

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

<b>IN RE:</b>	)	
	)	<b>Chapter 11</b>
<b>BUILDING MATERIALS HOLDING</b>	)	
<b>CORPORATION, <i>et al.</i>,<sup>1</sup></b>	)	<b>Case No. 09-12074 (KJC)</b>
	)	
<b>Debtors.</b>	)	<b>Jointly Administered</b>
	)	
	)	<b>Ref. Docket No. 693</b>

**DEBTORS' OBJECTION TO THE EXPEDITED MOTION OF THE OFFICIAL  
COMMITTEE OF UNSECURED CREDITORS TO CONTINUE THE CURRENTLY  
SCHEDULED OCTOBER 7, 2009 HEARING ON THE DISCLOSURE STATEMENT  
AND RELATED SOLICITATION PROCEDURES MOTION**

Building Materials Holding Corporation and its affiliates, as debtors and debtors in possession (collectively, the “**Debtor**”), hereby submit this Objection to the Expedited Motion of the Official Committee of Unsecured Creditors (the “Creditors’ Committee”) to Continue the Currently Scheduled October 7, 2009 Hearing on the Disclosure Statement and Related Solicitation Procedures Motion (the “**Motion**”). In support thereof, the Debtors respectfully represent:

**ARGUMENT**

1. After months of negotiating with multiple parties to secure exit financing for their plan of reorganization in an extremely difficult and shifting credit market, the Debtors have just recently obtained an exit financing commitment that will allow the Debtors to fund the

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<sup>1</sup> 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.

emergence from Chapter 11. The exit financing commitment expires on December 31, 2009, so it is imperative that the Debtors successfully emerge from chapter 11 prior to this date.

2. In light of the extremely tight timeframe, the Debtors worked furiously to file an Amended Plan and Disclosure Statement and did so last week (six days in advance of the upcoming October 7, 2009 hearing). Apart from responding to previous Disclosure Statement objections that had been raised by the Creditors' Committee, the Amended Plan and Disclosure Statement differ from the original Plan and Disclosure Statement filed on the Petition Date and the first amended Plan and Disclosure Statement filed on July 27, 2009, only in two primary respects: (a) to disclose the terms of the exit financing that the Debtors have obtained, and (b) to reduce the distribution to the Debtors' unsecured creditors and, because all of such distribution will be available on the Effective Date of the Amended Plan, eliminate the Liquidating Trust that existed when the Plan contemplated payments over time to such unsecured creditors.

3. The Creditors' Committee filed an almost immediate request to adjourn the Disclosure Statement Hearing<sup>2</sup> for more than six weeks -- or nearly two months after the filing of the Amended Plan -- under the guise of seeking more discovery.

4. However, as discussed below, the Creditors' Committee's true intent is not to seek more discovery relevant to the Amended Disclosure Statement. Indeed, and as set forth in ¶ 16 below, counsel for the Creditors' Committee recently confirmed in a filing with this Court that the Debtors have diligently responded to the Creditors' Committee's discovery requests on an expedited basis. Rather, the Creditors' Committee is unhappy with the lesser distribution they will receive (as set forth in ¶2(b) above) and the attempt to delay appears to be

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Creditors' Committee's Motion.

nothing more than an attempt to use delay to leverage the Debtors and the Prepetition Lenders into providing more favorable treatment (and treatment more favorable than that which they would otherwise be entitled under the absolute priority rule) to unsecured creditors, and to devise confirmation arguments.

5. At the threshold, the Creditors' Committee's request should be denied because their discovery requests are unrelated to the disclosure issues properly before the Court at the upcoming hearing and instead focus on why the Debtors amended their Plan. Although the Creditors' Committee also questions how such amendments impact the Debtors' unsecured creditors, this is more of a rhetorical, rather than a serious question: The Amended Disclosure Statement discloses the reduced distribution to the unsecured creditors, and the Creditors' Committee and any unsecured creditor will readily understand how such distribution impacts unsecured creditors. The historical underpinnings of how Debtors came to the terms of the Amended Plan are simply not required to be disclosed. Section 1125(a)(1) of the Bankruptcy Code is clear: adequate information about a plan does not mean that the Debtors must include in the Disclosure Statement "information about any other possible or proposed plan ...."

