

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

**IN RE:**

**BUILDING MATERIALS HOLDING  
CORPORATION, *et al.*,<sup>1</sup>**

**Debtors.**

)  
) **Chapter 11**

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

)  
) **Jointly Administered**

)  
) **Ref. Docket No. 1097**

**NOTICE OF FILING OF CORRECTED EXHIBIT WITH RESPECT TO  
DEBTORS' MOTION FOR AN ORDER, PURSUANT TO SECTIONS 105,  
363, AND 365 OF THE BANKRUPTCY CODE AND BANKRUPTCY  
RULES 2002, 9004, 9006, 9014, AND 9019, (I) AUTHORIZING THE PRIVATE  
SALE BY C CONSTRUCTION, INC. OF THE PURCHASED ASSETS  
FREE AND CLEAR OF LIENS, ENCUMBRANCES AND OTHER  
INTERESTS, (II) AUTHORIZING THE ASSUMPTION AND  
ASSIGNMENT OF CERTAIN ASSUMED CONTRACTS,  
(III) APPROVING THE ASSET PURCHASE AGREEMENT AND  
THE TRANSITION SERVICES AGREEMENT, (IV) AUTHORIZING THE DEBTORS  
TO PAY SEVERANCE, (V) AUTHORIZING THE WIND DOWN OF BUSINESS  
OPERATIONS IN ILLINOIS AND (VI) GRANTING RELATED RELIEF**

**PLEASE TAKE NOTICE** that on December 8, 2009, Building Materials Holding Corporation and its affiliates, as debtors and debtors in possession (collectively, the "Debtors"), filed Debtors' Motion for an Order, Pursuant to Sections 105, 363, and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 9004, 9006, 9014, and 9019, (I) Authorizing the Private Sale by C Construction, Inc. of the Purchased Assets Free and Clear of Liens, Encumbrances and Other Interests, (II) Authorizing the Assumption and Assignment of Certain Assumed Contracts, (III) Approving the Asset Purchase Agreement and the Transition Services

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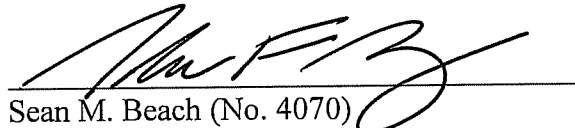
<sup>1</sup> The Debtors, along with the last four digits of each Debtor's tax identification number, are as follows: Building Materials Holding Corporation (4269), BMC West Corporation (0454), SelectBuild Construction, Inc. (1340), SelectBuild Northern California, Inc. (7579), Illinois Framing, Inc. (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.

Agreement, (IV) Authorizing the Debtors to Pay Severance, (V) Authorizing the Wind Down of Business Operations in Illinois and (VI) Granting Related Relief [Docket No. 1097] (the "Motion").<sup>2</sup> Attached to the Motion as Exhibit B was a copy of that certain Asset Purchase Agreement by and between C Construction, Inc. and the Purchaser (the "Current APA"). Inadvertently omitted from the Current APA, however, were copies of pages 10 and 11 thereto (the "Omitted Pages").

**PLEASE TAKE FURTHER NOTICE** that a copy of the Current APA, including the Omitted Pages, is attached hereto as Exhibit 1, and shall supersede and replace, in its entirety, the version of the Current APA attached to the Motion.

Dated: Wilmington, Delaware  
December 14, 2009

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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 Motion.

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ATTORNEYS FOR DEBTORS  
AND DEBTORS IN POSSESSION

**EXHIBIT 1**

**ASSET PURCHASE AGREEMENT**

**among**

**C CONSTRUCTION, INC.**

**and**

**DAVIS DEVELOPMENT COMPANY, INC.**

**Dated as of December 7, 2009**

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## **Exhibits**

<b>Exhibit A</b>	<b>Transition Services Agreement</b>
<b>Exhibit 1</b>	<b>Contracts</b>
<b>Exhibit 2</b>	<b>Equipment</b>
<b>Exhibit 3</b>	<b>Intangible Personal Property</b>
<b>Exhibit 4</b>	<b>Permits</b>
<b>Exhibit 5</b>	<b>Personal Property and Real Property Leases</b>
<b>Exhibit 6</b>	<b>Prepaid Expenses and Deposits</b>
<b>Exhibit 6</b>	<b>NBV of Purchased Assets</b>
<b>Exhibit 7</b>	<b>Purchase Price Allocation</b>
<b>Exhibit 8</b>	<b>Percentage Completion of Building Contracts</b>

## ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this "Agreement"), dated as of December 7, 2009, is made and entered into by and among **Davis Development Company, Inc.**, a California corporation ("Buyer"), **C Construction, Inc.**, a Delaware corporation ("Seller"), with reference to the following.

### RECITALS

A. Buyer has negotiated an agreement with Seller to acquire certain of the assets of Seller related to the Business (as defined below), including certain existing contracts, certain intangible assets, and fixed assets;

B. Seller is a debtor in possession under title 11 of the United States Code, 11 U.S.C. §§ 101 - 1532 (as amended, the "Bankruptcy Code") and filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code on June 16, 2009, in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") (Case No. 09-12074) (the "Bankruptcy Case");

C. Consummation of the transaction is subject to entry of the Sale Order (defined below) and is subject to applicable provisions of the Bankruptcy Code;

D. Buyer and Seller will enter into a Transition Services Agreement (the "Transition Services Agreement"), a copy of which is attached hereto as Exhibit A, under which Seller shall provide certain support services to Buyer, for a limited period following the Closing.

E. Pursuant to the terms, and subject to the conditions contained herein, at Closing Seller will sell certain of Seller's assets to Buyer;

F. Buyer and Seller wish to document the terms and conditions of the transaction.

### AGREEMENT

NOW, THEREFORE, IT IS AGREED among the parties as follows:

#### 1. DEFINITIONS

All capitalized terms defined in the introductory paragraph, recitals or elsewhere in this Agreement shall have the meanings ascribed thereto. For purposes of this Agreement, the capitalized terms identified in this Section shall have the following meanings:

"2006 Purchase Agreement" means that certain Asset Purchase Agreement, dated as of July 31, 2006, as amended to date, among Davis Brothers, Seller and certain other parties relating to the sale of Davis Brothers' framing services business to Seller.

"Business" means the Ontario Framing business of Seller, which is its business of providing integrated framing services to general contractors for high density projects, as presently conducted by the Seller in the Southern California area.

