trust Agreement and the Trust hereby created shall be governed, construed, administered and regulated in all respects in accordance with the laws of Idaho.
- (d) This Trust Agreement shall be binding upon the respective successors and assigns of the Company and the Trustee.
- (e) In the event of any conflict between provisions of the Plan and those of this Trust Agreement, this Trust Agreement shall prevail.

Section 14. Effective Date.

The effective date of this Trust Agreement shall be May 1, 2008.

Witness:

Susan Remmes

BUILDING MATERIALS HOLDING CORPORATION

By Paul S. Street

Title PAUL S. STREET  
Sr. Vice President, Chief Administrative Officer  
General Counsel and Corporate Secretary

Date 5/21/08

Witness:

\_\_\_\_\_

PRUDENTIAL BANK & TRUST, FSB

By Michael G. Williamson

Title Michael G. Williamson  
Vice President and  
Chief Trust Officer

Date Prudential Bank & Trust, F.S.B.  
5-9-2008

# **EXHIBIT G**

**Building Materials Holding Corporation Schedule B Excerpt**

In re Building Materials Holding Corporation

Case No. 09-12074

Debtor

**SCHEDULE B - PERSONAL PROPERTY - AMENDED**  
(Continuation Sheet)

Type of Property	N O N E	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
5. Books, pictures and other art objects, antiques, stamp, coin, record, tape, compact disc, and other collections or collectibles.		<b>Artwork</b> <b>Building Materials Holding Corporation</b> <b>Four Embarcadero Center, Suite 3200</b> <b>San Francisco, CA 94111</b>	-	<b>Unknown</b>
6. Wearing apparel.	X			
7. Furs and jewelry.	X			
8. Firearms and sports, photographic, and other hobby equipment.	X			
9. Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each.		<b>See Attachment B.9 - Amended</b>	-	<b>16,201,753.04</b>
10. Annuities. Itemize and name each issuer.	X			
11. Interests in an education IRA as defined in 26 U.S.C. § 530(b)(1) or under a qualified State tuition plan as defined in 26 U.S.C. § 529(b)(1). Give particulars. (File separately the record(s) of any such interest(s). 11 U.S.C. § 521(c).)	X			
12. Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Give particulars.		<b>Building Materials Holding Corporation</b> <b>2005 Deferred Compensation Plan for Executives</b> <b>Prudential Retirement</b> <b>P.O. Box 8000</b> <b>Milville, NJ 08332</b>	-	<b>1,131,575.90</b>
		<b>Building Materials Holding Corporation</b> <b>1999 Deferred Compensation Plan for Executives</b> <b>Prudential Retirement</b> <b>P.O. Box 8000</b> <b>Milville, NJ 08332</b>	-	<b>1.03</b>
		<b>Building Materials Holding Corporation</b> <b>2005 Deferred Compensation Plan for Directors</b> <b>Prudential Retirement</b> <b>P.O. Box 8000</b> <b>Milville, NJ 08332</b>	-	<b>0.00</b>
			Sub-Total >	<b>17,333,329.97</b>
			(Total of this page)	

Sheet 4 of 9 continuation sheets attached to the Schedule of Personal Property

In re Building Materials Holding Corporation

Case No. 09-12074

Debtor

**SCHEDULE B - PERSONAL PROPERTY - AMENDED**  
(Continuation Sheet)

Type of Property	N O N E	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
		<b>Building Materials Holding Corporation 1999 Deferred Compensation Plan for Directors Prudential Retirement P.O. Box 8000 Milville, NJ 08332</b>	-	<b>4,533.54</b>
13. Stock and interests in incorporated and unincorporated businesses. Itemize.		<b>BMC West Corporation Location: 720 Park Boulevard, Suite 200, Boise, ID (100% Ownership Interest)</b>	-	<b>Unknown</b>
		<b>SelectBuild Construction, Inc. Location: 720 Park Boulevard, Suite 200, Boise, ID (100% Ownership Interest)</b>	-	<b>Unknown</b>
14. Interests in partnerships or joint ventures. Itemize.	X			
15. Government and corporate bonds and other negotiable and nonnegotiable instruments.	X			
16. Accounts receivable.	X			
17. Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled. Give particulars.	X			
18. Other liquidated debts owed to debtor including tax refunds. Give particulars.		<b>Tax Refund - Colorado</b>	-	<b>78,000.00</b>
		<b>Tax Refund - Idaho</b>	-	<b>7,540.00</b>
		<b>Tax Refund - Montana</b>	-	<b>579,101.00</b>
		<b>Tax Refund - Utah</b>	-	<b>50,000.00</b>
		<b>Tax Refund - Virginia</b>	-	<b>33,471.00</b>
		<b>Tax Refund - Washington</b>	-	<b>33,157.00</b>
19. Equitable or future interests, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule A - Real Property.	X			
20. Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust.		<b>See Attachment B.9</b>	-	<b>Unknown</b>
			Sub-Total >	<b>785,802.54</b>
			(Total of this page)	

