



LLC (“Hovstone”) (collectively, the “Parties”). In support of the Motion, the Reorganized Debtors respectfully represent as follows:

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory and legal predicate for the relief requested is section 105(a) of the Bankruptcy Code, along with Bankruptcy Rule 9019(a).

### **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”). The Reorganized Debtors continue to operate their businesses and manage their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in the Chapter 11 Cases. On July 26, 2009, the Office of the United States Trustee (the “U.S. Trustee”) appointed the official committee of unsecured creditors.

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 the 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] confirming the Plan. The Effective Date (as defined in the Plan) of the Plan occurred on January 4, 2010.

## RELEVANT BACKGROUND

7. On or about April 13, 2007, Weckmann was a carpenter employed by Select-Build working on a construction site in a residential subdivision known as Liberty Lakes, located at or near 2576 Savanna Drive, Village of Wauconda, Illinois (the "Project"). Hovstone was the general contractor with respect to the Project, and CSI and Select-Build were subcontractors of Hovstone.

8. While working at the Project on April 13, 2007, Weckmann allegedly suffered serious bodily injury when he fell off a structure after being struck by a truss connected to a crane being operated by an agent of CSI. As a result of his injuries, Weckmann filed a workers' compensation claim (the "Workers' Comp. Claim") against Select-Build. As of this date, the Workers' Comp. Claim totals \$63,428.47, of which \$14,242.60 is on account of disability payments and \$49,185.87 is attributable to medical payments.

9. As a result of his injuries, Weckmann also commenced an action in Illinois state court against CSI and Hovstone captioned *Weckmann v. Hovstone Properties-Illinois L.L.C. and Component Systems-Illinois, L.L.C.* (Case No. 08 L 105) (the "Action"). By the complaint (as amended), Weckmann alleges that the negligent acts and/or omissions of CSI and Hovstone caused his injuries. As a result of the amounts Select-Build paid on account of the Workers' Comp. Claim, Select-Build holds a workers' compensation lien (the "Lien") in the amount of \$63,428.47 against any recovery obtained by Weckmann in connection with the Action.

10. In connection with the Action, Hovstone and CSI each filed third-party contribution actions (collectively, the "Contribution Claims") against Select-Build alleging that

certain acts and/or omissions of Select-Build contributed to Weckmann's injuries. Select-Build disputes these claims.

11. Pursuant to section 362 of the Bankruptcy Code, the Action and the associated Contribution Claims were stayed as of the Petition Date.

12. Weckmann, Hovstone and CSI (collectively, the "Non-Debtor Parties") filed proofs of claim in the Chapter 11 Cases against Select-Build in the following amounts and priorities: (i) Weckmann asserted an unliquidated general unsecured claim in the amount of \$1,476,714; (ii) Hovstone asserted an unliquidated general unsecured claim in the amount of \$2,500,000; and (iii) CSI asserted an unliquidated general unsecured claim in the amount of \$2,500,000. In accordance with Section 8.11 of the Plan, the Reorganized Debtors are authorized to compromise and settle Claims (as such term is defined in the Plan).

### **SETTLEMENT AGREEMENT**

13. Prior to the Petition Date, the Non-Debtor Parties conducted extensive discovery and were preparing for trial in connection with the Action. The Non-Debtor Parties desire to resolve the Action by proceeding with pretrial mediation and have agreed, subject to Court approval and the terms of the Settlement Agreement, to dismiss Select-Build from the Action in order to allow the Action to proceed.

14. The principal terms of the Settlement Agreement,<sup>2</sup> attached as Exhibit 1 to the proposed order annexed hereto as Exhibit A, are as follows:

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<sup>2</sup> The summary of the Settlement Agreement is qualified in its entirety by the actual terms and conditions of the Settlement Agreement. If there are any inconsistencies between the summary contained herein and the Settlement Agreement, the Settlement Agreement shall control. Unless otherwise defined herein, all capitalized terms shall have the meanings ascribed to them in the Settlement Agreement.