6. More importantly, the Creditors' Committee's request must be denied because it jeopardizes, without justification, consummation of the Amended Plan by the December 31 deadline when the exit financing commitment expires.

**A. Time is of the Essence in these Chapter 11 Cases**

7. The Debtors commenced the present chapter 11 cases under substantial financial distress and with a need to quickly rationalize their balance sheets in order to remain viable during the current unprecedented economic downturn. The competitive landscape demands that the Debtors, like their competitors, demonstrate an ability to survive this difficult period and quickly emerge from bankruptcy with a capital structure that is sufficient to support

the reorganized Debtors' business operations on a go-forward basis. The longer the Debtors remain in chapter 11, the greater effect these proceedings have on the Debtors' business operations as the Debtors' competitors continue in their efforts to siphon the Debtors' employees and customers—luring them away with the promise of greater stability elsewhere.

8. Mindful of the debilitating effect these proceedings have on their business operations, the Debtors have labored to develop a plan of reorganization that results in the greatest possible distribution to their creditors and which incorporates a capital structure that will allow the Debtors' business operations to continue. Thus, the Debtors filed their Joint Plan of Reorganization for the Debtors Under Chapter 11 of the Bankruptcy Code [Docket No. 18] (as amended, the “*Plan*”) on the first day of these chapter 11 cases.

9. The Plan embodied a restructuring that was supported by the Debtors' prepetition secured lenders and which contemplated those lenders providing a \$100 million revolving credit facility on favorable terms to finance the reorganized Debtors' business operations. However, the Debtors' post-petition efforts to obtain binding commitments for this favorably-priced \$100 million revolving credit facility did not bear fruit because, among other reasons, certain of the Debtors' prepetition secured lenders elected to discontinue further investments in the building materials and construction services sector and accordingly opted not to participate in the Debtors' proposed exit financing facility.

10. Without the investments of these key prepetition creditors, the Debtors' other prepetition secured creditors became unwilling to supply the proposed exit financing facility on favorable terms, and those that were willing to provide such financing insisted on market terms. This forced the Debtors to renew their search for exit financing. Unfortunately, and due to circumstances beyond the Debtors' control, the process of obtaining a commitment for

an acceptable exit financing arrangement forced the Debtors to adjourn the Disclosure Statement Hearing until October 7, 2009.

11. Now that the Debtors have been able to obtain a commitment to provide the financing necessary to consummate their Plan, the terms of the Debtors' exit financing commitment and debtor-in-possession credit facility as well as the Debtors' operational needs all dictate that the Debtors proceed to confirmation of their Plan with due speed. The Debtors' exit financing commitment expires unless the Debtors have consummated the Amended Plan by December 31, 2009. Similarly, the Debtors' debtor-in-possession credit facility expires on December 31, 2009.<sup>3</sup> In addition to these drop-dead deadlines, the Debtors' business operations are at greater risk each day these cases continue as the Debtors' competitors continue to attempt to exploit the fact that the Debtors are in chapter 11.

**B. The Debtors' Second Amended Disclosure Statement Does Not Implicate Any New Disclosure Issues**

12. In light of the increased cost associated with the exit financing and to ensure that the Amended Plan was likely to be supported by the Debtors' Prepetition Lenders -- without whose acceptance the Amended Plan cannot be confirmed -- the Debtors modified the Plan treatment of unsecured creditors. Accordingly, the Disclosure Statement was amended to reflect this new Plan treatment and to describe the Debtors' newly-obtained exit financing commitment.<sup>4</sup> However, the mere fact that the treatment of the claims of unsecured creditors has

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<sup>3</sup> The Debtors' debtor-in-possession credit facility does contain a provision whereby it can be extended for 90 days. However, in order to obtain this extension, the Debtors would be forced to pay \$400,000 to the debtor-in-possession credit facility lenders.