Sheet 5 of 9 continuation sheets attached to the Schedule of Personal Property

Insurance Company	Type of Policy	Policy Number	Surrender or Refund Value
Connecticut General Life Insurance Co. (CG)	Group Health Ins-Stop Loss	3220873	\$0.00
CIGNA	Group Health Insurance	3220873 / 600428	\$0.00
Federal Insurance Company	Crime, Fiduciary Liability	8122-2977	Undetermined
National Union Fire Insurance Co. of Pittsburgh, PA	Employment Practices Liability	575-84-22	Undetermined
American International Specialty Lines Ins Co	Environmental Contractor's Pollution Liability	CPO 2085489	Undetermined
American International Specialty Lines Ins Co	Environmental Pollution Legal Liability - Claims Made	PLS 2101368	Undetermined
ACE American Insurance Company	Marine Hull & Liability	Y08159129	Undetermined
XL Specialty Ins. Co	Non-Owned Aircraft Liability	NAN3051921	Undetermined
Westchester Surplus Lines Inc. Co.	Property	D37339945002	Undetermined
AXIS Surplus Ins. Co.	Property	EA7440039-08	Undetermined
Max Specialty	Property	MAX4X90003248	Undetermined
ACE American Insurance Company	Automobile Liability	ISAH0801355A	Undetermined
ACE American Insurance Company	Commercial General Liability Excess	XSLG23741805	Undetermined
AIG Excess Liability Insurance Co Ltd.	Directors & Officers - Excess	3161903	Undetermined
Federal Insurance Company	Directors & Officers - Excess	82102232	Undetermined
Zurich American Ins Co	Directors & Officers - Excess	DOC967016200	Undetermined
Arch Insurance Company	Directors & Officers - Excess	DOX000722103	Undetermined
XL Specialty Insurance Co	Directors & Officers - Excess	ELU10511908	Undetermined
National Union Fire Insurance Co. of Pittsburgh, PA	Directors & Officers - Primary	5757381	Undetermined
ACE American Insurance Company	Excess/Umbrella Liability	XOOG23891517	Undetermined
Aspen Insurance (UK) Ltd.	Following Form Excess Liability - 1st Layer	K0A0ABF08A0X	Undetermined
Lexington Insurance Company	Following Form Excess Liability - 2nd Layer	2213790	Undetermined
Max Re Insurance Europe Ltd.	Following Form Excess Liability - 3rd Layer	23440-528-XSOCC-2008	Undetermined
Catlin Insurance Company (UK) Ltd.	Following Form Excess Liability - 3rd Layer	DL500408(1)	Undetermined
XL Europe Company Ltd.	Following Form Excess Liability - 3rd Layer	EIE0001380L108A	Undetermined
Swiss Re (SR International Business Insurance)	Following Form Excess Liability - 3rd Layer	MH 66701.2	Undetermined
AIG Cat Excess Liability	Following Form Excess Liability - 4th Layer	173-0879	Undetermined
ACE American Insurance Company	Workers Compensation	WLRC44347635	Undetermined