a. Effective Date. The Settlement Agreement shall become effective after the entry of an order of the Court approving the Settlement Agreement (the “Approval Order”). In the event the Bankruptcy Court does not approve the Settlement Agreement, the Settlement Agreement shall be null and void;

b. Settlement of the Claim and the Lien. Immediately upon the Effective Date, Weckmann and Select-Build have agreed to settle the Claim for \$1 and Select-Build will compromise the Lien such that Select-Build will accept \$35,000 in full satisfaction of the Lien;

c. Dismissal of Select-Build from the Action. Immediately upon the Effective Date, the Non-Debtor Parties each agree to withdraw all complaints, counterclaims, claims, and causes of action filed against Select-Build in connection with the Action and Select-Build shall be dismissed from the Action with prejudice. The Non-Debtor Parties each agree to file a stipulation of dismissal or equivalent documents with the Illinois state court to effectuate the dismissal of Select-Build from the Action. In addition, to the extent applicable, the Non-Debtor Parties each agree to withdraw any proof of claim they filed against Select-Build in the Chapter 11 Cases, which relates in any way to the Action; and

d. Releases.

(i) Select-Build’s Release. Upon the Effective Date, Select-Build, for itself, its parents, subsidiaries, affiliates, successors, assigns, officers, directors, employees and any party or fiduciary acting for or on behalf of the foregoing parties, hereby fully and forever releases and discharges the Non-Debtor Parties from all claims, causes of action, claims, losses, damages, liabilities and obligations of every nature and description, whether known or unknown, liquidated, actual, contingent or otherwise, arising out of or in any way directly or indirectly connected with the Action, including without limitation, attorneys fees and costs, except for the obligations of the Non-Debtor Parties that are expressly set forth in the Settlement Agreement; and

(ii) Non-Debtor Parties’ Releases. Upon the Effective Date, the Non-Debtor Parties, for themselves, their parents, subsidiaries, affiliates, successors, assigns, officers, directors, employees and any party or fiduciary acting for or on behalf of the foregoing parties hereby fully and forever releases and discharges (i) Select-Build; (ii) Select-Build’s predecessors, successors, parents, subsidiaries, assigns, subcontractors, suppliers and their related entities; and (iii) all representatives, agents, attorneys, advisors, administrators, related entities, present and former stockholders, members, owners, trustees, officers, directors, managers and employees of any of the above persons and/or entities, from all causes of action, claims, losses, damages, liabilities and obligations of

every nature and description, at law or in equity, including any and all claims arising under the Bankruptcy Code, known or unknown, asserted or that might have been asserted, arising out of or in any way directly or indirectly connected with the Action, including without limitation claims for personal injury, contribution, and indemnification, except for the obligations of Select-Build that are expressly set forth in the Settlement Agreement.

### **RELIEF REQUESTED**

15. By this Motion, and in accordance with section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019, the Reorganized Debtors respectfully requests this Court to enter an order, (i) approving the Settlement Agreement and (ii) authorizing the Reorganized Debtors to take any and all actions necessary to effectuate the Settlement Agreement. The Parties have weighed the costs and risks associated with litigating the matters described above against the compromises contained within the Settlement Agreement and have concluded that it is in their respective best interests to compromise and settle the matter, pursuant to the terms of the Settlement Agreement, without further litigation.

### **BASIS FOR RELIEF REQUESTED**

16. Bankruptcy Rule 9019(a) provides that “on motion by the trustee and after a hearing, the court may approve a compromise or settlement.” Fed. R. Bankr. P 9019(a). The settlement of time-consuming and burdensome litigation, especially in the bankruptcy context, is encouraged and “generally favored in bankruptcy.” In re World Health Alternatives, Inc., 344 B.R. 291, 296 (Bankr. D. Del. 2006); see also In re Penn Cent. Transp. Co., 596 F.2d 1102 (3d Cir. 1979) (“administering reorganization proceedings in an economical and practical manner it will often be wise to arrange the settlement of claims . . . .” (quoting In re Protective Comm. for Indep. Stockholders of TMT Ferry, Inc. v. Anderson, 390 U.S. 414, 424 (1968))).