"Business Day" means any day, not a Saturday or Sunday, on which banks in the State of California are required to be open.

"Buyer Related Party" means any Person who, directly or indirectly, controls or is controlled by, or is under common control with Buyer.

"Closing" means the exchange of closing documents, the transfer of the Purchased Assets to the Buyer by Seller, and the payment of the Purchase Price to Seller by Buyer.

"Closing Date" means 11:59 p.m. on the date on which the Closing occurs.

"COBRA" means the Consolidated Omnibus Budget Reconciliation Act of 1986, as amended.

"Code" means the Internal Revenue Code of 1986, as amended.

"Construction Defect" means any of the following: (i) performance of services which are not of workmanlike quality in conformance with the requirements of the underlying Contract documents or of applicable building codes, industry and professional standards, and/or manufacturers' recommendations, (ii) violation of any standards set forth in California Civil Code sections 895 et seq. and 1375 et seq. or Nevada Revised Statutes section 40.615, or (iii) construction which is based on design documents containing errors, omissions, or otherwise falling below the applicable standard of care.

"Construction Defect Liabilities" means Liabilities or obligations relating to or arising out of a Construction Defect with respect to products sold or services performed by the Company on or prior to the Closing Date, including but not limited to liabilities or obligations set forth in California Civil Code Sections 895 et seq. and 1375 et seq. or Nevada Revised Statutes Sections 40.645 et. seq. and 40.668 et. seq.

"Contingent Consideration" means any Contingent Consideration or Final Contingent Consideration, as those terms are defined in the 2006 Purchase Agreement and the Contingent Consideration Agreement.

"Contingent Consideration Agreement" means that certain Contingent Consideration Payment Agreement, dated September 18, 2009, among Davis Brothers, Seller and certain other parties.

"Contracts" means each contract, agreement, commitment, purchase order, or other instrument related to the operation of the Business listed on *Exhibit 1* attached hereto, which Exhibit will be updated as of the Closing Date to reflect any new Building Contracts entered into between the date of this Agreement and the Closing Date.

"Davis Brothers" means Davis Brothers Framing, Inc., a California corporation.

"Equipment" means all tools, equipment, rolling stock, office furniture, computers and equipment and other pieces of tangible personal property and fixed assets (and interests in any of the foregoing), including spare parts, supplies, office equipment and products used by the Company in the Business. All Equipment used by Seller in the Business is listed or described on *Exhibit 2* attached hereto.

"Excluded Assets" means the following assets of Seller which assets are expressly excluded from the purchase and sale of assets contemplated by this Agreement and as such are not Purchased Assets:

- (i) all cash, cash equivalents, investments and securities,
- (ii) all Trade Accounts Receivable, notes, drafts, intercompany receivables and other accounts and other obligations for the payment of money, including all rights to access or draw upon funds through credit lines or working capital arrangements, if any,
- (iii) all assets that are not primarily used by Seller in the Business,
- (iv) all bank and other depository accounts, corporate records and safe deposit boxes,
- (v) all rights under this Agreement and the Purchase Price,
- (vi) all employee benefit plans,
- (vii) all computer software,
- (viii) all causes of action, claims, demands, set-offs, rights and privileges against third parties that relate to any Excluded Assets or Excluded Liabilities (as defined in Section 3.3(c)),
- (ix) any and all Tax returns, Tax refunds, Tax loss carryforwards, Tax identification numbers or other identification numbers of Seller assigned by any Governmental Authority, and records related to the foregoing of Seller relating to the Business or the Purchased Assets for any period or portion thereof ending on or prior to the Closing Date (and any such refunds received by Buyer shall be promptly paid over by Buyer to Seller),
- (x) all assets used primarily in connection with the corporate functions of Seller (including but not limited to corporate charters, taxpayer and other identification numbers, records, seals, minute books and stock transfer books),
- (xi) all cash, cash equivalents, letters of credit of Seller held by Seller's insurers as collateral for workers compensation claims, if any,
- (xii) other receivables, including volume allowances and employee advances,

(xiii) prepaid expenses, including prepayments for fuel and for rent under the Real Property Lease, and a deposit for utilities, and

(xii) subject to the provisions of Section 11.1, all estimated earnings in excess of billings.

"Governmental Authority" means any foreign, domestic, federal, territorial, state, regional or local governmental authority, quasi-governmental authority, court, commission, board, bureau, agency or instrumentality, or any regulatory, administrative or other department, agency, or any political or other subdivision, department or branch of any of the foregoing.

"Intangible Personal Property" means and any processes, trade secrets, and know how pertaining to framing of multifamily and high-density projects, and customer lists, customer contacts and relationships and other intangible personal property used, licensed or owned by Seller and used primarily in the Business, and all right, title and interest therein and thereto. All Intangible Personal Property is listed on *Exhibit 3* attached hereto.

"Knowledge of Seller" means, as to a particular matter, the actual knowledge of the Seller.

"Law" means any law, statute, treaty, rule, regulation, ordinance, order, decree, consent decree or similar instrument or determination or award of an arbitrator or a court or any other Governmental Authority.

"Leases" shall mean the Real Property Lease and the Personal Property Leases.

"Liabilities" means all indebtedness, obligations, penalties and other liabilities (or contingencies that have not yet become liabilities), whether absolute, accrued, matured, contingent (or based upon any contingency), known or unknown, fixed or otherwise, or whether due or to become due, including without limitation, any fines, penalties, judgments, awards or settlements respecting any judicial, administrative, arbitration or other proceedings or any damages, losses, claims or demands with respect to any Law or otherwise.

"Permits" means all federal, state and local licenses, permits and other governmental authorizations relating to the Business. All Permits are listed on *Exhibit 4* attached hereto.

"Permitted Encumbrances" means (a) liens for Taxes and other governmental charges and assessments which are not yet due and payable, (b) statutory liens of landlords and statutory liens of carriers, warehousemen, mechanics and materialmen and other like statutory liens arising in the ordinary course of business for sums not yet due and payable, (c) other liens or imperfections on property which are not material in amount or do not materially detract from the value of or materially impair the existing use of the property affected by such lien or imperfections, (d) liens relating to deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security or to secure the performance of leases, trade contracts or other similar agreements, (e) purchase money liens on personal property acquired in the ordinary course of business, (f) liens securing executory obligations under any lease that constitutes a "capital lease", (g) any and all requirements of Law including those affecting the real property assets relating to zoning and land

use, (h) any customary utility company rights, easements and franchises which do not materially detract from the value of or materially impair the existing use of the property affected by such lien or imperfections, and (i) the other liens, if any, set forth in the Disclosure Schedule.

