

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:)	Chapter 11
)	
BUILDING MATERIALS HOLDING CORPORATION, <i>et al.</i> , ¹)	Case No. 09-12074 (KJC)
)	
Debtors.)	Jointly Administered
)	
)	Objection Deadline: October 15, 2009 at 4:00 p.m. (ET)
)	Hearing Date: October 22, 2009 at 2:00 p.m. (ET)

**DEBTORS' MOTION FOR AN ORDER PURSUANT TO SECTION 363(b)
OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 6004 APPROVING
COMMITMENT LETTER AND RELATED FEE LETTER BY AND BETWEEN
BUILDING MATERIALS HOLDING CORPORATION
AND WELLS FARGO BANK, N.A.**

Building Materials Holding Corporation ("**BMHC**") and its affiliates, as debtors and debtors in possession (collectively, the "**Debtors**"), submit this motion (the "**Motion**") for entry of an order, substantially in the form annexed hereto as **Exhibit A**, pursuant to section 363(b) of title 11 of the United States Code (the "**Bankruptcy Code**") and Rule 6004 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") approving the Commitment Letter (as defined below) and the related Fee Letter (as defined below) by and between Building Materials Holding Corporation and Wells Fargo Bank, N.A. ("**WFB**"). In support of this Motion, the Debtors respectfully represent:

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.

JURISDICTION AND VENUE

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

BACKGROUND

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

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

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

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

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

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

5. On the Petition Date, the Debtors filed their proposed chapter 11 plan (the "**Plan**") and accompanying disclosure statement (the "**Disclosure Statement**"). The Debtors filed amended versions of the Plan and Disclosure Statement on July 27, 2009. As a result of continued negotiations, the Debtors filed further amended versions of the Plan (the "**Amended Plan**") and Disclosure Statement on October 1, 2009.

THE COMMITMENT LETTER AND FEE LETTER

6. WFB is the administrative agent with respect to the Debtors' \$80 million debtor-in-possession financing (the "**DIP Financing**"), which the Court approved on a final basis on July 1, 2009, and its prepetition Second Amended and Restated Credit Agreement (the "**Prepetition Credit Agreement**").

7. As a result of continued negotiations since these Chapter 11 Cases were filed, WFB and certain banks, financial entities and other entities (the "**Lenders**") have committed to provide to the Debtors, upon the terms and subject to the conditions set forth in that certain Commitment Letter—Exit Credit Facilities (the "**Commitment Letter**") by and between WFB and the Debtors, an Exit Revolver in the amount of \$50,000,000 and an Exit Term Loan in the amount of \$53,500,000. The Exit Revolver and the Exit Term Loan are referred to in the Amended Plan

and this Motion as the “Exit Credit Facilities.” WFB will act as the sole administrative agent for the Exit Credit Facilities.

8. The commitments in the Commitment Letter are subject to certain conditions precedent. First, the Commitment Letter requires that BMHC accept and comply with the terms and conditions of that certain fee Letter (the “*Fee Letter*”) by and between WFB and the Debtors.² In sum, the Fee Letter requires BMHC to pay the following fees (the “*Fees*”) in connection with the Exit Credit Facilities:³

- **Backstop Premium:** BMHC agrees to pay WFB, for the account of WFB and the Lenders, a backstop premium (the “*Backstop Premium*”) in an amount equal to \$5,175,000 (*i.e.*, 5% of the total \$103.5 million commitment under the Exit Credit Facilities) due and payable upon the last to occur of (1) the date on which the Court unconditionally approves BMHC’s payment of the Backstop Premium and (2) the day on which BMHC receives written acknowledgement from WFB and the Lenders (collectively having an aggregate commitment under the Exit Credit Facilities of at least \$103,500,000) that the Plan Approval Condition has been satisfied.⁴

² The Debtors attached executed versions of the Fee Letter and Commitment Letter as Exhibits H and J, respectively, to the Disclosure Statement filed on October 1, 2009. At the time the letters were executed, WFB had committed to provide \$30 million of the \$50 million Exit Revolver. Since yesterday, an additional Lender has committed to fund the remaining \$20 million of the Exit Revolver, necessitating certain amendments to the respective letters. The Debtors expect to file and serve amended executed versions of the Fee Letter and the Commitment Letter by Monday, October 5, 2009, or as soon as practicable thereafter.