17. In determining the fairness and equity of a compromise in bankruptcy, the United States Court of Appeals for the Third Circuit has stated that it is important that the bankruptcy court “apprise itself of all facts necessary to form an intelligent and objective opinion of the probabilities of ultimate success should the claims be litigated, and estimated the complexity, expense and likely duration of such litigation, and other factors relevant to a full and fair assessment of the [claims].” In re Penn Cent. Transp. Co., 596 F.2d at 1153; see also In re Marvel Entm’t Group, Inc., 222 B.R. 243 (D. Del. 1998) (describing “the ultimate inquiry to be whether ‘the compromise is fair, reasonable, and in the interest of the estate.’” (quoting In re Louise’s Inc., 211 B.R. 798, 801 (D. Del. 1997))).

18. The Third Circuit Court of Appeals has enumerated four factors that should be considered in determining whether a settlement should be approved. The four enumerated factors are: “(1) the probability of success in litigation; (2) the likely difficulties in collection; (3) the complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors.” In re Martin, 91 F.3d 389, 393 (3d Cir. 1996); accord In re Nutraquest, Inc., 434 F.3d 639, 644 (3d Cir. 2006).

19. The decision to approve a settlement “is within the sound discretion of the bankruptcy court.” In re World Health Alternatives, Inc., 344 B.R. at 296; see also In re Neshaminy Office Bldg. Assoc., 62 B.R. 798, 803 (E.D. Pa. 1986), cited with approval in In re Martin, 91 F.3d 389. The bankruptcy court should not substitute its judgment for that of the debtor. See In re Neshaminy Office Bldg. Assoc., 62 B.R. at 803. The court is not to decide the numerous questions of law or fact raised by litigation, but rather should canvass the issues to see whether the settlement falls below the lowest point in the range of reasonableness. See In re W.T. Grant and Co., 699 F.2d 599, 608 (2d Cir. 1983); see also In re World Health Alternatives,



Inc., 344 B.R. at 296 (stating that “the court does not have to be convinced that the settlement is the best possible compromise. Rather, the court must conclude that the settlement is within the reasonable range of litigation possibilities.”) (internal citations and quotations omitted).

20. In the Reorganized Debtors’ informed business judgment, the resolutions embodied in the Settlement Agreement are reasonable and in the best interests of the Reorganized Debtors, their estates, their creditors and other parties in interest. Moreover, a review of the above-referenced Martin factors clearly demonstrates that the terms of the Settlement Agreement are reasonable under the circumstances. Indeed, the Reorganized Debtors’ decision to satisfy the Workers’ Comp. Claim for \$1 and to accept \$35,000 in full satisfaction of the Lien in exchange for the dismissal of Select-Build from the Action are reasonable, especially in light of the amounts potentially owed by the Reorganized Debtors to CSI and Hovstone on account of the Contribution Claims. Although the Reorganized Debtors may ultimately prevail if they chose to litigate the Action, the Reorganized Debtors acknowledge, as with all litigation, that there is an inherent risk in litigating these matters as well as incurring unavoidable expenditures of estate assets associated with any such litigation. Among other things, this settlement eliminates that need to continue in protracted litigation with the Non-Debtor Parties, which would continue to drain valuable resources. Additionally, the Settlement Agreement fully and finally resolves the Action as it relates to Reorganized Debtor Select-Build without expending additional estate resources.

21. In light of the above, the Reorganized Debtors believe the Settlement Agreement is fair, equitable, and in the best interests of their creditors and estates, represents an exercise of their sound business judgment, and should be approved pursuant to section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019.

**NOTICE**

22. Notice of this Motion will be provided to: (i) the U.S. Trustee; (ii) counsel to Wells Fargo Bank, as agent under the now Reorganized Debtors' Prepetition Credit Agreement and DIP Facility (as defined in the Plan); (iii) DK Acquisition Partners, L.P.; (iv) Wells Fargo Foothill, LLC; (v) the Non-Debtor Parties to the Settlement Agreement; and (vi) all parties entitled to notice under Local Rule 2002-1(b). In light of the nature of the relief requested herein, the Reorganized Debtors submit that no other or further notice is necessary.