"Person" means an individual, partnership, corporation, business trust, joint stock company, trust, unincorporated association, joint venture, Governmental Authority or other entity of whatever nature.

"Personal Property Leases" means those leases of personal property, involving the Business. All Personal Property Leases are listed under "Personal Property Leases" on *Exhibit 5* attached hereto.

"Purchase Price" means the net book value of the Purchased Assets that are specifically set forth on *Exhibit 6*.

"Purchased Assets" means the Contracts, Equipment, Intangible Personal Property, Permits, Personal Property Leases, Real Property Lease, Prepaid Expenses and Deposits, all goodwill of the Business and all rights, claims, credits, causes of action or rights of set-off against third parties relating to the foregoing and the Assumed Liabilities, other than Excluded Assets.

"Real Property Lease" means the lease of real property involving the Business set forth under "Real Property Lease" on *Exhibit 5* attached hereto.

"Sale Order" means a final, non-appealable order (or orders) of the Bankruptcy Court, which is not subject to a stay pending appeals, in form and substance reasonably acceptable to Buyer and Seller approving this Agreement and all of the terms and conditions hereof, and approving and authorizing Seller to consummate the transaction contemplated by this Agreement. Without limiting the generality of the foregoing, such order shall find and provide, among other things, that (i) the Purchased Assets sold to Buyer pursuant to this Agreement shall be transferred to Buyer free and clear of all Liens (other than Liens created by Buyer and Permitted Encumbrances) and claims, such Liens and claims to attach to the Purchase Price; (ii) Buyer has acted in "good faith" within the meaning of section 363(m) of the Bankruptcy Code; (iii) this Agreement was negotiated, proposed and entered into by the Parties without collusion, in good faith and from arm's length bargaining positions; (iv) the Bankruptcy Court shall retain jurisdiction to resolve any controversy or claim arising out of or relating to this Agreement, or any breach hereof; and (v) this Agreement may be specifically enforced and binding upon Seller and any Chapter 7 or Chapter 11 trustee of Seller.

"Seller Financial Statements" means the unaudited balance sheets, profit and loss statements of the Business, which are dated as of December 31, 2008 and October 31, 2009, copies of which have been delivered to Buyer.

"Seller Related Party" means any Person who, prior to the Closing, directly or indirectly, controls or is controlled by, or is under common control with Seller.

"Tax" (and, with correlative meaning, "Taxes") means any federal, state, local or foreign income, gross receipts, property, sales, use, license, excise, franchise, employment, payroll,

withholding, alternative or add-on minimum, ad valorem, transfer or excise Tax, or any other Tax, custom, duty, governmental fee or other like assessment or charge of any kind whatsoever, together with any interest or penalty, imposed by any Governmental Authority.

"Trade Accounts Payable" means the obligations arising out of the Business to make payment to third parties for goods and services furnished to Seller in the ordinary course of the Business incurred prior to the Closing.

"Trade Accounts Receivable" means all obligations arising out of the Business to make payment to Seller, including obligations owed but not yet due, as of the Closing by all third-party purchasers of goods and services from Seller in the ordinary course of the Business prior to the Closing.

## 2. PURCHASE AND SALE

2.1 Purchase and Sale. At Closing, Seller agrees to sell and convey to Buyer, and Buyer agrees to purchase and accept from Seller, the Purchased Assets (and all of Seller's right, title and interest therein and thereto) for the Purchase Price and Buyer's agreement to assume the Assumed Liabilities, on the covenants, terms and conditions contained herein. Notwithstanding any implications to the contrary contained herein, the Purchased Assets shall not include the Excluded Assets.

## 3. PURCHASE PRICE; LIABILITIES

3.1 Purchase Price. As consideration for the purchase of the Purchased Assets, Buyer shall pay to Seller, in the aggregate and in the manner set forth in Section 4 hereof, the Purchase Price.

3.2 Allocation of Value. The parties mutually agree that the allocation for tax purposes of the total of Purchase Price and the value of Assumed Liabilities among the Purchased Assets shall be as set forth on *Exhibit 7*, and the parties shall file all Tax returns or other Tax reports in a manner that is consistent with such allocation. If such allocation is challenged by a Governmental Authority and a reallocation is required, each party hereto shall be responsible for its own additional Tax Liabilities arising from such reallocation, if any.

### 3.3 Assumption of Certain Liabilities.

(a) Upon the terms and subject to the conditions set forth herein, at the Closing Buyer shall assume, and agree to thereafter pay when due and discharge and indemnify and hold harmless Seller with respect to, the Assumed Liabilities (as defined below). Other than the Assumed Liabilities expressly defined, Buyer shall assume no other liabilities of Seller.

(b) For all purposes of and under this Agreement, the term "Assumed Liabilities" shall mean the following liabilities, but excluding the Excluded Liabilities (as defined below in Section 3.3(c)):

(i) any executory liabilities and obligations of Seller as of the Closing Date under any Contract assumed by Buyer; and

(ii) any obligations of Seller to perform ordinary course warranty-related services on contracting projects performed as part of the Business prior to the Closing Date ("Warranty Work"), but only to the extent, and subject to the terms and conditions, set forth in Section 3.5 below; provided that in no event shall Warranty Work include Construction Defect Liabilities or similar Liabilities.

(c) Buyer shall not assume, and the term "Assumed Liabilities" shall not mean, refer to or include (and, therefore, the "Excluded Liabilities" shall mean) any Liability not specifically assumed by Buyer pursuant to Section 3.3(b), including without limitation, the following:

(i) Liabilities for Taxes of Seller or its Related Parties, including, without limitation, those arising as a result of the transactions contemplated by this Agreement;

(ii) Liabilities of Seller or its Related Parties in respect of expenses payable by them pursuant to Section 3.4 hereof;

(iii) Liabilities of Seller or its Related Parties not arising out of or relating to the Business or the Purchased Assets;

(iv) Trade Accounts Payable, accrued expenses and intercompany accounts;

(v) any accrued or other liability of Seller for vacation pay earned by employees of the Business through the Closing Date, any accrued or other liability of Seller pertaining to the Business under any employee pension benefit plan, employee welfare benefit plan, multiemployer plan, collective bargaining agreement, or any other plan or agreement with respect to any employees of the Business, past or present;

(vii) any Liabilities of the Business with respect to or arising out of occurrences on or prior to the Closing Date or actions by Seller or its related Parties on or prior to the Closing Date (except for the Liabilities specifically set forth in Section 3.3(b) above);

(viii) Liabilities of Seller or its Related Parties as set forth in Section 8.2 hereof;

(ix) Liabilities of Seller or its Related Parties arising out of any writ, injunction, lawsuit, claim arbitration, proceeding, citation or notice letter threatened or pending as of the Closing Date, whether or not disclosed to Buyer;

(x) Liabilities of Seller or its Related Parties related to insurance;

(xi) any Construction Defect Liabilities caused by or asserted against Seller or its Related Parties relating to periods prior to the Closing; and

(xii) any Liabilities of Seller or its Related Parties that are not expressly Assumed Liabilities.



