

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

IN RE:)	Chapter 11
)	
BUILDING MATERIALS HOLDING CORPORATION, et al.,¹)	Case No. 09-12074 (KJC)
)	
Debtors.)	Jointly Administered
)	
)	

**DEBTORS' OMNIBUS RESPONSE TO CURE CLAIM OBJECTIONS AND
PROPOSED ORDER RESOLVING CURE CLAIM OBJECTIONS**

Building Materials Holding Corporation and its affiliates, as debtors and debtors in possession (collectively, the "*Debtors*"), respectfully submit this Omnibus Response to the various objections and other responses to the cure amounts asserted by the Debtors in their various Notices of (I) Possible Assumption of Executory Contracts and Unexpired Leases, (II) Fixing of Cure Amounts In Connection Therewith, and (III) Deadline to Object Thereto. In support thereof, the Debtors respectfully state as follows:

INTRODUCTION

1. Pursuant to Section 6.1 of the *Joint Plan of Reorganization for the Debtors Under Chapter 11 of the Bankruptcy Code Amended December 7, 2009 (With Technical Modifications)* [Docket. No. 1066] (as may be amended and or supplemented from time to time, the "*Plan*"),

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.

except as otherwise provided for in the Plan or the Confirmation Order,² all Executory Contracts and Unexpired Leases of the Debtors will be assumed pursuant to section 365 of the Bankruptcy Code as of the Effective Date, except for any such contract or lease (i) that has been assumed or rejected, or renegotiated and either assumed or rejected on renegotiated terms, pursuant to an order of the Bankruptcy Court entered prior to the Effective Date, (ii) that has been entered into by the Debtors during the pendency of the Chapter 11 Cases in the ordinary course of business or pursuant to an order of the Bankruptcy Court, (iii) that is the subject of a motion to reject, or a motion to approve renegotiated terms and to assume or reject on such renegotiated terms, that has been filed and served prior to the Effective Date, or (iv) that is identified on the Rejected Executory Contract and Unexpired Lease List (collectively, the "**Assumed Contracts**").

2. Pursuant to this Court's *Order (I) Approving the Disclosure Statement; (II) Establishing Procedures for Solicitation and Tabulation of Votes To Accept or Reject the Plan, Including (A) Approving the Form and Manner of Distribution of Solicitation Packages, (B) Approving the Form and Manner of Notice of the Confirmation Hearing, (C) Establishing a Record Date and Approving Procedures for Distribution of Solicitation Packages, (D) Approving Forms of Ballots, (E) Establishing the Deadline for Receipt of Ballots, and (F) Approving the Procedures for Vote Tabulations; (III) Establishing the Deadline and Procedures for Filing Objections to (A) Confirmation of the Plan, and (B) Proposed Cure Amounts Related to Contracts and Leases Assumed under the Plan; and (IV) Granting Related Relief*, dated October 22, 2009 [Docket No. 768] (the "**Solicitation Procedures Order**"), the Debtors mailed each of the counterparties to the potentially Assumed Contracts a *Notice of (I) Possible*

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Plan.

Assumption of Executory Contracts and Unexpired Leases, (II) Fixing of Cure Amounts In Connection Therewith, and (III) Deadline to Object Thereto (the "Cure Notice").

3. Each Cure Notice identified Executory Contracts and/or Unexpired Leases that the Debtors are contemplating assuming through the Plan and the amount that the Debtors believe would be required to cure any monetary defaults under such contracts and leases. Pursuant to the Solicitation Procedures Order, the counterparties which received the Cure Notices were required to file and serve any objections (i) to the cure amounts proposed by the Debtors and to propose alternative cure amounts, and/or (ii) to the proposed assumption of such contracts or leases under the Plan, by December 3, 2009. The counterparties identified below filed such objections. The Debtors respectfully request that the Court enter an order, substantially in the form attached hereto as *Exhibit A* (the "*Proposed Order*"), resolving these objections in the manner described below.

RESPONSE

A. The Resolved Objections

4. After further review of their books and records, the Debtors have concluded that the cure amounts asserted by the counterparties identified on *Exhibit B* are correct. The Proposed Order fixes the cure amounts with respect to such contracts and leases at the amounts asserted in the objections.