³ The summaries of the Fee Letter and the Commitment Letter are for convenience only and are subject in all respects to the actual terms of the Fee Letter and Commitment Letter.

⁴ In summary, the Plan Approval Condition requires that WFB and the Lenders shall be satisfied with the terms and conditions of the Debtors’ Plan of Reorganization, related business plan, and the form of confirmation order. BMHC shall not pay the Backstop Premium until WFB and the Lenders have confirmed that the Plan Approval Condition has been satisfied with respect to those documents previously provided (or expected to be provided as soon as practicable after the date hereof) to the Lenders.

- **Closing Discount/Fee:** On the Closing Date,⁵ BMHC agrees to pay to WFB, for the account of WFB and the Lenders, a fee, denominated as a closing discount (the “*Closing Discount*”) in the Fee Letter, in an amount equal to 2.5% of the sum of the aggregate committed principal amount of the Exit Revolver on the effective date of the Amended Plan (the “*Closing Date*”) plus the original principal amount of the Exit Term Loan. The Closing Discount will be \$2,587,500 which is 2.5% of \$103,500,000.
- **Administrative Agency Fee:** BMHC agrees to pay to WFB an administrative agency fee in an amount equal to \$100,000 per annum, payable to WFB in advance on the Closing Date and on each anniversary thereof until the earlier of (1) the final maturity of the Exit Credit Facilities and payment of all amounts due thereunder and (2) early termination of the Exit Credit Facilities and payment of all amounts due thereunder.

9. In addition to compliance with the Fee Letter, the Commitment Letter is subject to the other terms and conditions of the Commitment Letter, which material terms and conditions can be summarized as follows:

- **Material Adverse Change:** The commitments are conditioned on and subject to WFB not becoming aware of any new or inconsistent information or other matter not previously disclosed to WFB relating to any of (1) the Debtors; or (2) the contemplated transactions, in each case, which WFB deems material and adverse and as a result thereof WFB reasonably believes that a material adverse change in the business, financial condition, results of operations or prospects of the Debtors, taken as a whole, has occurred.
- **Indemnification:** BMHC agrees, subject to the approval of the Court as requested in this Motion, to indemnify and hold harmless WFB and certain parties from and against any losses, claims, damages, liabilities and expenses of whatever nature, as well as reimbursing all out-of-pocket expenses, including reasonable attorneys’ fees, arising out of or in connection with (1) any matters contemplated by the Commitment Letter and the contemplated transactions or (2) the use or contemplated use of the proceeds of the Exit Credit Facilities; provided that no indemnification is available to the extent resulting from the indemnified party’s own gross negligence or willful misconduct.

⁵ The Closing Date is defined in the Commitment Letter as the Effective Date of the Plan.

- **Expenses:** BMHC shall, subject to the approval of the Court as requested in this Motion, reimburse WFB, from time to time on demand, for all reasonable out-of-pocket costs and expenses (including, without limitation, reasonable legal fees and expenses and due diligence expenses) of WFB incurred in connection with the preparation, review, negotiation, execution and delivery of the Commitment Letter, the Fee Letter and the contemplated financing documentation (the “*Expenses*”).

10. The Commitment Letter specifies that the commitments and agreements of WFB and the Lenders shall automatically terminate on **October 30, 2009** unless (A) the Court has entered an order unconditionally approving (1) the immediate payment by BMHC of the Backstop Premium and (2) all other terms and conditions set forth in the Commitment Letter, and (B) the Backstop Premium has been paid by BMHC by such date.

11. In addition, the commitments and agreements of WFB and the Lenders terminate on (1) December 31, 2009 if the Closing Date has not occurred by that time; (2) the first business day following the effective date of the Plan if the Closing Date shall not have occurred by such time; and (3) a material breach by BMHC under the Commitment Letter or the Fee Letter.

