

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

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X  
:                   **Chapter 11**  
:                   :  
:                   :  
**In re:**                   :  
:                   :  
:                   **Case No. 09-12074 (KJC)**  
**BUILDING MATERIAL HOLDING**                   :  
**CORPORATION, et al.**<sup>1</sup>                   :  
:                   :  
:                   Jointly Administered  
:                   :  
**Debtors.**                   :  
:                   **Related Docket No. 132**  
:                   :  
:                   :  
X  
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**CERTIFICATION OF COUNSEL FOR STIPULATION  
REGARDING PLAN SUPPORT AND CHALLENGE PERIOD**

I, Paul N. Heath, a director with Richards, Layton & Finger, P.A., counsel to Wells Fargo Bank, N.A., as agent, hereby certify:

1. On June 16, 2009 (the “Petition Date”), each of the above-referenced debtors and debtors-in-possession (collectively, “Debtors”) filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

2. Pursuant to paragraph 6 of the Final DIP Order, the official committee of unsecured creditors in Debtors’ cases (“the Committee”) had 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

<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).

Prepetition Lenders (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. Pursuant to the Stipulation Extending Challenge Period Deadline Date in Final DIP Order (the "DIP Extension Stipulation"), the Committee, Debtors and the Prepetition Administrative Agent, as agent for the Lenders (collectively, the "Parties"), agreed, among other things, to extend the Challenge Period Deadline to October 26, 2009. The Order approving the DIP Extension Stipulation (the "DIP Extension Stipulation Order") was entered on or about September 21, 2009.

4. Subsequent to the DIP Extension Stipulation Order, the Parties entered into settlement discussions respecting the Debtors' proposed plan of reorganization. Following extensive negotiations, the Parties reached a settlement respecting the Joint Plan of Reorganization for the Debtors Under Chapter 11 of the Bankruptcy Code Amended October 22, 2009, as more fully set forth below in the Stipulation attached hereto as **Exhibit 1** (the "Stipulation").

5. 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: October 27, 2009  
Wilmington, Delaware



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Paul N. Heath (DE 3704)  
Richards, Layton & Finger, P.A.  
One Rodney Square  
920 N. King Street  
Wilmington, DE 19801  
Phone: (302) 651-7700  
Fax: (302) 651-7701  
Email: [heath@rlf.com](mailto:heath@rlf.com)

-and-

Kevin B. Fisher  
Seth Mennillo  
Paul, Hastings, Janofsky & Walker, LLP  
55 Second Street, 24th floor  
San Francisco, CA 94105  
Phone: (415) 856-7000  
Fax: (415) 856-7000  
Email: [kevinfisher@paulhastings.com](mailto:kevinfisher@paulhastings.com)  
[Sethmennillo@paulhastings.com](mailto:Sethmennillo@paulhastings.com)

*Attorneys for Wells Fargo Bank, N.A.*

# **EXHIBIT 1**

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

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

**STIPULATION REGARDING PLAN SUPPORT AND CHALLENGE PERIOD**

- A. On June 16, 2009 (the "Petition Date"), each of the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code.<sup>2</sup>
- B. Pursuant to paragraph 6 of the Final DIP Order, the Committee had 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 (their successors and assigns, if applicable) arising out of the Prepetition Master Agreements or the Prepetition Credit Agreement and/or the

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<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 Post Petition Secured Financing And (B) Utilize Cash Collateral, (II) Granting Liens And Superiority Administrative Expense Status, (III) Granting Adequate Protection To Prepetition Lenders, And (IV) Modifying The Automatic Stay entered on July 1, 2009 [Docket No. 132].

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. Pursuant to the Stipulation Extending Challenge Period Deadline Date in Final DIP Order (the "DIP Extension Stipulation"), the Committee, Debtors and the Prepetition Administrative Agent, as agent for the Lenders (collectively, the "Parties"), agreed, among other things, to extend the Challenge Period Deadline to October 26, 2009. The Order approving the DIP Extension Stipulation (the "DIP Extension Stipulation Order") was entered on or about September 21, 2009.