(d) Except as expressly set forth in this Agreement with respect to the waiver of Contingent Consideration and non-competition and non-solicitation obligations of Davis Brothers, George Davis and Randolph Davis, the provisions of this Agreement shall not affect any obligations that the parties may have under the 2006 Purchase Agreement.

### 3.4 Certain Expenses.

(a) Buyer shall not pay or be liable for any of the following fees, expenses, Taxes or liabilities incurred by Seller or any of its Related Parties, all of which shall be borne and timely paid, or provided for, or caused to be paid by Seller:

(i) the fees and expenses of any person retained by Seller or any of its respective Related Parties for brokerage, financial advisory or investment banking services or services as a finder rendered to Seller or any of its respective Related Parties in connection with the proposed sale of the Purchased Assets, including without limitation, the transactions contemplated by this Agreement;

(ii) the fees and expenses of legal counsel, auditors and accountants retained or employed by the Seller or any of its respective Related Parties for services rendered to the Seller or any of its respective Related Parties solely in connection with the proposed sale of the Purchased Assets, including without limitation, the transactions contemplated by this Agreement;

(iii) any income, capital gains, or other Tax incurred by the Seller or any of its Related Parties as a result of the consummation of the transactions contemplated by this Agreement.

(b) If Buyer shall be required to pay any fee, expense, Tax or liability described in Section 3.4(a), the sum of all such payments shall be deducted from the Purchase Price. If any such payment is not deducted from the Purchase Price as provided in the preceding sentence, the amount of such payments not so deducted shall be paid promptly by Seller to Buyer upon demand.

(c) Seller shall pay all documentary stamp or transfer Taxes or other similar charges, Taxes or expenses arising in connection with the sale of the Purchased Assets from the Seller to the Buyer ("Sales Tax"). To the extent permitted by law, Buyer and Seller shall cooperate fully in minimizing any such Sales Tax. Seller shall prepare and file any and all documents required to pay the Sales Tax. To the extent a Taxing authority provides notice to a party of an audit of any Sales Tax, such party shall immediately notify the other parties, and Seller shall assume responsibility for such audit and shall have complete authority to control, settle or defend any proposed adjustment to the Sales Tax, and Buyer shall fully cooperate with Seller in such settlement or defense.

(d) All state, county and local ad valorem taxes on real or personal property shall be apportioned between Buyer and Seller as of the Closing Date, computed on the basis of the fiscal year for which the same are levied and all utility charges, gas charges, electric charges, water charges, water rents and sewer rents, if any, shall be apportioned between Buyer and Seller

as of the Closing Date, computed on the basis of the most recent meter charges or, in the case of annual charges, on the basis of the established fiscal year. All prepaid expenses (including any rent) any Seller paid prior to the Closing Date in respect of the Business shall be apportioned between Buyer and Seller as of the Closing Date computed on the basis of the benefit received by Seller prior to the Closing Date and the benefit to be received by Buyer subsequent to the Closing Date with respect to any contract or other matter to which the prepaid expense relates. All prorations shall be made and the Purchase Price shall be adjusted insofar as feasible on the Closing Date. In the event Buyer or Seller shall receive bills after the Closing Date for expenses incurred prior to the Closing Date that were not prorated in accordance with this Section 3.4(d) then Buyer or Seller, as the case may be, shall promptly notify the other party as to the amount of the expense subject to proration and the responsible party shall promptly pay its portion of such expense (or, in the event such expense has been paid on behalf of the responsible party, reimburse the other party for its portion of such expenses).

(c) Seller shall not pay or be liable for any of the following fees, expenses or liabilities incurred by the Buyer, all of which shall be borne by Buyer:

(i) the fees and expenses of any person retained by Buyer for brokerage, financial advisory or investment banking services as a finder in connection with the proposed sale of the Purchased Assets, including, without limitation, the transactions contemplated by this Agreement; and

(ii) the fees and expenses of legal counsel, auditors and accountants retained or employed by the Buyer for services rendered to the Buyer solely in connection with the proposed sale of the Purchased Assets, including, without limitation, the transactions contemplated by this Agreement.

3.5 Ordinary Course Warranty Work. Buyer will be responsible for any Warranty Work; provided that Buyer shall only be responsible for up to \$1000 of Warranty Work per dwelling unit (i.e. detached residence, condominium, townhome or apartment unit) and shall perform such Warranty Work up to such amount without charge to Seller ("Ordinary Course Warranty Work"). In the event that Warranty Work is in excess of \$1000 for any house or other building, Seller may retain Buyer to perform such Warranty Work upon mutually agreeable terms and Buyer will charge Seller for the cost of such Warranty Work in excess of \$1000 per house or other building ("Non-Ordinary Course Warranty Work"). Seller may request that Buyer perform such Non-Ordinary Course Warranty Work, which Buyer may choose to accept or refuse in its sole discretion. In the event Buyer agrees to be hired by Seller to perform Non-Ordinary Course Warranty Work, Buyer will be hired as a subcontractor pursuant to terms mutually agreeable to Seller and Buyer, provided that in no event shall Buyer assume any warranty liability to any third party for Non-Ordinary Course Warranty Work performed by it.