12. While the Debtors have negotiated with various other parties to provide exit financing on more favorable terms, those negotiations have been unsuccessful. The Debtors believe that the Exit Credit Facilities are integral to the success of the Amended Plan and it is therefore absolutely critical to secure the commitment to provide the Exit Credit Facilities specified in the Commitment Letter. The funds provided through the Exit Credit Facilities enable the Debtors to implement their business plan and pay the obligations due to be paid under the Plan. Accordingly, approval of the Commitment Fee and Fee Letter is appropriate, and the payment of the Fees and Expenses described in paragraphs 7 and 8 above (collectively, the “*Fees*”

and Expenses”) is an actual and necessary cost of preserving and enhancing the value of the Debtors' estates.

BASIS FOR RELIEF REQUESTED

13. Based on the facts and circumstances of these cases, the Debtors submit that good and sufficient justification exists to warrant approval of the Commitment Letter, the Fee Letter and the related Fees and Expenses.

14. Section 363(b)(1) of the Bankruptcy Code provides, in relevant part, that “the trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate” 11 U.S.C. § 363(b)(1). Use of estate property outside the ordinary course of business may be authorized if the debtor demonstrates a “sound business purpose.” *See In Re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (“The rule we adopt requires that a judge determining a 363(b) application expressly find . . . a good business reason to grant such an application.”); *Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp.* (*In re Montgomery Ward Holding Corp.*), 242 B.R. 147, 153 (D. Del. 1999) (“In determining whether to authorize the use, sale or lease of property of the estate under [section 363(b)], courts require the debtor to show that a sound business purpose justifies such actions.”); *In re Phoenix Steel Corp.*, 82 B.R. 334, 335-36 (Bankr. D. Del. 1987) (stating that judicial approval of a section 363 sale requires a showing that the proposed sale is fair and equitable, a good business reason exists for completing the sale and that the transaction is in good faith).

15. Once the debtor articulates a business justification for the proposed use of estate property, courts review the debtor’s request under the “business judgment rule.” *See, e.g., Myers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996) (noting that under normal circumstances, courts defer to a trustee’s judgment concerning use of property under Bankruptcy

Code section 363(b) when there is a legitimate business justification). Similarly, in the context of using assets of a bankruptcy estate to provide a proposed funder with an expense reimbursement, or other similar protections, other bankruptcy courts use the "business judgment" test to measure the appropriateness of such provisions. *See Official Committee of Subordinated Bondholders v. Integrated Resources, Inc. (In re Integrated Resources, Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992). The business judgment rule "is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company." *Id. (quoting Smith v. Van Gorkom*, A.2d 858, 872 (Del. 1985); *see also In re Helm*, 335 B.R. 528, 539 (Bankr. S.D.N.Y. 2006) ("The business judgment rule requires the Court to determine whether a reasonable business person would make a similar decision under similar circumstances.") (*quoting In re Vencor, Inc.*, Case No. 99-3199, 2003 Bankr. LEXIS 659, 2003 WL 21026737 at *3 (Bankr. D. Del. Apr. 30, 2003)).

16. In this case, BMHC has made a sound business decision to enter into the Commitment Letter and the Fee Letter in order to induce WFB and the Lenders to commit to provide the Exit Credit Facilities. Without exit financing, the Debtors' Plan is not feasible and cannot be confirmed. With approval of the Commitment Letter and the Fee Letter, the Debtors will be assured of the necessary exit financing pursuant to the terms of the Exit Credit Facilities. Thus, the Debtors have articulated a sound business justification for entering into the Commitment Letter and Fee Letter, and such decision should be protected by the business judgment rule and approved by the Court.

17. In the Third Circuit, the propriety of payment of the Fees and Expenses as general administrative expenses may also be evaluated, by analogy, under the standards imposed

in *Calpine Corp. v. O'Brien Envtl. Energy, Inc. (In re O'Brien Envtl. Energy, Inc.)*, 181 F.3d 527 (3d Cir. 1999) ("*In re O'Brien*"). In *In re O'Brien*, a case involving the payment of break-up fees and expenses, the Third Circuit concluded that "the determination whether break-up fees or expenses are allowable under § 503(b) must be made in reference to general administrative expense jurisprudence. In other words, the allowability of [such] fees...depends upon the requesting party's ability to show that the fees were actually necessary to preserve the value of the estate." *In re O'Brien*, 181 F.3d at 535. Here, the Fees and Expenses should be approved because they will preserve and provide a significant benefit to the Debtors' estates.