Nationwide	Executive Variable Universal Life Insurance	N056483660	\$142,816.32
Nationwide	Executive Variable Universal Life Insurance	N056483670	\$115,081.39
Nationwide	Executive Variable Universal Life Insurance	N056483680	\$203,668.22
Nationwide	Executive Variable Universal Life Insurance	N056483690	\$192,587.37
Nationwide	Executive Variable Universal Life Insurance	N056483700	\$147,171.35
Nationwide	Executive Variable Universal Life Insurance	N056483710	\$142,816.31
Nationwide	Executive Variable Universal Life Insurance	N056483720	\$161,132.95
Nationwide	Executive Variable Universal Life Insurance	N056483730	\$134,518.35
Nationwide	Executive Variable Universal Life Insurance	N056483740	\$142,816.31
Nationwide	Executive Variable Universal Life Insurance	N056483750	\$111,350.84
Nationwide	Executive Variable Universal Life Insurance	N056483760	\$134,518.35
Nationwide	Executive Variable Universal Life Insurance	N056483770	\$118,744.39
Nationwide	Executive Variable Universal Life Insurance	N056483780	\$111,350.84
Nationwide	Executive Variable Universal Life Insurance	N056483790	\$126,403.55
Nationwide	Executive Variable Universal Life Insurance	N056483800	\$122,517.49
Nationwide	Executive Variable Universal Life Insurance	N056483810	\$147,171.35
Nationwide	Executive Variable Universal Life Insurance	N056483820	\$166,150.78
Nationwide	Executive Variable Universal Life Insurance	N056483830	\$138,602.57
Nationwide	Executive Variable Universal Life Insurance	N056483840	\$181,949.71
Nationwide	Executive Variable Universal Life Insurance	N056483850	\$171,281.50
Nationwide	Executive Variable Universal Life Insurance	N056483860	\$181,949.71
Nationwide	Executive Variable Universal Life Insurance	N056483870	\$176,515.93
Nationwide	Executive Variable Universal Life Insurance	N056483880	\$138,602.57
Nationwide	Executive Variable Universal Life Insurance	N056483890	\$87,848.35
Nationwide	Executive Variable Universal Life Insurance	N056483900	\$171,281.50
Nationwide	Executive Variable Universal Life Insurance	N056483910	\$147,171.35
Nationwide	Executive Variable Universal Life Insurance	N056483920	\$161,132.95
Nationwide	Executive Variable Universal Life Insurance	N056483930	\$126,403.55
Nationwide	Executive Variable Universal Life Insurance	N056483940	\$192,587.37
Nationwide	Executive Variable Universal Life Insurance	N056483950	\$198,058.16
Nationwide	Executive Variable Universal Life Insurance	N056483960	\$166,150.78
Nationwide	Executive Variable Universal Life Insurance	N056483970	\$156,339.89

