

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

IN RE:

**BUILDING MATERIALS HOLDING
CORPORATION, *et al.*,¹**

Debtors.

) **Chapter 11**

) **Case No. 09-12074 (KJC)**

) **Jointly Administered**

) **Ref. Docket No. 210**

**CERTIFICATION OF COUNSEL REGARDING STIPULATION
BY AND BETWEEN THE DEBTORS AND EL PASO LUMBER &
PLYWOOD, INC. RESOLVING THE MOTION FOR ALLOWANCE
OF ADMINISTRATIVE EXPENSE CLAIM**

On July 15, 2009, El Paso Lumber & Plywood, Inc. ("*El Paso*") filed the *Motion of El Paso Lumber & Plywood, Inc. for Allowance of Administrative Expense Claim* [Docket No. 210] (the "*Motion*") requesting allowance of an administrative expense claim in the amount of \$16,957.44 pursuant to section 503(b)(9) of the Bankruptcy Code and reserving its rights and remedies.

The hearing to consider the relief requested in the Motion was originally scheduled for August 11, 2009. Responses to the Motion were due on or before August 4, 2009 at 4:00 p.m. (the "*Objection Deadline*"). No other objections or responses to the Motion were received prior to the Objection Deadline. Subsequent to the filing of the Motion, the Debtors evaluated the amount of El Paso's section 503(b)(9) claim and entered into discussions with El Paso in an attempt to reach a consensual resolution of the Motion.

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

As a result of the discussions, the Debtors and El Paso (collectively, the "**Parties**") have entered into the *Stipulation by and between the Debtors and El Paso Lumber & Plywood, Inc. Resolving the Motion for Allowance of Administrative Expense Claim* (the "**Stipulation**") which consensually resolves the Motion. The pertinent terms of the Stipulation are as follows:

- (a) El Paso shall have an allowed claim pursuant to 11 U.S.C. §503(b)(9) of \$16,957.44 (the "**Allowed Claim**") against BMC West Corporation.
- (b) Unless the Debtors, in the exercise of their discretion, shall agree to earlier payment of the Allowed Claim, the Allowed Claim shall be paid in accordance with a confirmed chapter 11 plan of reorganization or liquidation or such other procedures for paying claims pursuant to section 503(b)(9) of the Bankruptcy Code that may be established by the Court; *provided, however*, that the foregoing limitation on the timing of payment shall not survive a conversion to a case under chapter 7 of the Bankruptcy Code or a dismissal of these cases.
- (c) The Motion shall be deemed resolved and withdrawn upon entry of the Proposed Order (as defined below) approving the Stipulation.

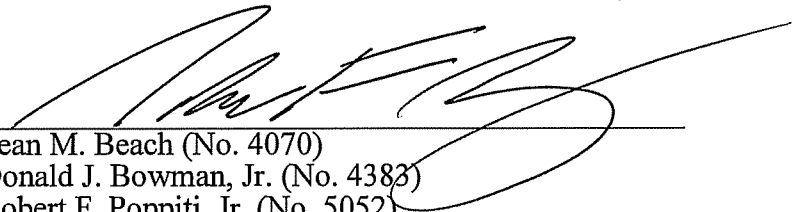
Attached hereto as **Exhibit 1** is a proposed order approving the Stipulation (the "**Proposed Order**"). The Stipulation is attached to the Proposed Order as **Exhibit A**.

[Signature page to follow]

WHEREFORE, the Debtors respectfully request entry of the Proposed Order
approving the Stipulation at the Court's earliest convenience.

Dated: Wilmington, Delaware
August 6, 2009

YOUNG CONAWAY STARGATT & TAYLOR, LLP



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ATTORNEYS FOR DEBTORS AND DEBTORS IN
POSSESSION

EXHIBIT 1

Proposed Order

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

IN RE:)	Chapter 11
BUILDING MATERIALS HOLDING CORPORATION, <i>et al.</i>,¹)	Case No. 09-12074 (KJC)
Debtors.)	Jointly Administered
)	Ref. Docket Nos. 210 and _____

**ORDER APPROVING STIPULATION
BY AND BETWEEN THE DEBTORS AND EL PASO LUMBER &
PLYWOOD, INC. RESOLVING THE MOTION FOR ALLOWANCE
OF ADMINISTRATIVE EXPENSE CLAIM**

The Court having considered the Stipulation by and between the Debtors and El Paso Lumber & Plywood, Inc. Resolving the Motion for Allowance of Administrative Expense Claim, a copy of which is attached hereto as *Exhibit A*; the Court having determined that good and adequate cause exists for approval of the Stipulation; and the Court having determined that no further notice of the Stipulation must be given; and it appearing that the Stipulation is in the best interests of the Debtors, their estates and creditors and other parties in interest; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED:

1. The Stipulation is approved, and the terms and conditions of the Stipulation are incorporated in this Order by reference as if fully set forth herein.

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

2. The Debtors are authorized and empowered to take any and all steps or perform any and all such acts as are necessary to carry out or otherwise effectuate the terms, conditions and provisions of the Stipulation.