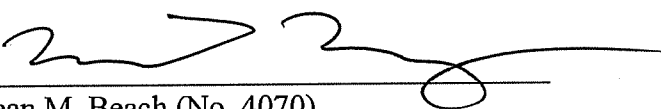
*Signature page follows*

**CONCLUSION**

WHEREFORE, the Reorganized Debtors respectfully request this Court to enter an order, substantially in the form attached hereto as Exhibit A, (i) approving the Settlement Agreement, (ii) authorizing the Reorganized Debtors to take any and all actions necessary to effectuate the Settlement Agreement, and (iii) granting such other and further relief as may be just and proper.

Dated: Wilmington, Delaware  
April 28, 2010

YOUNG CONAWAY STARGATT & TAYLOR, LLP



Sean M. Beach (No. 4070)  
Donald J. Bowman, Jr. (No. 4383)  
Robert F. Poppiti, Jr. (No. 5052)  
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---- and ----

GIBSON, DUNN & CRUTCHER LLP  
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Matthew K. Kelsey (admitted *pro hac vice*)  
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ATTORNEYS FOR THE REORGANIZED DEBTORS

**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>Reorganized Debtors.</b>	)	<b>Jointly Administered</b>
	)	
	)	<b>Objection Deadline: May 12, 2010 at 4:00 p.m. (ET)</b>
	)	<b>Hearing Date: May 19, 2010 at 11:30 a.m. (ET)</b>

**NOTICE OF MOTION**

TO: (I) THE U.S. TRUSTEE; (II) COUNSEL TO WELLS FARGO BANK, AS AGENT UNDER THE REORGANIZED DEBTORS' PREPETITION CREDIT AGREEMENT AND DIP FACILITY; (III) DK ACQUISITION PARTNERS, L.P.; (IV) WELLS FARGO FOOTHILL, LLC; (V) THE NON-DEBTOR PARTIES TO THE SETTLEMENT AGREEMENT; AND (VI) ALL PARTIES ENTITLED TO NOTICE UNDER RULE 2002-1(b) OF THE LOCAL RULES OF BANKRUPTCY PRACTICE AND PROCEDURE FOR THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

**PLEASE TAKE NOTICE** that the above-captioned reorganized debtors (collectively, the "Reorganized Debtors") have filed the attached **Reorganized Debtors' Motion Pursuant to Section 105 of the Bankruptcy Code and Bankruptcy Rule 9019 For an Order Approving and Authorizing the Settlement Agreement and General Release By and Between Select-Build Illinois, LLC, Thomas Weckmann, Component Systems-Illinois, LLC and Hovstone Properties Illinois, LLC** (the "Motion").

**PLEASE TAKE FURTHER NOTICE** that any objections (each, an "Objection") to the Motion must be filed with the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801 on or before **4:00 p.m (ET) on May 12, 2010** (the "Objection Deadline"). At the same time, you must also serve a copy of any Objection upon the undersigned counsel to the Reorganized Debtors so that the Objection is received on or before the Objection Deadline.

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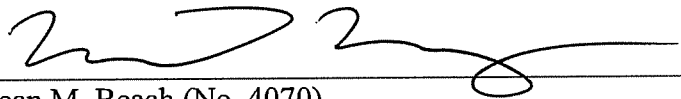
<sup>1</sup> The Reorganized Debtors, along with the last four digits of each Reorganized Debtor's tax identification number, are as follows: Building Materials Holding Corporation (4269), BMC West Corporation (0454), SelectBuild Construction, Inc. (1340), SelectBuild Northern California, Inc. (7579), 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.

**PLEASE TAKE FURTHER NOTICE THAT A HEARING ON THE MOTION WILL BE HELD ON MAY 19, 2010 AT 11:30 A.M. (ET) BEFORE THE HONORABLE KEVIN J. CAREY AT THE BANKRUPTCY COURT, 824 MARKET STREET, 5TH FLOOR, COURTROOM NO. 5, WILMINGTON, DELAWARE 19801.**

**PLEASE TAKE FURTHER NOTICE THAT IF YOU FAIL TO RESPOND ON OR BEFORE THE OBJECTION DEADLINE, THE BANKRUPTCY COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR A HEARING.**

Dated: Wilmington, Delaware  
April 28, 2010

YOUNG CONAWAY STARGATT & TAYLOR, LLP



Sean M. Beach (No. 4070)  
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----and----

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ATTORNEYS FOR THE REORGANIZED DEBTORS