Insurance Company	Type of Policy	Policy Number	Surrender or Refund Value
Nationwide	Executive Variable Universal Life Insurance	NO56483980	\$187,169.60
Nationwide	Executive Variable Universal Life Insurance	NO56483990	\$94,277.13
Nationwide	Executive Variable Universal Life Insurance	NO56484000	\$176,515.93
Nationwide	Executive Variable Universal Life Insurance	NO56484010	\$138,602.57
Nationwide	Executive Variable Universal Life Insurance	NO56484020	\$151,677.73
Nationwide	Executive Variable Universal Life Insurance	NO56484030	\$151,677.73
Nationwide	Executive Variable Universal Life Insurance	NO56484040	\$151,677.73
Nationwide	Executive Variable Universal Life Insurance	NO56484050	\$151,677.73
Nationwide	Executive Variable Universal Life Insurance	NO56484060	\$130,402.06
Nationwide	Executive Variable Universal Life Insurance	NO56484070	\$203,668.22
Nationwide	Executive Variable Universal Life Insurance	NO56484080	\$166,150.78
Nationwide	Executive Variable Universal Life Insurance	NO56484090	\$187,169.60
Nationwide	Executive Variable Universal Life Insurance	NO56484100	\$126,403.55
Nationwide	Executive Variable Universal Life Insurance	NO56484110	\$109,766.70
ING Security Life of Denver	Executive Life Insurance	1557445	\$188,159.01
ING Security Life of Denver	Executive Life Insurance	1561242	\$83,120.09
ING Security Life of Denver	Executive Life Insurance	1561243	\$59,471.99
ING Security Life of Denver	Executive Life Insurance	1561244	\$82,265.43
ING Security Life of Denver	Executive Life Insurance	1561245	\$106,692.33
ING Security Life of Denver	Executive Life Insurance	1561273	\$117,639.27
ING Security Life of Denver	Executive Life Insurance	1563401	\$182,787.52
ING Security Life of Denver	Executive Life Insurance	1563402	\$106,070.88
ING Security Life of Denver	Executive Life Insurance	1563403	\$78,444.92
ING Security Life of Denver	Executive Life Insurance	1563404	\$63,501.59
ING Security Life of Denver	Executive Life Insurance	1563405	\$67,902.67
ING Security Life of Denver	Executive Life Insurance	1563486	\$64,419.04
ING Security Life of Denver	Executive Life Insurance	1563487	\$62,858.69
ING Security Life of Denver	Executive Life Insurance	1563488	\$68,216.50
ING Security Life of Denver	Executive Life Insurance	1563489	\$72,213.39
ING Security Life of Denver	Executive Life Insurance	1563490	\$66,238.36
ING Security Life of Denver	Executive Life Insurance	1565323	\$27,398.41
ING Security Life of Denver	Executive Life Insurance	1565335	\$67,520.17
ING Security Life of Denver	Executive Life Insurance	1567121	\$105,753.58
ING Security Life of Denver	Executive Life Insurance	1567122	\$151,031.69
ING Security Life of Denver	Executive Life Insurance	1567123	\$77,012.10
ING Security Life of Denver	Executive Life Insurance	1567124	\$54,267.02
ING Security Life of Denver	Executive Life Insurance	1567125	\$67,760.94
ING Security Life of Denver	Executive Life Insurance	1571400	\$36,868.29
ING Security Life of Denver	Executive Life Insurance	1571404	\$55,278.24
ING Security Life of Denver	Executive Life Insurance	1571405	\$37,816.77
ING Security Life of Denver	Executive Life Insurance	1575132	\$36,186.70
ING Security Life of Denver	Executive Life Insurance	1575133	\$40,395.44
ING Security Life of Denver	Executive Life Insurance	1575134	\$42,474.75
ING Security Life of Denver	Executive Life Insurance	1575135	\$30,109.21
ING Security Life of Denver	Executive Life Insurance	1575136	\$34,637.58
ING Security Life of Denver	Executive Life Insurance	1575137	\$32,606.50
ING Security Life of Denver	Executive Life Insurance	1575138	\$32,721.00
ING Security Life of Denver	Executive Life Insurance	1575139	\$30,589.37
ING Security Life of Denver	Executive Life Insurance	1575140	\$41,489.62
ING Security Life of Denver	Executive Life Insurance	1575174	\$67,323.43
ING Security Life of Denver	Executive Life Insurance	1575175	\$44,829.35
ING Security Life of Denver	Executive Life Insurance	1575177	\$46,170.32
ING Security Life of Denver	Executive Life Insurance	1575178	\$83,906.63
ING Security Life of Denver	Executive Life Insurance	1575179	\$46,887.28
ING Security Life of Denver	Executive Life Insurance	1575180	\$176,920.16
ING Security Life of Denver	Executive Life Insurance	1575181	\$63,029.88
ING Security Life of Denver	Executive Life Insurance	1575182	\$66,143.07
ING Security Life of Denver	Executive Life Insurance	1575183	\$68,834.41
ING Security Life of Denver	Executive Life Insurance	1575184	\$64,038.34
ING Security Life of Denver	Executive Life Insurance	1575185	\$159,300.74