B. The Withdrawn Proposed Assumptions

5. Upon receiving the objections from the counterparties identified on *Exhibit C*, the Debtors have concluded, in the sound exercise of their business judgment, that rejecting the implicated contracts and leases is in the best interests of their estates, given the cost that would be attendant with engaging in protracted discussions or litigation over the proposed cure

amounts. The Proposed Order preserves both the objections and the Debtors' rights to respond to the objections in the event that the Debtors do not reject the implicated contracts or leases.

C. The C&I Tax Consultants Objection

6. The Debtors received an objection from C&I Tax Consultants ("**C&I**") which states that C&I may be entitled to payments pursuant to its contract with Debtor Building Materials Holding Corporation (the "**C&I Contract**") if and when the Debtors receive a tax refund that C&I helped procure. The objection further states that C&I may be entitled to other future payments as a result of recent tax changes relating to Net Operating Loss carry backs.³ The Debtors do not believe that they currently owe C&I any amounts pursuant to their contract with C&I and do not believe that the objection asserts a cure amount other than \$0.00. Accordingly, the Proposed Order sets the cure amount with respect to C&I at \$0.00.

D. The Limited Objection of Infor Global Solutions (Michigan), Inc.

7. The Debtors received a limited objection from Infor Global Solutions (Michigan), Inc. f/k/a NxTrend Technology, Inc. ("**Infor**") which seeks clarification that the Cure Notice, which referenced a "software license" with Infor, relates to that certain Software License, Maintenance and Support Agreement, dated March 9, 1999 (together with all amendments,

³ The objection also contains a paragraph discussing C&I's late filed, wholly unliquidated claim. C&I did not file a response to the *Debtors' First Omnibus (Non-Substantive) Objection to Claims Pursuant to Section 502(b) of the Bankruptcy Code, Bankruptcy Rules 3003 and 3007 and Local Rule 3007-1* [Docket No. 757] which sought to disallow C&I's claim because it was filed after the bar date and C&I's claim was disallowed and expunged by this Court's November 19, 2009 *Order Sustaining, In Part, Debtors' First Omnibus (Non-Substantive) Objection to Claims Pursuant to Section 502(b) of the Bankruptcy Code, Bankruptcy Rules 3003 and 3007 and Local Rule 3007-1* [Docket No. 967] (the "**Disallowance Order**"). The Debtors understand C&I's request to be one for reconsideration of the Disallowance Order. This December 3, 2009 request, like C&I's proof of claim, is late. *See* Fed. R. Bankr. P. 8015 (requiring a motion for reconsideration to be filed within 10 days of the entry of the order sought to be reconsidered). Nonetheless, to the extent that C&I is entitled to payments pursuant to an assumed contract with the Debtors, those payments will be made to C&I in the ordinary course of business.

addenda, supplements or related invoices, purchase orders or other documents, the "*License Agreement*"), including, without limitation, that certain Support Renewal Amendment dated as of June 11, 2009 (the "*Support Renewal Amendment*").⁴ The Debtors hereby confirm that the Cure Notice relates to the License Agreement, including, without limitation, the Support Renewal Amendment. The limited objection also objects to the assumption of the License Agreement "to the extent that the Reorganized Debtors have not expressed their intentions to abide by the terms of the License Agreement...." Infor Obj. ¶ 11. If the License Agreement is assumed, the Debtors intend to abide by the terms contained therein.⁵ The Debtors believe that these representations resolve Infor's limited objection.⁶

E. The Southwest Management, Inc. Objection

8. Southwest Management, Inc. ("*Southwest Management*") filed an objection (the "*Southwest Management Objection*") to the Debtors' proposed cure amount of \$0.00 in connection with the possible assumption of that certain Purchase and Sale Agreement (the "*APA*") by and among C Construction, Inc., SelectBuild Construction, Inc. f/k/a BMC Construction, Inc. (the "*Purchasing Parties*") and Campbell Concrete of Nevada, Inc., Campbell

⁴ Infor's objection actually seeks clarification that the Debtors "are, in fact, assuming the License Agreement, including the Support Renewal Amendment and all other amendments, addenda, supplements or related invoices, purchase orders or other documents." Infor Obj. ¶ 10. Because the Cure Notice does not obligate the Debtors to assume any contracts, the Debtors are treating this request as a request to clarify that the Cure Notice relates to the identified contracts.