**EXHIBIT A**

Proposed Order

**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>Ref. Docket No.: ____</b>

**ORDER APPROVING AND AUTHORIZING THE SETTLEMENT AGREEMENT AND GENERAL RELEASE BY AND BETWEEN SELECT-BUILD ILLINOIS, LLC, THOMAS WECKMANN, COMPONENT SYSTEMS-ILLINOIS, LLC AND HOVSTONE PROPERTIES ILLINOIS, LLC**

Upon consideration of the motion (the “Motion”)<sup>2</sup> of Building Materials Holding Corporation and its affiliates, as reorganized debtors (collectively, the “Reorganized Debtors”), seeking entry of an order, pursuant to Bankruptcy Rule 9019 and section 105(a) of the Bankruptcy Code, approving the *Settlement Agreement and General Release* (the “Settlement Agreement”) entered into by and between Reorganized Debtor Select-Build Illinois, LLC, Thomas Weckmann, Component Systems-Illinois, LLC, and Hovstone Properties Illinois; and due and sufficient notice of the Motion having been given; and it appearing that the relief requested in the Motion is in the best interests of the Reorganized Debtors, their estates and creditors; and after due deliberation and sufficient cause appearing therefor; it is hereby

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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.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Motion.

ORDERED that the Motion is GRANTED; and it is further

ORDERED that the Settlement Agreement, attached hereto as Exhibit 1, is approved pursuant to section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019, and the terms and conditions of the Settlement Agreement are incorporated into this Order by reference as if fully set forth herein; and it is further

ORDERED that, upon the entry of this Order, Select-Build, for itself, its parents, subsidiaries, affiliates, successors, assigns, officers, directors, employees and any party or fiduciary acting for or on behalf of the foregoing parties, hereby fully and forever releases and discharges the Non-Debtor Parties from all claims, causes of action, claims, losses, damages, liabilities and obligations of every nature and description, whether known or unknown, liquidated, actual, contingent or otherwise, arising out of or in any way directly or indirectly connected with the Action, including without limitation, attorneys fees and costs, except for the obligations of the Non-Debtor Parties that are expressly set forth in the Settlement Agreement; and it is further

ORDERED that, upon the entry of this Order, the Non-Debtor Parties, for themselves, their parents, subsidiaries, affiliates, successors, assigns, officers, directors, employees and any party or fiduciary acting for or on behalf of the foregoing parties hereby fully and forever releases and discharges (i) Select-Build; (ii) Select-Build's predecessors, successors, parents, subsidiaries, assigns, subcontractors, suppliers and their related entities; and (iii) all representatives, agents, attorneys, advisors, administrators, related entities, present and former stockholders, members, owners, trustees, officers, directors, managers and employees of any of the above persons and/or entities, from all causes of action, claims, losses, damages, liabilities and obligations of every nature and description, at law or in equity, including any and all claims



arising under the Bankruptcy Code, known or unknown, asserted or that might have been asserted, arising out of or in any way directly or indirectly connected with the Action, including without limitation claims for personal injury, contribution, and indemnification, except for the obligations of Select-Build that are expressly set forth in the Settlement Agreement; and it is further

ORDERED that immediately upon entry of this Order, any proofs of claim filed by the Non-Debtor Parties against Select-Build in the Chapter 11 Cases, which relate in any way to the Action, including, without limitation, proof of claim number 1590 filed by Hovstone, proof of claim number 1716 filed by CSI and proof of claim number 2502 filed by Weckmann, shall be deemed automatically withdrawn without the need for (i) any further order of this Court or (ii) any further filings in the Chapter 11 Cases by the Non-Debtor Parties; and it is further

ORDERED that the Reorganized Debtors are authorized to take all actions necessary to effectuate the terms of the Settlement Agreement; and it is further

ORDERED, that this Court shall retain jurisdiction to hear any and all disputes arising out of the interpretation or enforcement of this Order.