D. Subsequent to the DIP Extension Stipulation Order, the Parties entered into settlement discussions respecting the Debtors' proposed plan of reorganization. Following extensive negotiations, the Parties reached a settlement respecting the Joint Plan of Reorganization for the Debtors Under Chapter 11 of the Bankruptcy Code Amended October 22, 2009 (the "Plan") attached as Exhibit B to the Disclosure Statement approved by Order dated October 22, 2009, as more fully set forth below.

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

1. In exchange for the treatment of unsecured creditors in classes 6(a)-(l) and 8(a)-(l) as set forth in the Plan, including the establishment and funding of the "Unsecured Cash Fund" (as such term is defined in the Plan) in the amount of \$5,500,000 and agreeing to provide aggregate payments to "Holders" of "Allowed Small Unsecured Claims" (as such terms are defined in the Plan) of up to \$700,000, (collectively, the "Plan Treatment"), the Committee agrees (i) to support the Plan; (ii) to take such reasonable actions as are in furtherance of confirmation of the Plan; and (iii) not to file or initiate an adversary complaint or contested

matter, or support in any manner another party to investigate, file or initiate an adversary complaint or contested matter, in either event challenging the amount, validity, enforceability, extent or priority of the Prepetition Debt or the Prepetition Liens 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) (collectively, a "Challenge"): provided, however, that in the event that the Plan Treatment is in any way altered to lessen or negatively impact the distribution to general unsecured creditors, through amendment, modification, supplement, or otherwise, then no earlier than five (5) business days after counsel for Debtors and for the Prepetition Administrative Agent have each received actual notice of the Committee's intension to commence a Challenge, the right of the Committee to commence a Challenge shall be reinstated subject only to the right of the Prepetition Administrative Agent or any of the Prepetition Lenders to obtain an order of the Court staying such Challenge, the sole basis of such stay being that the Plan Treatment has not been lessened or negatively impacted. Any such Challenge shall be filed no later than thirty (30) days after reinstatement of the Committee's right to commence a Challenge, or such later date as the Committee and the Prepetition Administrative Agent may mutually agree or as ordered by the Court.

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.

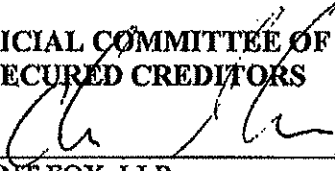
4. This Stipulation may be signed in counterparts, with each part being deemed a part of the original document.

5. This Stipulation may be signed by facsimile transmission which signatures shall be treated as original signatures.

6. The time period for reinstatement of the Committee's right to commence a Challenge, as provided in paragraph 1 above, shall commence upon actual notice to counsel for the Committee of any change to the Plan Treatment.

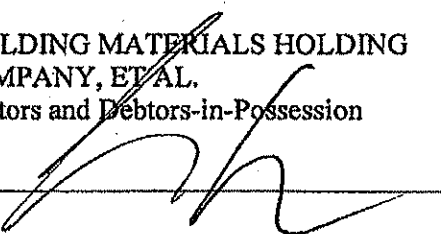
Dated: Wilmington, DE  
October 26, 2009

**OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS**

By:   
\_\_\_\_\_  
AREN FOX, LLP  
*Counsel for the Committee*

**DEBTORS**

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

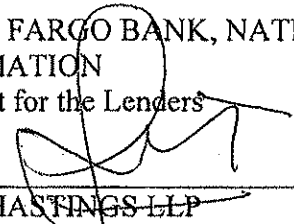
By:   
\_\_\_\_\_



GIBSON DUNN & CRUTCHER LLP  
*Counsel for Debtor*

**PREPETITION ADMINISTRATIVE  
AGENT**

WELLS FARGO BANK, NATIONAL  
ASSOCIATION  
as Agent for the Lenders

By:   
\_\_\_\_\_  
PAUL HASTINGS LLP  
*Counsel for Wells Fargo Bank, National  
Association*

## **EXHIBIT A**

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

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

**ORDER APPROVING STIPULATION RESPECTING  
PLAN SUPPORT AND CHALLENGE PERIOD**

Upon consideration of the Stipulation Respecting Plan Support and Challenge Period (the “Stipulation”) entered into by the official committee of unsecured creditors (the “Committee”) to the above-reference debtors and debtors-in-possession (“Debtors”), Debtors, and Wells Fargo Bank, National Association (as the “Prepetition Administrative Agent,” and together with the Committee and 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 therefore,

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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).