<sup>4</sup> The Disclosure Statement was also amended to reflect updates in these chapter 11 cases and other minor revisions to the Plan. For example, the original Disclosure Statement described the then-pending putative Acevedo class action whereas the Second Amended Disclosure Statement indicates that this action has been settled.

changed and that the Debtors have obtained an exit financing commitment that varies from the Debtors' original proposed Plan do not render the Debtors' descriptions of such treatment and financing inadequate. Indeed, the Creditors' Committee has not asserted that the Second Amended Disclosure Statement inadequately discloses the terms of the Plan transaction.<sup>5</sup>

13. As the black-line version of the Amended Plan and Disclosure Statement filed with this Court make clear, the only material changes to the Amended Plan are to the exit financing terms and the amount of the distribution to unsecured creditors. In fact, the basic structure of the original Plan is continued in the Amended Plan. The Creditors' Committee long ago filed an objection to reflect their actual "disclosure" objections to the original Disclosure Statement. Indeed, most of the changes in the Amended Plan and Disclosure Statement are the result of the Creditors' Committee's previously filed objections and extensive discussions between the Debtors and the Creditors' Committee to resolve those objections.

14. Instead of attacking the sufficiency of the Debtors' disclosures, the Creditors' Committee seeks to unnecessarily delay these proceedings so that it can purportedly conduct discovery on a number of issues. However, the issues on which the Creditors' Committee seeks discovery are not disclosure statement issues, but are instead related to why the Second Amended Plan differs from the Debtors' originally filed plan. *See* Mot. ¶ 30. Contrary to the Creditors' Committee's assertions, *see* Mot. ¶ 29, the Debtors' Disclosure Statement "need not include...information about any other possible or proposed plan," 11 U.S.C. § 1125(a)(1). Thus, it remains unclear how additional delay for discovery will aid the Creditors' Committee in

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Without explanation or precedent, the Committee claims that the amendments made to the Debtors' Disclosure Statement somehow render it *an entirely new* Disclosure Statement such that the Disclosure Statement Hearing must be re-noticed in accordance with Rule 3017 of the Federal Rules of Bankruptcy Procedure. Given the relatively modest changes that the Debtors made to the Disclosure Statement (which are clearly indicated in the black-line version the Debtors filed with the Court), this argument is simply untenable.

evaluating the sufficiency of the Debtors' disclosures. If the Creditors' Committee is unhappy with the revised Plan treatment of unsecured creditors, it has ample opportunity to request appropriate information prior to the confirmation hearing and will have a full opportunity to raise any objections to the Amended Plan at that time.

**C. The Debtors Have Been Responsive to the Creditors' Committee's Requests for Information**

15. The Committee's Motion contains vague and unsupported allegations that the Debtors have not been completely responsive to requests for information.

16. To the contrary, and as the Creditors' Committee conceded just weeks ago, the Debtors have diligently responded to all discovery requests. Counsel to the Creditors' Committee attested to the following in the Certification of Counsel For Stipulation Regarding the Extension of the Challenge Period in the DIP Order, executed on September 18, 2009 [D.I. 639] (annexed hereto as *Exhibit 1*):

- From the outset of this matter, the Debtors “agreed with the Creditor’s Committee to cooperate in expedited and informal discovery,” (Id. at ¶ 3)
- The Creditors’ Committee has made numerous discovery requests since that time; (Id. at ¶ 4)
- The Debtors “provided documents on a rolling basis both prior to, and since, the informal document requests as such documents became available,” (Id.) and
- “Counsel for the Creditors’ Committee corresponded regularly with follow up requests to counsel for the Debtors and the Prepetition Administrative Agent, respectively, who provided additional documents.” (Id. at ¶ 5)

17. In addition to providing all requested discovery, Debtors were forthright with the Creditors' Committee regarding the reason for adjourning the Disclosure Statement Hearing – i.e., that the Debtors were seeking funding alternatives for the Debtors' Plan. *See* Mot.