Insurance Company	Type of Policy	Policy Number	Surrender or Refund Value
Metlife	Executive Life Insurance	942 708 635 A	\$90,284.36
Metlife	Executive Life Insurance	942 708 637 PR	\$97,456.94
Metlife	Executive Life Insurance	972 706 751 PR	\$61,278.16
Metlife	Executive Life Insurance	952 707 476 PR	\$103,797.76
Metlife	Executive Life Insurance	942 708 728 PR	\$84,717.66
Metlife	Executive Life Insurance	942 709 386 PR	\$304,126.34
Metlife	Executive Life Insurance	942 708 853 A	\$108,949.97
Metlife	Executive Life Insurance	942 709 127 PR	\$80,626.84
Metlife	Executive Life Insurance	942 709 272 PR	\$409,078.07
Metlife	Executive Life Insurance	942 708 692 PR	\$185,964.35
Metlife	Executive Life Insurance	942 708 875 A	\$44,556.98
Metlife	Executive Life Insurance	942 709 178 PR	\$97,177.68
Metlife	Executive Life Insurance	942 709 028 A	\$309,137.47
Metlife	Executive Life Insurance	972 706 703 PR	\$54,721.15
Metlife	Executive Life Insurance	972 706 848 PR	\$32,733.69
Metlife	Executive Life Insurance	962 705 778 PR	\$115,522.91
Metlife	Executive Life Insurance	962 705 832 E3	\$61,725.34
Metlife	Executive Life Insurance	942 709 072 E2	\$38,793.10
Metlife	Executive Life Insurance	942 708 918 A	\$369,190.66
Metlife	Executive Life Insurance	952 707 567 A	\$73,354.59
Metlife	Executive Life Insurance	972 706 813 PR	\$49,080.63
Metlife	Executive Life Insurance	942 709 262 PR	\$220,053.67
Metlife	Executive Life Insurance	942 709 261 A	\$75,399.98
Metlife	Executive Life Insurance	962 705 808 PR	\$38,867.58
Metlife	Executive Life Insurance	962 705 825 PR	\$105,526.00
Metlife	Executive Life Insurance	962 705 835 E1	\$47,573.01
Metlife	Executive Life Insurance	962 705 796 PR	\$109,085.88
Metlife	Executive Life Insurance	942 709 122 A	\$162,605.81
Metlife	Executive Life Insurance	942 709 168 A	\$60,906.70
Metlife	Executive Life Insurance	952 707 574 A	\$115,074.61
Metlife	Executive Life Insurance	963 000 353 A	\$57,047.28
Metlife	Executive Life Insurance	942 709 055 E1	\$208,428.78
Metlife	Executive Life Insurance	962 705 794 A	\$44,370.37
Metlife	Executive Life Insurance	942 708 987 E1	\$178,437.16
Metlife	Executive Life Insurance	942 708 739 A	\$134,090.46
Metlife	Executive Life Insurance	942 708 653 PR	\$101,533.69
Metlife	Executive Life Insurance	942 709 012 A	\$315,845.58
Metlife	Executive Life Insurance	942 709 103 E1	\$60,975.02
Metlife	Executive Life Insurance	972 706 700 PR	\$42,201.65
Metlife	Executive Life Insurance	942 709 009 A	\$52,429.41
Metlife	Executive Life Insurance	942 708 655 PR	\$76,176.98
Metlife	Executive Life Insurance	972 706 805 PR	\$52,756.45
Metlife	Executive Life Insurance	942 709 123 A	\$124,838.43
Metlife	Executive Life Insurance	943 105 831 PR	\$92,086.23
Metlife	Executive Life Insurance	942 709 111 A	\$26,986.94
Metlife	Executive Life Insurance	972 706 757 PR	\$82,771.50
Metlife	Executive Life Insurance	942 708 654 PR	\$47,408.48
Metlife	Executive Life Insurance	972 706 768 PR	\$54,102.48
Metlife	Executive Life Insurance	962 705 807 PR	\$85,270.61
Metlife	Executive Life Insurance	942 708 822 A	\$138,190.55
Metlife	Executive Life Insurance	942 709 260 PR	\$66,672.97
Metlife	Executive Life Insurance	942 708 851 PR	\$148,932.35
Alternative Re	Cell Captive/Reinsurance Arrangement	ARCH COR 2003-17H-01	Undetermined
Alternative Re	Cell Captive/Reinsurance Arrangement	ARCHESCORPF 2003-17L-01	Undetermined
Arch Insurance Company	Workers Compensation	ZAWCI 90076	Undetermined
Arch Insurance Company	Commercial Automobile	ZACAT90076	Undetermined
Arch Insurance Company	General Liability	ZAGLB 90076	Undetermined
Arch Excess & Surplus Insurance Company	Products/Completed Operations	ZAGLB 90077	Undetermined