18. The Third Circuit's decision in *In re O'Brien* is instructive in analyzing the Fees and Expenses. The Third Circuit identified at least two instances in which expenses incurred by a third party may benefit the estate. First, expense reimbursement may be necessary to preserve the value of the estate if payment of the expenses "promote[s] more competitive bidding, such as by inducing a bid that otherwise would not have been made and without which bidding would have been limited." *Id.* at 537. Second:

if the availability of break-up fees and expenses were to induce a bidder to research the value of the debtor and convert that value to a dollar figure on which other bidders can rely, the bidder may have provided a benefit to the estate by increasing the likelihood that the price at which the debtor is sold will reflect its true worth.

Id. Both of these criteria favor approval of the Fees and Expenses. BMHC's agreement, subject to court approval, to pay the Fees and Expenses induced WFB and the Lenders to commit to provide the Exit Credit Facilities on the terms specified in the term sheet attached to the Commitment Letter. The establishment of such terms may entice other potential financiers to attempt to provide more favorable financing or plan terms.

19. In *In re O'Brien*, the Third Circuit referred to nine factors that the bankruptcy court viewed as relevant in deciding whether to approve expense reimbursement: (1) the presence of self-dealing or manipulation in negotiating the expense reimbursement; (2) whether the fee harms, rather than encourages, bidding; (3) the reasonableness of the expense reimbursement relative to the purchase price; (4) whether the "unsuccessful bidder place[d] the estate property in a sales configuration mode to attract other bidders to the auction;" (5) the ability of the request for expenses reimbursement "to attract or retain a potentially successful bid, establish a bid standard or minimum for other bidders, or attract additional bidders"; (6) the correlation of the fee to a maximization of value of the debtor's estate; (7) the support of the principal secured creditors and creditors committees of expense reimbursement; (8) the benefits of the safeguards to the debtor's estate; and (9) the "substantial adverse impact [of the break-up fee] on unsecured creditors, where such creditors are in opposition to the break-up fee." See *In re O'Brien*, 181 F.3d at 536. Some of these factors are, of course, not applicable to the Fees and Expenses because they do not arise in the context of a competing bid for the Debtors. Those that are applicable, however, clearly support approval of the Fees and Expenses. The Fees and Expenses involve no self-dealing or manipulating, encourage rather than harm competitive bidding for exit financing, are reasonable relative to the amount of the committed Exit Credit Facilities (\$103.5 million), maximize the value of the Debtors' estates, were necessary to induce WFB and the Lenders to commit to providing Exit Credit Facilities and, under the circumstances (including that the Exit Credit Facilities ensures the feasibility of the Amended Plan), have a positive impact on secured and unsecured creditors and the Debtors' estates.

20. Courts have approved the payment of a variety of fees and expenses as beneficial to the estate in creating incentives to bid, to provide financing to, or purchase the

assets of, the debtor based on the facts and circumstances of the case. *See Integrated Resources*, 147 B.R. at 662; *In re Radnor Holdings*, Case No. 06-10894 (Bankr. D. Del. September 22, 2006) (aggregate fee and expense reimbursement of 3% permitted); *In re Riverstone Networks*, Case No. 06-10110 (Bankr. D. Del. February 24, 2006); *Tama Beef Packing, Inc.*, 312 B.R. 192 (Bankr. N.D. Iowa 2004); *In re Chi-Chi's Inc.*, Case No. 03-13063 (Bankr. D. Del. November 4, 2003); *In re Great Northern Paper, Inc.*, Case No. 03-10048 (Bankr. D. Me. February 18, 2003) (fee of 5.4% plus reimbursement of expenses upheld); *In re FSC Corp.*, Case No. 00-B-04659 (Bankr. N.D. Ill. February 28, 2000) (break-up fee of 3.4% plus reimbursement of expenses is reasonable); *In re Hechinger Investment Company Inc.*, Case No. 99-2261 (PJW) (Bankr. D. Del. October 1, 1999); *In re Montgomery Ward Holding Corp.*, Case No. 97-1409 (PJW) (Bankr. D. Del. February 17, 1998).