⁵ Infor also reserved its rights to argue that the Debtors have not provided adequate assurance of performance as required by 11 U.S.C. § 365(b)(1)(C). Although the Debtors believe that section 365(b)(1) is not applicable to the proposed assumption of the License Agreement because there has not been a default with respect to such Agreement, the Debtors submit that ample cause exists to find that the Debtors have provided adequate assurance of future payment. The Debtors' remaining obligations under the License Agreement are approximately \$41,684. The Debtors' proposed Exit Credit Facilities will provide them with access to \$103,500,000 to satisfy this and other obligations.

⁶ Infor's counsel confirmed orally that such representations would resolve Infor's objection.

Concrete of California, Inc., Campbell Concrete of Arizona, Inc., Campbell Concrete, Inc., Campbell Concrete of Northern California, Inc., Sterling Trenching, Inc., SR Campbell Plumbing of California, Inc., SR Campbell Plumbing of Nevada, Inc., SRC Enterprises, Inc., Southwest Management, Inc., and Steven R. Campbell (Shareholder) (the "**Seller Parties**"), dated as of July 29, 2005.⁷ "The Seller Parties do not oppose Debtors' assumption of the APA so long as Debtors cure the defaults thereunder, as required by the Bankruptcy Code." Southwest Management Obj. ¶ 17. Southwest Management asserts that the Debtors' cure obligation with respect to the APA should be fixed at \$931,085.95 plus pre-petition interest as allowed by law. *Id.* This assertion is based upon two theories. First, Southwest Management avers that the Debtors owe the Seller Parties \$300,000 in connection the settlement of a lawsuit filed against the Seller Parties. No such obligation exists pursuant to the terms of the APA. Second, Southwest Management claims that certain leases⁸ by and between the Debtors and certain non-Seller Parties are somehow so related to the APA that the APA cannot be assumed without curing any monetary defaults arising under such already rejected leases. These independent leases are not part of the APA and the APA may be assumed without curing the defaults arising from the rejection of these leases.

9. Because the Southwest Management Objection remains unresolved as of the date hereof and implicates factual and legal questions which require further investigation, the Debtors

⁷ Because multiple Debtors are party to the APA, the Cure Notice sent to the Seller Parties references a purchase agreement with C Construction, Inc. and a purchase agreement with SelectBuild Construction, Inc. The purchase agreements are one and the same—the APA.

⁸ The Debtors have already rejected each of these leases. *See First Order Authorizing the Debtors to Reject Certain Unexpired Leases and Executory Contracts Nunc Pro Tunc to the Rejection Effective Date* [Docket No. 242].

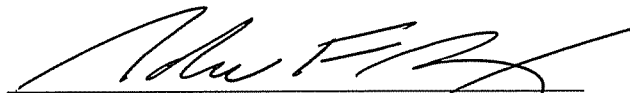
propose to adjourn the hearing on the Southwest Management Objection until the January 27, 2010 omnibus hearing date. In accordance with Section 6.4 of the Plan, should the Court sustain the Southwest Management Objection to the Debtors' proposed cure amount of \$0.00, the Debtors will retain the right to reject the APA rather than to assume it with a different cure amount.

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WHEREFORE, the Debtors therefore respectfully request that the Court enter the Proposed Order, and grant such other and further relief as the Court may deem just and proper.

Dated: Wilmington, Delaware
December 8, 2009

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ATTORNEYS FOR 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, et al.,¹)	Case No. 09-12074 (KJC)
)	
Debtors.)	Jointly Administered
)	
)	Ref. Docket No. _____
)	

ORDER RESOLVING CURE CLAIM OBJECTIONS

Upon consideration of the Omnibus Response (the "**Response**") of Building Materials Holding Corporation and its affiliates, as debtors and debtors in possession (collectively, the "**Debtors**"), to the various objections and other responses to the cure amounts asserted by the Debtors in those certain Notices of (I) Possible Assumption of Executory Contracts and Unexpired Leases, (II) Fixing of Cure Amounts In Connection Therewith, and (III) Deadline to Object Thereto, all as set forth in the Response; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

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.