¶ 11. As the Creditors' Committee acknowledges, the Debtors also forthrightly informed the Creditors' Committee that they could not share the details of such funding alternatives due to confidentiality concerns. *See id.* Indeed, certain of the funding alternatives contemplated by the Debtors were contingent on the negotiations remaining confidential such that if the name of the proposed plan sponsor or the terms of the proposed deal were disclosed, the offer would be automatically withdrawn.

18. It was not until late in the afternoon on September 24, 2009 that it became clear that the third-party funding alternatives Debtors had been exploring would not materialize. It was not until September 25, 2009 that the Debtors received confirmation that the Debtors' prepetition secured lenders were going to be able to facilitate the proposed exit financing on the terms described in the Debtors' Second Amended Plan. That very day, Debtors' counsel reached out to Counsel to the Creditors' Committee to discuss this exit financing and its impact on the Debtors' Plan. The Debtors filed the Amended Plan and Disclosure Statement embodying this deal as soon as reasonably practicable thereafter (on October 1, 2009).



WHEREFORE, the Debtors respectfully request that the Court deny the Motion and proceed with the hearing on the Debtors' Second Amended Disclosure Statement and related Solicitation Procedures Motion, and grant such other and further relief as the Court may deem just and proper.

Dated: Wilmington, Delaware  
October 6, 2009

YOUNG CONAWAY STARGATT &  
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ATTORNEYS FOR DEBTORS AND DEBTORS  
IN POSSESSION

## **EXHIBIT 1**

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

-----	X	
In re:	:	Chapter 11
	:	
BUILDING MATERIAL HOLDING	:	Case No. 09-12074 (KJC)
CORPORATION, <u>et al.</u> <sup>1</sup>	:	
	:	Jointly Administered
Debtors.	:	
-----	X	Related Docket No. 132

**CERTIFICATION OF COUNSEL FOR STIPULATION  
REGARDING THE EXTENSION OF THE CHALLENGE  
PERIOD IN FINAL DIP ORDER**

I, Bradford Sandler, a partner with Benesch Friedlander Coplan & Aronoff, LLP, counsel to the official committee of unsecured creditors (the "Committee") to the above-referenced debtors and debtors-in-possession (the "Debtors"), hereby certify:

1. On June 16, 2009 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.
2. Pursuant to paragraph 6 of the Final DIP Order, the Committee has ninety (90) days from the Committee Formation Date (that is, until September 24, 2009), or such later date (i) consented to by the Prepetition Administrative Agent or (ii) ordered by this Court (the "Challenge Period Deadline") to file/initiate an adversary complaint or a contested matter with this Court (a) challenging the amount, validity, enforceability, extent, or priority of the Prepetition Lender Debt or the Prepetition Liens or (b) otherwise asserting any other claims or

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<sup>1</sup> 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).

causes of action against the Prepetition Lenders (and their successors and assigns, if applicable) (a "Challenge") arising out of the Prepetition Master Agreements or the Prepetition Credit Agreement, and/or the prepetition activities of the Prepetition Administrative Agent or any of the Prepetition Lenders (and/or its and/or their successors and assigns, if applicable).

3. The Debtors, Agent, Lenders, Prepetition Administrative Agent, and Prepetition Lenders have agreed with the Creditors' Committee to cooperate in expedited and informal discovery, but reserve all applicable rights to contest such discovery. The parties' consent to a telephonic conference, subject to the Court's availability, to resolve any discovery disputes. Any Challenge may be filed in the name of the Debtors without leave of the Court, upon three (3) days prior written notice to the Debtors and the Prepetition Administrative Agent.

4. On or about July 8, 2009, counsel for the Committee sent an informal document request to counsels for the Prepetition Administrative Agent and the Debtors, respectively, requesting several categories of documents and other information. Counsels for the Debtors and Prepetition Administrative Agent, respectively, provided documents on a rolling basis both prior to, and since the informal document request as such documents became available. Counsel for the Committee corresponded regularly with follow-up requests to counsels for the Debtors and the Prepetition Administrative Agent, respectively, who provided additional documents.