21. Whether evaluated under the "business judgment rule" applied by many courts or the Third Circuit's "administrative expense" standard, the Commitment Letter, the Fee Letter and the related Fees and Expenses should be approved because they are necessary to preserve the full value of the Debtors' estates. First, all negotiations between the Debtors and WFB and the Lenders have been conducted on a good faith, arm's-length basis and in consultation with counsel and advisors. Second, the Debtors' agreement to pay the Fees and Expenses was necessary to obtain WFB's and the Lenders' commitment to provide the Exit Credit Facilities.

22. The Debtors' payment of the Fees and Expenses under the circumstances described herein would be (i) an actual and necessary cost and expense of preserving the Debtors' estates, within the meaning of section 503(b) of the Bankruptcy Code; (ii) of substantial

benefit to the Debtors' estates; and (iii) reasonable and appropriate in light of the efforts and the significant costs and expenses that have been and will be expended by WFB and the Lenders.

23. The Debtors have determined, in the exercise of their business judgment, that entering into the Commitment Letter and Fee Letter, and paying the Fees and Expenses is reasonable and in the best interests of the Debtors, their creditors, and all parties in interest. The Exit Credit Facilities are absolutely critical to the Amended Plan. Accordingly, the Debtors respectfully request that the Court approve the Commitment Letter, the Fee Letter and the payment of the Fees and Expenses.

REQUEST FOR WAIVER OF STAY

24. To implement the foregoing, the Debtors seek a waiver of any stay of the effectiveness of the order approving this Motion. Pursuant to Bankruptcy Rule 6004(h), any "order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 10 days after entry of the order, unless the court orders otherwise." Because the Commitment Letter and the Fee Letter require entry of an order unconditionally permitting payment of the Backstop Premium by October 30, 2009, the Debtors submit that ample cause exists to justify a waiver of the 10-day stay under by Bankruptcy Rule 6004(h).

NOTICE

25. No trustee or examiner has been appointed in the Chapter 11 Cases. The Debtors have provided notice of filing of the Motion to: (a) the U.S. Trustee; (b) counsel to the Creditors' Committee; (c) counsel to Wells Fargo Bank, as agent under the Debtors' Prepetition Credit Agreement and DIP Facility (as defined in the Amended Plan); and (d) 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.

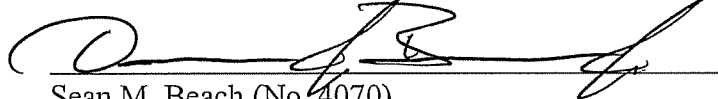
NO PRIOR REQUEST

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

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

Dated: Wilmington, Delaware
October 2, 2009

YOUNG CONAWAY STARGATT & TAYLOR, LLP



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ATTORNEYS FOR DEBTORS AND
DEBTORS IN POSSESSION

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

In re:)	
)	Chapter 11
)	
BUILDING MATERIALS HOLDING CORPORATION, <i>et al.</i>,¹)	Case No. 09-12074 (KJC)
)	
Debtors.)	Jointly Administered
)	
)	Objection Deadline: October 15, 2009 at 4:00 p.m. (ET)
)	Hearing Date: October 22, 2009 at 2:00 p.m. (ET)

NOTICE OF MOTION

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

PLEASE TAKE NOTICE that the above-captioned debtors and debtors in possession (collectively, the “Debtors”) have filed the attached **Debtors’ Motion for an Order Pursuant to Section 363(b) of the Bankruptcy Code and Bankruptcy Rule 6004 Approving Commitment Letter and Related Fee Letter By and Between Building Materials Holding Corporation and Wells Fargo Bank, N.A. (the “Motion”)**.

PLEASE TAKE FURTHER NOTICE that any objections to the Motion must be filed on or before **October 15, 2009 at 4:00 p.m. (ET)** (the “Objection Deadline”) with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801. At the same time, you must serve a copy of the objection upon the undersigned counsel to the Debtors so as to be received on or before the Objection Deadline.