#### 4. TERMS OF PAYMENT

4.1 Payment Due at Closing. At Closing, Buyer shall pay to Seller the Purchase Price for the Purchased Assets as set forth in Section 3. Such payment shall be made as follows: (a) by crediting against the Purchase Price all amounts due and payable at any time, before or after Closing, to Davis Brothers, Randolph Davis and/or George Davis from Seller as Contingent

Consideration under the under the 2006 Purchase Agreement and the Contingent Consideration Agreement that have not previously been paid, and (b) Buyer shall pay to Seller an amount equal to the difference between the Purchase Price and the amount of the credit in clause (a) above, which payment shall be in immediately available funds delivered by wire transfer in accordance with payment instructions provided by Seller to Buyer at least two days prior to the Closing. In order to effect the credit in clause (a) above, Buyer shall cause Davis Brothers, Randolph Davis and George Davis to waive and release, effective as of the Closing Date and in a form acceptable to Seller, the right to receive any and all amounts due and payable at any time, before or after Closing, to any of them as Contingent Consideration.

## **5. CONTRACTS AND LEASES**

5.1 Contracts. Seller has delivered to Buyer, as *Exhibit 9*, a schedule setting forth all Contracts, which shall include, as applicable: the name of parties, contact person and information, location of project, amount of work completed and paid under the Contract, amount of work to be completed under the Contract and the total Contract price.

5.2 Real Property Lease and Personal Property Leases. Seller shall assume and assign to Buyer, and Buyer shall perform, the Real Property Lease and Personal Property Leases specified on *Exhibit 5* as of the Closing Date, to the extent that such Leases can be assigned to Buyer pursuant to the Sale Order. Seller agrees to make lease payments through the Closing Date. Buyer and Seller agree to cooperate in obtaining consent to the assignment of the Leases to Buyer to the extent consents are required after entry of the Sale Order. To the extent that any of the Leases cannot be assigned, Buyer agrees to sublease from Seller the real property, equipment or other property covered by such Leases for an amount equal to Seller's total remaining cost under such Leases to the extent permissible.

## **6. REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller hereby represents to Buyer, except as specifically disclosed in the disclosure schedules delivered to Buyer herewith (the "Disclosure Schedule"), as follows, and the representations contained in this Section or elsewhere in this Agreement shall be deemed to be made on the date hereof and as of the Closing Date:

6.1 Good Standing; Authorization. Seller is duly organized, validly existing and in good standing under the laws of the state of Delaware, with full corporate power to carry on its business as it is now and has since its organization been conducted and to own, lease or operate the Purchased Assets owned, leased or operated by it, subject to the limitations imposed on Seller as a result of the Bankruptcy Case, and is qualified to do business in the State of California and in every other jurisdiction in which the conduct of the Business requires it to qualify. Subject to entry of the Sale Order and such other authorizations as is required by the Bankruptcy Court, Seller has all requisite power and authority to enter into this Agreement and to carry out the transactions contemplated hereby. This Agreement has been duly executed and delivered by Seller, and, assuming the due authorization and execution of this Agreement by Buyer and subject to entry of the Sale Order, is the valid, binding obligation of Seller enforceable against it in accordance with its terms, except that (i) such enforcement may be subject to bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating

to creditors' rights, and (ii) the remedies of specific performance and injunctive and other equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceedings may be brought. This Agreement and the transactions contemplated hereby have been approved all necessary corporate action on the part of Seller. There are no agreements or understandings in effect with respect to voting of any of the capital stock of Seller except as reflected on the Disclosure Schedule.

6.2 Ownership of Purchased Assets. Seller is the lawful owner of each of the Business and the Purchased Assets.. At the Closing, Seller will transfer to Buyer all of its right, title and interest in the Purchased Assets, subject to entry of the Sale Order, free and clear of any liens, mortgages, pledges, security interests, restrictions, prior assignments, encumbrances, options or claims of any kind or nature whatsoever except for Permitted Encumbrances, which Permitted Encumbrances are set forth on the Disclosure Schedule (collectively, "Liens"), other than Permitted Encumbrances, and Buyer will be vested with good title to such Purchased Assets, free and clear of all Liens, other than Permitted Encumbrances to the fullest extent permissible under section 363(f) of the Bankruptcy Code.

6.3 Tax Matters. Seller has timely filed all Tax returns heretofore required to be filed with respect to Taxes imposed on the Business, all such returns were true, complete and correct and Seller has paid or will have paid all Taxes shown to be due on such returns. There are no liens for Taxes upon the Purchased Assets, except liens for current Taxes not yet due or delinquent. Seller has made provision for payment of all Taxes, including without limitation, all federal, state and local Taxes, that have been incurred but are not currently due as of the date of this Agreement. No extension of a statute of limitations relating to Taxes with respect to the Business is in effect. Seller has not received notice that it is or may be subject to Tax in a jurisdiction in which it has not filed, or does not currently file, Tax returns. Seller has withheld for its employees who are employees of the Business any and all applicable Taxes for all pertinent periods in compliance with the Tax withholding provisions of all applicable Laws.

6.4 Compliance with Laws, Licenses and Permits. Seller is not in violation of (i) any applicable order, judgment, injunction, award or decree, or (ii) any Law, statute, ordinance, regulation or other requirement of any Governmental Authority, relating to the Business.

6.5 Financial Statements. Seller has delivered to Buyer true and correct copies of the Seller Financial Statements. The Seller Financial Statements: (i) have been prepared in accordance with the books and records of Seller, (ii) have been prepared in accordance with Seller's normal practices for the Business consistently applied, and (iii) present fairly, in all material respects, the financial position and the results of operations of the Business, at and for the fiscal periods then indicated.

6.6 Absence of Certain Changes. Since October 31, 2009, Seller has conducted the Business in the ordinary course consistent with past practice in all material respects, subject to the limitations of the Bankruptcy Case.

6.7 Legal Proceedings. Except for the Bankruptcy Case and as reflected on the Disclosure Schedule, there are no lawsuits, assertion of claims, charges, hearings, or arbitrations pending or, to the Knowledge of Seller, threatened against or involving the Business or the

Purchased Assets, or that seek to prevent or enjoin, alter or delay the transactions contemplated by this Agreement.

6.8 Accounts Receivable. All Trade Accounts Receivable of Seller as of the Closing Date, including those shown on the Seller Financial Statements, represent bona fide transactions made in the ordinary course of the Business.

6.9 Equipment. A complete and accurate list of the Equipment utilized in the operation of the Business is attached as *Exhibit 2*. Except as reflected on the Disclosure Schedules, the Equipment is in good operating condition and repair and is adequate for the uses to which it is put, and none of such Equipment is in need of replacement, maintenance or repair except for routine replacement, maintenance or repair.

6.10 Brokers and Finders. Neither Seller nor any Related Party has agreed to pay, or have taken any action that will result in any third party becoming obligated to pay or be entitled to receive, any investment banking, brokerage, finder's or similar fee or commission in connection with this Agreement or the transactions contemplated hereby.