3. This Court shall retain jurisdiction to hear and determine any and all matters arising from or related to the interpretation or implementation of this Order or the Stipulation.

Dated: Wilmington, Delaware
August ____, 2009

Kevin J. Carey
Chief United States Bankruptcy Judge

EXHIBIT A

Stipulation

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:)	Chapter 11
BUILDING MATERIALS HOLDING CORPORATION, <i>et al.</i> , ¹)	Case No. 09-12074 (KJC)
Debtors.)	Jointly Administered
)	Ref. Docket No. 210
)	

STIPULATION BY AND BETWEEN THE DEBTORS AND
EL PASO LUMBER & PLYWOOD, INC. RESOLVING THE
MOTION FOR ALLOWANCE OF ADMINISTRATIVE
EXPENSE CLAIM

BMC West Corporation ("**BMC West**"), and its affiliated debtors and debtors in possession in the above-captioned cases (collectively, the "**Debtors**") and El Paso Lumber & Plywood, Inc. ("**El Paso**" and together with the Debtors, the "**Parties**"), hereby stipulate (the "**Stipulation**") resolving the *Motion of El Paso Lumber & Plywood, Inc. for Allowance of Administrative Expense Claim* [Docket No. 210] (the "**Motion**"). In connection with this Stipulation, the Parties respectfully state as follows:

WHEREAS, on June 16, 2009 (the "**Petition Date**"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

WHEREAS, the Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of chapter 11 of the Bankruptcy Code.

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

WHEREAS, on July 15, 2009, El Paso filed the Motion, pursuant to 11 U.S.C. § 503(b)(9), seeking the allowance of an administrative expense claim, in the amount of \$16,957.44, for goods allegedly delivered to the Debtors within the twenty-day period prior to the Petition Date and reserving its rights.

WHEREAS, as a result of subsequent analysis and follow-up discussions between the Parties it was determined that, prior to the Petition Date, El Paso provided BMC West with certain goods in the ordinary course of business. Specifically, the Parties ultimately determined that BMC West received \$16,957.44 worth of goods from El Paso in the twenty-day period prior to the Petition Date (the "**503(b)(9) Goods**").

WHEREAS, as set forth below, the Parties have negotiated a consensual resolution to the Motion.

NOW THEREFORE, in consideration of the foregoing, and in order to avoid the cost and inconvenience of litigating the issues raised in the Motion, the Parties hereby stipulate and agree as follows:

1. In consideration of the terms of this Stipulation, the Motion shall be deemed resolved and withdrawn upon entry of an order approving this Stipulation.
2. El Paso shall have an allowed administrative expense claim against BMC West pursuant to section 503(b)(9) of the Bankruptcy Code in the amount of \$16,957.44 on account of the 503(b)(9) Goods (the "**Allowed Claim**"). Nothing set forth in this Stipulation shall affect, nor shall this Stipulation be deemed an allowance of, any claim that El Paso may have for goods received by the Debtors other than the 503(b)(9) Goods. Additionally, nothing in this Stipulation shall prohibit El Paso from filing a proof of claim for amounts owed on account of goods

received by the Debtors other than the 503(b)(9) Goods or prohibit the Debtors from objecting thereto.

3. Unless the Debtors, in the exercise of their discretion, agree to earlier payment of the Allowed Claim, the Parties agree that the Allowed Claim shall be paid in accordance with a confirmed chapter 11 plan of reorganization or such other procedures for paying claims pursuant to section 503(b)(9) that may be established by the Court; *provided, however*, that the foregoing limitation on the timing of payment shall not survive a conversion to a case under chapter 7 or a dismissal of these cases.

4. This Stipulation shall be binding on and inure to the benefit of the Parties hereto and their respective successors and assigns.

5. Subject to approval by the Bankruptcy Court, the undersigned hereby represent and warrant that they have full authority to execute this Stipulation on behalf of the respective Parties and that the respective Parties have full knowledge of, and have consented to, this Stipulation.

6. This Stipulation may be executed in one or more counterparts, each of which when so executed and delivered shall be an original, but all of which when taken together shall constitute one and the same instrument.

7. This Stipulation shall not be modified, altered, amended or vacated without written agreement of the Parties.

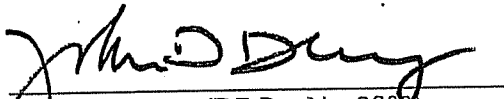
8. This Court shall retain jurisdiction, and the Parties consent to such retention of jurisdiction, to resolve any disputes or controversies arising from or related to this Stipulation. Any motion or application brought before the Court to resolve a dispute arising from or related to

the Stipulation shall be brought on proper notice to the undersigned parties in accordance the relevant Federal Rules of Bankruptcy Procedure and the Local Rules of this Court.

[Signature page to follow]

Stipulated and Agreed this 5th day of August, 2009

STEVENS & LEE, P.C.

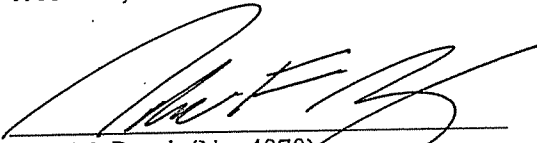

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