5. As of September 16, 2009, the Debtors and Prepetition Administrative Agent, respectively, have provided email and correspondence as requested by the Committee. The Committee anticipates that, due to their volume, these documents will require a time-consuming review. Initially, the Committee requested additional emails and correspondence from the Debtors and Prepetition Administrative Agent but, based on discussions with Prepetition Administrative Agent, amended such request and has received all currently requested email and

correspondence from Prepetition Administrative Agent. The Committee reserves its right to seek further production from the Debtors and/or Prepetition Administrative Agent with respect to emails and correspondence initially requested. Because the Committee received the bulk of the email and correspondence on September 16, 2009, the Committee is in need of additional time within which to review and analyze the remaining documents.

6. Pursuant to the Stipulation attached hereto as Exhibit 1 (the "Stipulation"), in response to the Committee's request for an extension of the Challenge Period Deadline to allow the Committee to complete its review and analysis of recently produced and yet to be produced documents, the Prepetition Administrative Agent and the Debtors, respectively, have agreed to an extension of the Challenge Period Deadline to October 26, 2009.

7. The Parties respectfully request that the Court enter the order attached hereto as Exhibit A approving the Stipulation at the Court's earliest convenience.

Dated: Wilmington, DE  
September 16, 2009

 BENESCH FRIEDLANDER COPLAN & ARONOFF, LLP

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*Counsel for the Official Committee of Unsecured  
Creditors*

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

-----X	:	Chapter 11
In re:	:	
	:	
BUILDING MATERIAL HOLDING	:	Case No. 09-12074 (KJC)
CORPORATION, <u>et al.</u> <sup>1</sup>	:	
	:	Jointly Administered
Debtors.	:	
-----X		

**STIPULATION EXTENDING CHALLENGE PERIOD DEADLINE  
DATE IN FINAL DIP ORDER**

**RECITALS:**

- A. On June 16, 2009 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.<sup>2</sup>
- B. Pursuant to paragraph 6 of the Final DIP Order, the Committee has ninety (90) days from the Committee Formation Date (that is, until September 24, 2009), or such later date (i) consented to by the Prepetition Administrative Agent or (ii) ordered by this Court (the "Challenge Period Deadline") to file/initiate an adversary complaint or a contested matter with this Court (a) challenging the amount, validity, enforceability, extent, or priority of the Prepetition Lender Debt or the Prepetition Liens or (b) otherwise asserting any other claims or causes of action against the Prepetition Lenders (and their successors and assigns, if applicable) (a "Challenge") arising out of the Prepetition Master Agreements or the Prepetition Credit

<sup>1</sup> 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).

<sup>2</sup> Terms not otherwise defined herein shall have the meaning ascribed to them in the Final DIP Order (I) Authorizing The Debtors To (A) Obtain Postpetition Secured Financing And (B) Utilize Cash Collateral, (II) Granting Liens And Superpriority Administrative Expense Status, (III) Granting Adequate Protection To Prepetition Lenders, And (IV) Modifying The Automatic Stay entered on July 1, 2009 [Docket No. 132].

Agreement, and/or the prepetition activities of the Prepetition Administrative Agent or any of the Prepetition Lenders (and/or its and/or their successors and assigns, if applicable).

C. The Debtors, Agent, Lenders, Prepetition Administrative Agent, and Prepetition Lenders have agreed with the Creditors' Committee to cooperate in expedited and informal discovery, but reserve all applicable rights to contest such discovery. The parties' consent to a telephonic conference, subject to the Court's availability, to resolve any discovery disputes. Any Challenge may be filed in the name of the Debtors without leave of the Court, upon three (3) days prior written notice to the Debtors and the Prepetition Administrative Agent.

D. On or about July 8, 2009, counsel for the Committee sent an informal document request to counsels for the Prepetition Administrative Agent and the Debtors, respectively, requesting several categories of documents and other information. Counsels for the Debtors and Prepetition Administrative Agent, respectively, provided documents on a rolling basis both prior to and since the informal document request as such documents became available. Counsel for the Committee corresponded regularly with follow-up requests to counsels for the Debtors and the Prepetition Administrative Agent, respectively, who provided additional documents.