IT IS HEREBY ORDERED:

1. The Cure Claims² with respect to the Executory Contracts and Unexpired Leases identified on Exhibit B attached to the Response shall be, and hereby are, fixed at the amounts set forth therein.

2. The objections with respect to the Executory Contracts and Unexpired Leases identified on Exhibit C attached to the Response shall be preserved in the event that the Debtors elect to assume such executory contracts and unexpired leases. Likewise, the Debtors' rights to respond to such objections shall be preserved in all respects in the event that the Debtors elect to assume such executory contracts and unexpired leases.

3. The Cure Claim with respect to the C&I Contract shall be, and hereby is, fixed at \$0.00.

4. The hearing on the Southwest Management Objection shall be held on January 27, 2010 at 3:00 (ET) or at such other time as the Court may order or the parties may agree. The Debtors shall have until January 20, 2010 at 4:00 (ET) to file and serve their response to the Southwest Management Objection. In accordance with Section 6.4 of the Plan, should the Court sustain the Southwest Management Objection and determine that the Cure Claim in connection with the APA should be an amount greater than \$0.00, the Debtors shall retain the right to reject the APA in lieu of assuming it with a greater Cure Claim.

5. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Response.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Response (whether set forth explicitly therein or by reference to the Plan).

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

Date: Wilmington, Delaware
December __, 2009

Kevin J. Carey
Chief United States Bankruptcy Judge

EXHIBIT B
Resolved Objections

Claimant	Contract to be Assumed	Agreed Cure Amount
Air Components & Systems Ltd. P.O. Box 560578 Charlotte, NC 28256	Service Agreement for Air Compressor Service with BMC West Corporation	\$184.03
Idaho Records Management 970 W. River Street Boise, ID 83702	Service Agreement – Record Retention Storage with BMC West Corporation	\$2,932.03

EXHIBIT C
Withdrawn Proposed Assumptions

Claimant	Contract to be Rejected
Merli Concrete Pumping 2545 Marco St. Las Vegas, NV 89115-4519	Purchase Order with SelectBuild Nevada, Inc.
Keller Lumber Sales Inc. P.O. Box 994005 Redding, CA 96099	Purchase Order with BMC West Corporation
Berg Wholesale P.O. Box 3050 Tualatin, OR 97062	Purchase order with BMC West Corporation
Avaya, Inc. Multiple Addresses	Various contracts with BMC West Corporation for phone leasing and/or maintenance
Trade Show Services Ltd. d/b/a Pro-Tect Security 3511 S. Eastern Ave. Las Vegas, NV 89169	Contract with SelectBuild Nevada, Inc. to provide after hours security at the Range Road location
GlassCraft Door Company 2002 Brittmore Road Houston, TX 77043	Purchase Order with BMC West Corporation
Rio Grande Material 10645 N. Tatum Blvd. #200-650 Phoenix, AZ 85028	Purchase Order with SelectBuild Arizona, LLC
ECMD P.O. Box 130 North Wilkesboro, NC 28659	Purchase Order with BMC West Corporation
Crisp LaDew Fire Protection Co. 5201 Saunders Fort Worth, Texas 75119	Service Agreement – Maintenance of Fire Sprinkler System with BMC West Corporation
Brazos Forest Products, L.P. P.O. Box 535155 Grand Prairie, TX 75050	Purchase Order with BMC West Corporation
Walnut Creek Planing 5778 SR 515 Millersburg, OH 44654	Purchase Order with BMC West Corporation

Claimant	Contract to be Rejected
Continental Trading, Inc. P.O. Box 8516 Bend, OR 97708	Purchase Order with BMC West Corporation
First Cut Sawing and Breaking, Inc. 3634 East Southern Avenue, Suite 6 Phoenix, AZ 85040	Purchase Order with SelectBuild Arizona, LLC
Pelican Bay Forest Products P.O. Box 6958 Bend, OR 97708	Purchase Order with BMC West Corporation