6.11 Intangible Personal Property. Each item of Intangible Personal Property is set forth on *Exhibit 3*. Seller owns all Intangible Personal Property and has taken commercially reasonable steps to protect its rights therein. Except as reflected on the Disclosure Schedule, Seller has not (i) received written notice of any infringement by it of the rights of any person with respect to such Person's intellectual property, or (ii) infringed, misappropriated or otherwise violated (and the operation of the Business as currently conducted does not infringe, misappropriate or otherwise violate) any intellectual property rights of any person. To the Knowledge of Seller, no Person has infringed, misappropriated or otherwise violated any of the Intangible Personal Property.

6.12 No Other Representations or Warranties. Except for the representations and warranties contained in this Article VI, neither Seller nor any other person makes any other express or implied representation or warranty with respect to Seller, the Purchased Assets or the transactions contemplated hereby, and Seller disclaims any other representations or warranties, whether made by Seller, its affiliates or any of their respective representatives. Except for the representations and warranties contained in this Article VI (as modified by the Schedules hereto), Seller (i) expressly disclaims and negates any representation or warranty, expressed or implied, at common law, by statute, or otherwise, relating to the condition of the Purchased Assets (including any implied or expressed warranty of merchantability or fitness for a particular purpose, or of conformity to models or samples of materials) and (ii) disclaims all liability and responsibility for any representation, warranty, projection, forecast, statement, or information made, communicated, or furnished (orally or in writing) to Buyer or any of its affiliates or representatives (including any opinion, information, projection, or advice that may have been or may be provided to Buyer by any director, officer, employee, agent, consultant, or representative of Seller or any of its affiliates).

## 7. REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to Seller as follows, and the warranties and representations contained in this Section or elsewhere in this Agreement shall be deemed to be made as of the date hereof and as of the Closing Date:

7.1 Corporate Status. Buyer is a corporation duly organized, validly existing and in good standing under the laws of the state of California.

7.2 Authority. Buyer has full power and authority to execute and perform this Agreement and each other agreement contemplated hereby. Upon execution hereof, this Agreement shall be a valid and legally binding obligation of Buyer, enforceable against Buyer in accordance with its terms, except that (i) such enforcement may be subject to bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to creditors' rights, and (ii) the remedies of specific performance and injunctive and other equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceedings may be brought. Neither the execution nor the performance of this Agreement or each agreement contemplated hereby will violate the terms or any provision of Buyer's Articles of Incorporation or Bylaws or any material note, loan agreement, lease or other material contract or agreement to which Buyer is a party.

7.3 Brokers and Finders. Other than The Merjant Group, whose fees and commissions will be paid by Buyer, Buyer has not agreed to pay, nor has taken any action that will result in any third party becoming obligated to pay or be entitled to receive, any investment banking, brokerage, finder's or similar fee or commission in connection with this Agreement or the transactions contemplated hereby.

7.4 No Violation of Law. The execution and delivery by Buyer of this Agreement and each agreement contemplated by this Agreement, and the performance by Buyer of its obligations hereunder or thereunder, do not and will not (i) violate any provision of applicable Law relating to Buyer; (ii) violate any provision of any order, arbitration award, judgment or decree to which Buyer is subject; or (iii) require a registration, filing, application, notice, consent, approval, order, qualification or waiver with, to or from any Government Authority.

### 7.5 No Litigation or Regulatory Action

(a) There are no lawsuits, assertion of claims, charges, hearings, arbitrations or proceedings pending or, to the knowledge of Buyer, threatened against Buyer or its affiliates which would reasonably be expected to prevent, hinder or delay the consummation of any of the transactions contemplated by this Agreement or any agreement contemplated by this Agreement; and

(b) There are no lawsuits, assertion of claims, charges, hearings, arbitrations pending or, to the knowledge of Buyer, threatened, that question the legality or propriety of the transactions contemplated by this Agreement or any agreement contemplated by this Agreement.

## 8. EMPLOYEES

8.1 Definition. Seller has furnished to Buyer a list as of the date hereof of all persons regularly employed on either a part-time or full-time basis by Seller in connection with the Business, including their current wages and salary rates. The term "Employees" shall mean all persons included on such list, including employees on leave of absence, as well as those persons who become regularly employed by Seller between the date hereof and the Closing Date.

8.2 Termination. On the Closing Date, Seller shall terminate all Employees then employed by the Business. With respect to terminated Employees and any persons who terminated employment, including by notice of termination prior to Closing, Seller shall be solely responsible for payment, when and if due, of all salaries, wages, bonuses, vacation (subject to Section 8.4), COBRA liabilities and other obligations, if any, owed to Employees or past employees of the Business as of the Closing Date.

8.3 Buyer's Offer of Employment. Subject to the provisions of this Section 8.3, Buyer may offer employment to such terminated Employees as Buyer, in Buyer's sole discretion, may choose, to be effective on the Closing Date, at wages and salary rates of compensation reasonably comparable to those presently offered by Seller. All offers of employment shall be "at will" and Buyer shall be under no obligation to continue the employment for any set term. The number of terminated Employees not offered employment by Buyer shall not exceed 20. Buyer shall include the Employees who accept offers of employment from Buyer in Buyer's employment benefit plans, as such plans may exist, in accordance with the terms of such plans following the Closing Date, giving each Employee credit for his/her time of employment with Seller.

8.4 Nonassumption of Certain Obligations Owed Employees. Buyer assumes no responsibility whatsoever for obligations and/or benefits owed before, or with respect to the period before, the Closing Date, by Seller or the Business to its employees pursuant to Section 3.3(c)(vii), Section 8.2 or otherwise.

8.5 Workers' Compensation. Seller assumes all responsibility for liability arising from workers' compensation claims by Employees, both medical and disability, which have been filed on or prior to the Closing Date or which arose out of incidents that occurred on or prior to the Closing Date. Buyer shall be responsible for all claims for Employees which arise out of, or are based upon, incidents which occur subsequent to the Closing Date.

## 9. FURTHER ASSURANCES; BANKRUPTCY MATTERS

### 9.1 Further Assurances of Seller.

(a) From time to time after the Closing (as hereinafter defined), Seller and its Related Parties will execute and deliver to Buyer or any Buyer Related Party such instruments of sale, transfer, conveyance, assignment and delivery, consents, assurances, powers of attorney and other instruments as may be reasonably requested by Buyer or any Buyer Related Party in order to vest in Buyer all right, title and interest of Seller in and to the Purchased Assets and otherwise in order to carry out the purpose and intent of this Agreement.