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

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Kevin J. Carey  
United States Bankruptcy Judge

**EXHIBIT 1**

Settlement Agreement

## SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement is entered into by and between reorganized debtor and debtor in possession, SelectBuild Illinois, LLC (Case No. 09-12085) (KJC) ("Debtor" or "SelectBuild"),<sup>1</sup> Thomas Weckmann ("Weckmann"), Component Systems-Illinois, LLC ("CSI"), and Hovstone Properties Illinois, LLC ("Hovstone"). SelectBuild, Weckmann, CSI, and Hovstone are collectively referred to as the "Parties" and Weckmann, CSI, and Hovstone are the "Non-Debtor Parties".

### RECITALS

WHEREAS, at all times relevant hereto, Weckmann was a carpenter employed by SelectBuild working on a construction site in a residential subdivision known as Liberty Lakes located at or near 2576 Savanna Drive, Village of Wauconda, Illinois (the "Project");

WHEREAS, on April 13, 2007, Weckmann was injured while working at the Project;

WHEREAS, as a result of his injuries, Weckmann filed a workers' compensation claim (the "Claim") against SelectBuild;

WHEREAS, as of this date, the Claim totals \$63,428.47, of which \$14,242.60 is on account of disability payments and \$49,185.87 is attributable to medical payments;

WHEREAS, SelectBuild holds a workers' compensation lien (the "Lien") against any recovery obtained by Weckmann on account of his injuries in the amount of \$63,428.47;

WHEREAS, as a result of his injuries, Weckmann also commenced an action in Illinois state court against CSI and Hovstone captioned *Weckmann v. Hovstone Properties-Illinois L.L.C. and Component Systems-Illinois, L.L.C.* (Case No. 08 L 105) (the "Action");

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<sup>1</sup> The Debtor's chapter 11 case bankruptcy case is pending in the United States Bankruptcy Court for the District of Delaware and is being jointly administered with the bankruptcy cases of its affiliated debtors and debtors in possession under the case encaptioned *In re Building Materials Holding Corporation* (Case No. 90-12074) (KJC).

WHEREAS, by the complaint (as amended) Weckmann filed in the Action, Weckmann alleges that the negligent acts and/or omissions of CSI and Hovstone caused his injuries;

WHEREAS, Hovstone was the general contractor with respect to the Project and CSI and SelectBuild were subcontractors of Hovstone;

WHEREAS, in connection with the Action, Hovstone and CSI each filed third-party contribution actions against SelectBuild alleging that certain acts and/or omissions of SelectBuild contributed to Weckmann's injuries. SelectBuild disputes these claims;

WHEREAS, on June 16, 2009 (the "Petition Date"), SelectBuild and its affiliated now reorganized debtors and debtors in possession (collectively, the "Reorganized Debtors") each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Chapter 11 Cases") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court");

WHEREAS, pursuant to 11 U.S.C. § 362, the continued prosecution of the Action was stayed as of the Petition Date;

WHEREAS, prior to the Petition Date, and before becoming aware of the Chapter 11 Cases, the Non-Debtor Parties conducted extensive discovery and were preparing for trial in connection with the Action;

WHEREAS, the Non-Debtor Parties have indicated a desire to resolve the Action by proceeding with pretrial mediation and have agreed, subject to the terms of this Settlement Agreement, to dismiss SelectBuild from the Action;

NOW, THEREFORE, in consideration of the foregoing recitals and of the obligations of the Parties under this Settlement Agreement, the Parties hereby mutually agree, subject to approval of the Bankruptcy Court, as follows:

1. **Effective Date.** This Settlement Agreement shall become effective (the "Effective Date") after the entry of an order of the Bankruptcy Court approving this Settlement Agreement (the "Approval Order"). In the event the Bankruptcy Court does not approve this Settlement Agreement, this Settlement Agreement shall be treated as if it had never been entered into in the first instance.

2. **Settlement of the Claim and the Lien.** Immediately upon the Effective Date, Weckmann and SelectBuild have agreed to settle the Claim for \$1 and SelectBuild will compromise the Lien such that SelectBuild will accept \$35,000 in full satisfaction of the Lien.