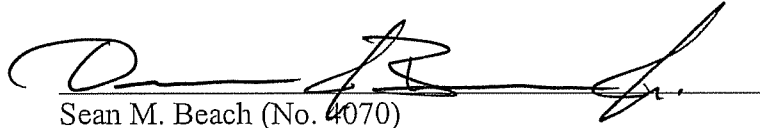
PLEASE TAKE FURTHER NOTICE THAT A HEARING TO CONSIDER THE MOTION WILL BE HELD ON OCTOBER 22, 2009 AT 2:00 P.M. (ET) BEFORE THE HONORABLE KEVIN J. CAREY AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 MARKET STREET, 5TH FLOOR, COURTROOM NO. 5, WILMINGTON, DELAWARE 19801.

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

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

Dated: Wilmington, Delaware
October 2, 2009

YOUNG CONAWAY STARGATT & TAYLOR, LLP



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ATTORNEYS FOR THE DEBTORS
AND DEBTORS-IN-POSSESSION

EXHIBIT A
Proposed Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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

**ORDER PURSUANT TO SECTION 363(B) OF THE BANKRUPTCY CODE
AND BANKRUPTCY RULE 6004 APPROVING COMMITMENT LETTER AND
RELATED FEE LETTER BY AND BETWEEN BUILDING MATERIALS HOLDING
CORPORATION AND WELLS FARGO BANK, N.A.**

Upon consideration of the motion (the "***Motion***") of Building Materials Holding Corporation and its affiliates, as debtors and debtors in possession (collectively, the "***Debtors***") for entry of an order pursuant to section 363(b) of title 11 of the United States Code (the "***Bankruptcy Code***") and Rule 6004 of the Federal Rules of Bankruptcy Procedure (the "***Bankruptcy Rules***") approving the Commitment Letter (as defined in the Motion) and the related Fee Letter (as defined in the Motion) by and between Building Materials Holding Corporation and Wells Fargo Bank, N.A. ("***WFB***") as set forth in the Motion; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. sections 1408 and 1409; and the Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest;

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

IT IS HEREBY ORDERED:

1. The Motion is granted as set forth below.
2. All objections to the Motion or the relief requested therein that have not been withdrawn, waived, or settled, and all reservations of rights included therein, hereby are overruled on the merits.
3. The Commitment Letter is approved in all respects and BMHC is authorized and empowered to take any and all steps and to perform such other and further actions as are necessary to carry out, effectuate, or otherwise enforce the terms, conditions, and provisions of the Commitment Letter, including, but not limited to, paying the related Fees and Expenses (as defined in the Motion) as and when they become due under the terms of the Fee Letter and the Commitment Letter.
4. The Fee Letter is approved in all respects and BMHC is authorized and empowered to take any and all steps and to perform such other and further actions as are necessary to carry out, effectuate, or otherwise enforce the terms, conditions, and provisions of the Fee Letter, including payment of the related Fees and Expenses (as defined in the Motion).
5. No recipient of the Fees and Expenses shall be required to file an application to be employed pursuant to any section of the Bankruptcy Code or to file any interim or final fee

application with the Court in connection with the receipt of such Fees and Expenses, provided, however, that the Debtors shall file with Court, as soon as practicable after payment of the applicable Fees and Expenses, a notice that reflects the amount of Fees and Expenses paid and the recipient thereof.

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

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

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

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

Dated: Wilmington, Delaware
October ____, 2009

Kevin J. Carey
Chief United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

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

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 above-captioned debtors, being duly sworn according to law, deposes and says that on October 2, 2009, she caused a copy of the **Debtors' Motion for an Order Pursuant to Section 363(b) of the Bankruptcy Code and Bankruptcy Rule 6004 Approving Commitment Letter and Related Fee Letter By and Between Building Materials Holding Corporation and Wells Fargo Bank, N.A.** to be served as indicated upon the parties identified on the attached service list.


Casey S. Cathcart

SWORN TO AND SUBSCRIBED before me this 2nd day of October, 2009.


Notary Public
My Commission Expires:
JUNE L. WELCH
NOTARY PUBLIC
STATE OF DELAWARE
My commission expires Aug. 23, 2011

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.

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