(b) Seller will pay all Trade Accounts Payable and accrued expenses for the Business as of the Closing Date in a timely manner and in accordance with payment terms, subject to the requirements of the Bankruptcy Court.

9.2 Further Assurances of Buyer. From time to time after the Closing (as hereinafter defined), Buyer will execute and deliver to Seller or any Related Party such instruments of sale, transfer, conveyance, assignment and assumption, consents, assurances, novation, releases, powers of attorney and other instruments as may be reasonably requested by Seller in order to vest in Buyer all right, title and interest of Buyer, in and to the Assumed Liabilities and release Seller therefrom, and otherwise in order to carry out the purpose and intent of this Agreement.

9.3 Bankruptcy Matters.

(a) Seller shall, at Seller's sole expense, promptly undertake all actions as are reasonably necessary to obtain entry of the Sale Order from the Bankruptcy Court. Seller shall, at the reasonable request of Buyer or Buyer's representative, provide such non-privileged information and documents reasonably necessary to keep Buyer informed as to the progress of the proceeding.

(b) Buyer agrees that it will promptly take such actions as are reasonably requested by Seller to assist in obtaining entry of the Sale Order, and a finding of adequate assurance of future performance by Buyer, including furnishing affidavits or other documents or information for filing with the Bankruptcy Court for the purposes, among others, of providing necessary assurances of performance by Buyer under this Agreement and demonstrating that Buyer is a "good faith" purchaser under Section 363(m) of the Bankruptcy Code. Buyer shall not, without the prior written consent of Seller, file, join in, or otherwise support in any manner whatsoever any motion or other pleading relating to the sale of the Purchased Assets hereunder. Buyer shall not be obligated to pay any out-of-pocket costs or expenses in connection with its obligations under this Section 9.3 relating to the Bankruptcy Court proceedings, other than the salaries and miscellaneous expenses of Buyer's employees and the cost of counsel and any other advisors retained by Buyer.

(c) In the event the entry of the Sale Order shall be appealed, Seller and Buyer shall promptly defend such appeal with reasonable diligence.

10. CONDUCT OF OPERATIONS PRIOR TO CLOSING

10.1 Interim Operating Covenant. From the date hereof until Closing, Seller shall conduct its operation of the Business in the ordinary course and substantially consistent with its prior practices, subject to the limitations imposed on Seller as a result of the Bankruptcy Case.

10.2 Access to Information. Between the date hereof and the Closing, Seller agrees to provide to Buyer and Buyer's authorized agents (including attorneys, accountants and auditors) reasonable access to the offices and properties of the Business and the books and records of Seller related to the Business upon reasonable prior notice, in order to conduct a review of the Purchased Assets, the Assumed Liabilities and the Business. Seller shall, and shall cause the



employees, agents and representatives of the Business to, reasonably cooperate with such examination. Each of the parties will hold, and will cause each of such party's consultants and advisers to hold, in confidence all documents and information furnished to such consultants and advisors by or on behalf of another party to this Agreement in connection with the transactions contemplated by this Agreement pursuant to the terms of Section 18.6 of this Agreement.

10.3 Employee Information and Access. Prior to the Closing Date, Seller shall provide to Buyer certain general information concerning Seller's compensation and benefit programs and specific information relating to individual Business employees, subject to any such employee's proper consent, solely for the purpose of Buyer formulating offers to such employees; provided, however, that Seller will not make personnel records available for inspection or copying. Seller shall provide Buyer with reasonable access to the Business employees during normal working hours following the date hereof on mutually agreeable dates, to deliver offers of employment from Buyer and to provide information to such employees about Buyer.

10.4 Seller Contractual Consents.

(a) Seller shall use commercially reasonable efforts to obtain all contractual consents to the assignment of the Contracts, except such consents as are not required under the provisions of the Bankruptcy Code. By undertaking this obligation, Seller does not represent, warrant or guarantee that any such contract can be freely assigned or that any such contractual consent shall be obtained.

(b) Buyer shall use commercially reasonable efforts to assist Seller in obtaining all contractual consent to the assignment of the Contracts, except such consents as are not required under the provisions of the Bankruptcy Code.

(c) In the event that any necessary contractual consents or assignments of any of the Contracts, or any right or benefit arising thereunder or resulting therefrom, are not obtained prior to the Closing Date, or in the event that a third party to a Contract objects to the proposed cure costs in the Bankruptcy Case with respect to a Contract, then, unless otherwise mutually agreed by Buyer and Seller, Seller, at its discretion, may terminate, or at Buyer's request, will terminate, such Contract and/or delete it from the list of Contracts being assigned to Buyer, prior to the Closing.

(d) Except as otherwise specifically provided in this Agreement, the obligations of the parties under this Section 10.4 shall not include any requirement of Seller or Buyer to expend money or incur any financial or other obligation (other than normal legal and professional fees, transaction costs or filing fees not otherwise required to be incurred by the other party), commence or participate in any litigation or offer or grant any accommodation (financial or otherwise) to any third party.

10.5 Transition. Between the date hereof and the Closing Date, Seller shall provide, without cost to Buyer, subject to availability and upon reasonable notice, assistance to Buyer in connection with all reasonably requested transition matters arising under the transactions contemplated by this Agreement, including arrangement of personal introductions to vendors and customers of the Business.

## 11. CONDUCT OF BUSINESS FOLLOWING CLOSING

### 11.1 Billings, Collections and WIP for Assigned Contracts.

(a) Seller shall retain, and not transfer to Buyer, the Trade Accounts Receivable that are outstanding as of the Closing Date with respect to the Building Contracts. Subject to the provisions of this Section 11.1, Seller shall have the right to retain any and all amounts collected with respect to such Trade Accounts Receivable that relate to actual work completed as of the Closing Date, which is reflected on *Exhibit 8*. Buyer and Seller shall mutually agree upon the content of *Exhibit 8* as promptly as practicable following the date of this Agreement.