E. As of September 16, 2009, the Debtors and Prepetition Administrative Agent, respectively, have provided email and correspondence as requested by the Committee. The Committee anticipates that, due to their volume, these documents will require a time-consuming review. Initially, the Committee requested additional emails and correspondence from the Debtors and Prepetition Administrative Agent but, based on discussions with Prepetition Administrative Agent, amended such request and has received all currently requested email and correspondence from Prepetition Administrative Agent. The Committee reserves its right to seek further production from the Debtors and/or Prepetition Administrative Agent with respect to



emails and correspondence initially requested. Because the Committee received the bulk of the email and correspondence on September 16, 2009, the Committee is in need of additional time within which to review and analyze the remaining documents. The Prepetition Administrative Agent and the Debtors have agreed to the extension requested by the Committee, as more fully set forth below.

**IT IS HEREBY STIPULATED, CONSENTED AND AGREED BY THE UNDERSIGNED PARTIES, THAT:**

1. The Challenge Period Deadline is extended to October 26, 2009.
2. The Court shall retain jurisdiction over the terms and conditions of this Stipulation.
3. This Stipulation cannot be amended, modified or superseded except upon written consent of the parties hereto.
4. This Stipulation may be signed in counterparts, with each part being deemed a part of the original document.
5. This Stipulation may be signed by facsimile transmission which signatures shall be treated as original signatures.

Dated: Wilmington, Delaware  
September 8, 2009

**OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

By: Katie A. Lane with permission  
ARENT FOX, LLP by Bradford J. Salton  
Katie A. Lane, Esq.

*Counsel for the Committee*

**DEBTORS**

BUILDING MATERIALS HOLDING COMPANY, ET AL.  
Debtors and Debtors-in-Possession

By: Aaron G. York with permission  
GIBSON DUNN & CRUTCHER LLP by Bradford J. Salton  
Aaron G. York, Esq.

*Counsel for the Debtors and Debtors in Possession*

**PREPETITION ADMINISTRATIVE AGENT**

WELLS FARGO BANK, NATIONAL ASSOCIATION  
as Agent for the Lenders

By: Kevin B. Fisher with permission  
PAUL HASTINGS LLP by Bradford J. Salton  
Kevin B. Fisher, Esq.  
Counsel for Wells Fargo Bank, National Association

-----X	
In re:	: Chapter 11
	:
BUILDING MATERIAL HOLDING	: Case No. 09-12074 (KJC)
CORPORATION, <u>et al.</u> <sup>1</sup>	:
	: Jointly Administered
Debtors.	:
	: <b>Re: Docket No.</b>
-----X	

Upon consideration of the Stipulation Extending the Challenge Period Deadline (the “Stipulation”) entered into by the official committee of unsecured creditors (the “Committee”) to the above-referenced debtors and debtors-in-possession (the “Debtors”), the Debtors, and Wells Fargo Bank, National Association “Prepetition Administrative Agent”, and together with the Committee and the Debtors, the “Parties”);<sup>2</sup> and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this matter being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and venue of this proceeding being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that notice of the Stipulation was appropriate under the circumstances and that no other or further notice need be given; and the relief requested being in the best interests of the Debtors’ estates, their creditors and other parties-in-interest; and after due deliberation and sufficient cause appearing therefor,

<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed in the Stipulation.

**IT IS HEREBY ORDERED** that:

1. The Stipulation is APPROVED.
2. The Challenge Period Deadline as defined in paragraph 6 of the Final DIP Order (I) Authorizing The Debtors To (A) Obtain Postpetition Secured Financing And (B) Utilize Cash Collateral, (II) Granting Liens And Superpriority Administrative Expense Status, (III) Granting Adequate Protection To Prepetition Lenders, And (IV) Modifying The Automatic Stay entered on July 1, 2009 [Docket No. 132] (the "Final DIP Order"), shall be extended to October 26, 2009.
3. This Court shall retain jurisdiction to hear and determine all matters relating to the Stipulation.

Dated: September \_\_, 2009

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Hon. Kevin J. Carey  
United States Bankruptcy Judge