3. **Dismissal of SelectBuild from the Action.** Immediately upon the Effective Date, the Non-Debtor Parties each agree to withdraw all complaints, counterclaims, claims, and causes of action filed against SelectBuild in connection with the Action and SelectBuild shall be dismissed from the Action with prejudice. The Non-Debtor Parties each agree to file a stipulation of dismissal or equivalent documents with the Illinois state court to effectuate the dismissal of SelectBuild from the Action. In addition, to the extent applicable, the Non-Debtor Parties each agree to withdraw any proof of claim they filed against SelectBuild in the Chapter 11 Cases, which relates in any way to the Action.

4. **Releases.**

(a) **SelectBuild's Release.** Upon the Effective Date, SelectBuild, for itself, its parents, subsidiaries, affiliates, successors, assigns, officers, directors, employees and any party or fiduciary acting for or on behalf of the foregoing parties, hereby fully and forever releases and discharges the Non-Debtor Parties from all claims, causes of action, claims, losses, damages, liabilities and obligations of every nature and description, whether known or unknown, liquidated, actual, contingent or otherwise, arising out of or in any way directly or indirectly

connected with the Action, including without limitation, attorneys fees and costs, except for the obligations of the Non-Debtor Parties that are expressly set forth in this Settlement Agreement.

(b) Non-Debtor Parties' Releases. Upon the Effective Date, the Non-Debtor Parties, for themselves, their parents, subsidiaries, affiliates, successors, assigns, officers, directors, employees and any party or fiduciary acting for or on behalf of the foregoing parties hereby fully and forever releases and discharges (i) SelectBuild; (ii) SelectBuild's predecessors, successors, parents, subsidiaries, assigns, subcontractors, suppliers and their related entities; and (iii) all representatives, agents, attorneys, advisors, administrators, related entities, present and former stockholders, members, owners, trustees, officers, directors, managers and employees of any of the above persons and/or entities, from all causes of action, claims, losses, damages, liabilities and obligations of every nature and description, at law or in equity, including any and all claims arising under the Bankruptcy Code, known or unknown, asserted or that might have been asserted, arising out of or in any way directly or indirectly connected with the Action, including without limitation claims for personal injury, contribution, and indemnification, except for the obligations of SelectBuild that are expressly set forth in this Settlement Agreement.

5. No Admissions. This Settlement Agreement represents a compromise of disputed claims and a consensual resolution of any claims against SelectBuild to allow the Non-Debtor Parties to proceed with the Action. Nothing contained in this Settlement Agreement will constitute, or will be construed as, an admission of fact, liability, or wrongdoing on the part of any Party.

6. Mistakes of Law or Fact. In entering into this Settlement Agreement, the Parties assume the risk of any mistake of law or fact. If any Party should later discover that any fact relied upon in entering into this Settlement Agreement is not true, or that the Party's

understanding of the facts or the law was incorrect, that Party will not be entitled to seek rescission of this Settlement Agreement by reason thereof. This Settlement Agreement is intended to be final and binding upon the Parties regardless of any mistake of law or fact. The Parties waive any rights they may have under any statute or common law principle that would limit the effect of their respective releases to those claims actually known or suspected to exist at the time of the execution of this Settlement Agreement, or that would otherwise limit the scope and breadth of the Settlement Agreement in any way, as the Parties intend a full and final repose of all disputes and potential litigation within the scope of the releases set forth above.

7. **No Prior Assignment.** Each Party represents and warrants that it has not sold, assigned, granted or transferred, in any manner, any of the claims or rights described in or encompassed within paragraph 4 above, entitled "Releases."

8. **Entire Agreement.** This Settlement Agreement constitutes the entire agreement between the Parties, and supersedes all other agreements and understandings from, on or before the Effective Date, both written and oral, between or among any of the Parties, with respect to the Action.

9. **Governing Law and Construction and Forum Selection.** This Settlement Agreement shall be governed by and construed in accordance with the laws of the State of Illinois, without reference to conflict of laws principles that would require the application of the laws of another jurisdiction. This Settlement Agreement shall further be construed without regard to who was responsible for its preparation, and it shall be deemed to have been prepared jointly by all Parties, each of whom acknowledges that it received the advice of counsel of its own choosing with respect to the negotiation and execution of this Settlement Agreement. Any ambiguity or uncertainty arising herein shall not be interpreted or construed against any Party


hereto. The headings or captions of the various paragraphs hereof are for convenient reference only and neither form a part hereof nor are to be relied upon to interpret or modify any of the provisions of this Settlement Agreement. Any dispute arising between the Parties hereto as to the meaning, performance or effect of this Settlement Agreement shall be resolved exclusively in the Bankruptcy Court.