<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 attached hereto as **Exhibit A** is APPROVED.

2. In exchange for the treatment of unsecured creditors in classes 6(a)-(l) and 8(a)-(l) as set forth in the Plan, including the establishment and funding of the “Unsecured Cash Fund” (as such term is defined in the Plan) in the amount of \$5,500,000 and agreeing to provide aggregate payments to “Holders” of “Allowed Small Unsecured Claims” (as such terms are defined in the Plan) of up to \$700,000, (collectively, the “Plan Treatment”), the Committee agrees (i) to support the Plan; (ii) to take such reasonable actions as are in furtherance of confirmation of the Plan; and (iii) not to file or initiate an adversary complaint or contested matter, or support in any manner another party to investigate, file or initiate an adversary complaint or contested matter, in either event challenging the amount, validity, enforceability, extent or priority of the Prepetition Debt or the Prepetition Liens 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) (collectively, a “Challenge”): provided, however, that in the event that the Plan Treatment is in any way altered to lessen or negatively impact the distribution to general unsecured creditors, through amendment, modification, supplement, or otherwise, then no earlier than five (5) business days after counsel for Debtors and for the Prepetition Administrative Agent have each received actual notice of the Committee’s intension to commence a Challenge, the right of the Committee to commence a Challenge shall be reinstated subject only to the right of the Prepetition Administrative Agent or any of the Prepetition Lenders to obtain an order of the Court staying such Challenge, the sole basis of such stay being that the Plan Treatment has not been lessened or negatively impacted. Any such

Challenge shall be filed no later than thirty (30) days after reinstatement of the Committee's right to commence a Challenge, or such later date as the Committee and the Prepetition Administrative Agent may mutually agree or as ordered by the Court.

3. This Court shall retain jurisdiction to hear and determine all matters relating to the Stipulation.

Dated: October \_\_, 2009

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Honorable Kevin J. Carey  
United States Bankruptcy Judge

## **EXHIBIT A**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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In re: :  
: Case No. 09-12074 (KJC)  
BUILDING MATERIAL HOLDING :  
CORPORATION, et al.<sup>1</sup> :  
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: :  
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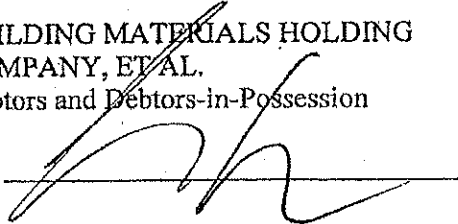
Dated: Wilmington, DE  
October 26, 2009

**OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS**

By:   
\_\_\_\_\_  
AREN'T FOX, LLP  
*Counsel for the Committee*

**DEBTORS**

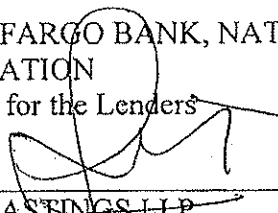
BUILDING MATERIALS HOLDING  
COMPANY, ET AL.  
Debtors and Debtors-in-Possession

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

GIBSON DUNN & CRUTCHER LLP  
*Counsel for Debtor*

**PREPETITION ADMINISTRATIVE  
AGENT**

WELLS FARGO BANK, NATIONAL  
ASSOCIATION  
as Agent for the Lenders

By:   
\_\_\_\_\_  
PAUL HASTINGS LLP  
*Counsel for Wells Fargo Bank, National  
Association*