10. **Authority to Execute; Counterparts.** Each undersigned representative of the Parties represents that s/he has all requisite authority and capacity to execute this Settlement Agreement on behalf of the specified party. This Settlement Agreement may be executed in counterparts, all of which together shall constitute a single document. For purposes of filing this Settlement Agreement to obtain approval by the Bankruptcy Court, signatures delivered via facsimile or in .pdf format via email shall be regarded as the equivalent of originals.

11. **Cooperation and Further Documents.** The Parties agree to cooperate with each other and to execute such other and further documents as may reasonably be required to effectuate the terms of this Settlement Agreement.

IN WITNESS WHEREOF, this Settlement Agreement has been duly executed and delivered by the Parties hereto on the date(s) indicated below.

SELECTBUILD ILLINOIS, LLC

By:  \_\_\_\_\_

Name: PAUL S. STREET  
Chief Executive Officer

Title: \_\_\_\_\_

Date: 4-12, 2010



with each other and to execute such other and further documents as may reasonably be required to effectuate the terms of this Settlement Agreement.

IN WITNESS WHEREOF, this Settlement Agreement has been duly executed and delivered by the Parties hereto on the date(s) indicated below.

SELECT-BUILD ILLINOIS, LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: March \_\_\_\_\_, 2010

HOVSTONE PROPERTIES ILLINOIS, LLC

By: \_\_\_\_\_

Name: Charles P. Rantler

Title: attorney for Horstone

Date: March 31, 2010

COMPONENT SYSTEMS-ILLINOIS LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: March \_\_\_\_\_, 2010

Mar 29 10 08:50a Costello McMahon Burke & 3125410520

p.10

with each other and to execute such other and further documents as may reasonably be required to effectuate the terms of this Settlement Agreement.

IN WITNESS WHEREOF, this Settlement Agreement has been duly executed and delivered by the Parties hereto on the date(s) indicated below.

SELECT-BUILD ILLINOIS, LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: March \_\_\_\_, 2010

HOVSTONE PROPERTIES ILLINOIS, LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: March \_\_\_\_, 2010

COMPONENT SYSTEMS-ILLINOIS LLC

By: EWG

Name: Edward K. Grasse

Title: \_\_\_\_\_

Date: March 31, 2010

THOMAS WECKMANN AND TINA WECKMANN

By: RF

Name: Richard F. Egan

Title: Attorney

Date: March 29, 2010

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

BUILDING MATERIALS HOLDING  
CORPORATION, *et al.*,<sup>1</sup>

Reorganized Debtors.

Chapter 11

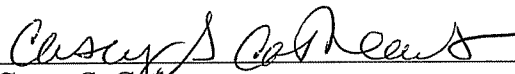
Case No. 09-12074 (KJC)

Jointly Administered


AFFIDAVIT OF SERVICE

STATE OF DELAWARE     )  
  ) SS  
NEW CASTLE COUNTY    )

Casey S. Cathcart, an employee of the law firm of Young Conaway Stargatt & Taylor, LLP, co-counsel to the Reorganized Debtors, being duly sworn according to law, deposes and says that on April 28, 2010, she caused a copy of the **Reorganized Debtors' Motion Pursuant to Section 105 of the Bankruptcy Code and Bankruptcy Rule 9019 for an Order Approving and Authorizing the Settlement Agreement and General Release By and Between Select-Build Illinois, LLC, Thomas Weckmann, Component Systems-Illinois, LLC and Hovstone Properties Illinois, LLC** to be served as indicated upon the parties identified on the attached service list.

  
Casey S. Cathcart

SWORN TO AND SUBSCRIBED before me this 28th day of April, 2010.

  
Notary Public  
My Commission Expires: 9/6/2013  
ERICA A. BROYLES  
NOTARY PUBLIC  
STATE OF DELAWARE  
My commission expires Sept. 6, 2013

<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.

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**BUILDING MATERIALS HOLDING CORPORATION**  
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