(b) Seller shall be entitled to receive and retain any gross profit earned on the Building Contracts with respect to the period on or prior to the Closing Date, and Buyer shall be entitled to receive and retain any gross profit earned on the Building Contracts with respect to the period following the Closing Date. Accordingly, (i) any Receivable Overage (as defined below) and Cost Shortfall (as defined below) for a particular Building Contract shall be paid by Seller to Buyer, and (ii) any Receivable Shortfall (as defined below) and Cost Overage (as defined below) for a particular Building Contract shall be paid by Buyer to Seller. Payments will be determined and remitted no later than 15 days after each month end that Buyer or Seller collect Trade Accounts Receivables related to Receivable Overages, Receivable Shortfalls, Cost Overages, or Cost Shortfalls.

(c) For purposes of this Section 11.1, (i) "gross profits" shall be calculated in a manner consistent with Sellers past practice, (ii) "Receivable Overage" is any amount collected from a Trade Account Receivable with respect to a Building Contract that is in excess of the amount to be paid under such Building Contract attributable to work completed by Seller as of the Closing Date, (iii) "Receivable Shortfall" is the amount by which a Trade Account Receivable with respect to a Building Contract is less than the amount to be paid under such Building Contract attributable to work completed by Seller as of the Closing Date, (iv) "Cost Overage" is any amount with respect to a Building Contract that Seller has paid for materials attributable to work that is beyond the actual work completed by Seller as of the Closing Date, (v) "Cost Shortfall" with respect to a Building Contract is the amount by which the material costs paid by Seller with respect to such Building Contract is less than the cost of materials attributable to the actual work completed by Seller as of the Closing Date, and (v) "Building Contracts" means those Contracts listed under "Building Contracts" on *Exhibit 1*.

(d) For purposes of illustration only, examples of calculations of the amounts described in this Section 11.1 are attached to *Exhibit 8*.

(e) In the event of a conflict between the provisions of this Section 11.1 and any other provision in this Agreement, the provisions of this Section 11.1 shall prevail.

11.2 Use of Names Related to the Business. Buyer agrees that following the Closing it will not utilize any of the following trade names or corporate names or other name that is confusingly similar to such names: Building Materials Holding Corporation, BMC West and SelectBuild.

## 12. CLOSING

12.1 Closing. Closing shall occur as promptly as practicable following entry of the Sale Order, at 8780 Prestige Court, Rancho Cucamonga, California 91730, or at such other time or place as the parties may agree upon.

12.2 Time is of the Essence. Time is of the essence for the Closing of this transaction.

## 13. CONDITIONS PRECEDENT TO BUYER'S DUTY TO CLOSE

Buyer shall have no duty to close unless and until each and every one of the following conditions precedent has been fully and completely satisfied or waived by Buyer, which waiver shall be deemed to have irrevocably occurred upon the Closing:

13.1 No Misrepresentation or Breach of Covenants and Warranties. The representations and warranties of Seller made in this Agreement (i) that are qualified by materiality or material adverse effect shall be true and correct as of the date hereof and on and as of the Closing Date, as though made on the relevant date, (ii) that are not qualified by materiality or material adverse effect shall be true and correct in all material respects as of the date hereof and on and as of the Closing Date, as though made on the relevant date; except, in each case, for those representations and warranties which refer to facts existing at a specific date.

13.2 Performance of Obligations. Seller shall have substantially performed or tendered performance of each and every one of its obligations hereunder which by their terms are capable of being performed before Closing.

13.3 Delivery of Closing Documents. Seller shall have tendered delivery to Buyer of all the documents required to be delivered to Buyer by Seller prior to or at Closing pursuant to this Agreement.

13.4 Litigation. No lawsuit, administrative proceedings or other legal action shall have been filed which seeks to restrain or enjoin the acquisition of the Purchased Assets or the operation of the Business in any material respect.

13.5 Transition Services Agreement. Buyer and Seller shall have executed the Transition Services Agreement.

13.6 Certificate. The Seller shall have delivered a certificate to Buyer, dated as of the Closing, certifying that the conditions set forth in Sections 13.1, 13.2 and 13.4 have been satisfied.

13.7 Sale Order. The Bankruptcy Court shall have issued the Sale Order.

13.8 Approval of Percentage Completion Schedule. Buyer shall have approved *Exhibit 8*.

13.9 Termination of Non-Competition and Related Obligations. Each of Seller, George Davis and Randolph Davis shall have executed agreements in form reasonably

acceptable to Buyer terminating any confidentiality, non-competition and non-solicitation obligation with Seller and Building Materials Holding Corporation, of Davis Brothers Framing, Inc., George Davis and/or Randolph Davis under their respective Employment, Confidentiality, Non-Competition and Non-Solicitation Agreements with Seller and Building Materials Holding Corporation and/or the 2006 Purchase Agreement.

#### **14. CONDITIONS PRECEDENT TO SELLER'S DUTY TO CLOSE**

Seller shall have no duty to close this transaction unless and until each and every one of the following conditions precedent has been fully and completely satisfied:

14.1 No Misrepresentation or Breach of Covenants and Warranties. The representations and warranties of Buyer made in this Agreement (i) that are qualified by materiality or material adverse effect shall be true and correct as of the date hereof and on and as of the Closing Date, as though made on the relevant date, (ii) that are not qualified by materiality or material adverse effect shall be true and correct in all material respects as of the date hereof and on and as of the Closing Date, as though made on the relevant date; except, in each case, for those representations and warranties which refer to facts existing at a specific date.

14.2 Performance of Obligations. Buyer shall have substantially performed or tendered performance of each and every one of its obligations hereunder which by their terms are capable of being performed before Closing.

14.3 Payment of Purchase Price and Delivery of Closing Documents. Buyer shall have paid the Purchase Price to Seller and Buyer shall have tendered delivery to Seller all the documents required to be delivered to Seller by Buyer at Closing pursuant to this Agreement.

14.4 Litigation. No lawsuit, administrative proceedings or other legal action shall be pending or threatened against Seller which seeks to restrain or enjoin Seller's sale, or Buyer's acquisition of, the Purchased Assets.

14.5 Certificate. The Seller shall have delivered a certificate to Buyer, dated as of the Closing, certifying that the conditions set forth in Sections 14.1, 14.2 and 14.4 have been satisfied.

14.6 Sale Order. The Bankruptcy Court shall have issued the Sale Order.

14.7 Waiver of Severance, Etc. Each of George Davis and Randolph Davis shall have executed agreements in form reasonably acceptable to Seller (i) waiving their respective rights to receive severance or other payments pursuant to their respective Employment, Confidentiality, Non-Competition and Non-Solicitation Agreements with Seller and Building Materials Holding Corporation, upon termination of their employment in accordance with Section 8.2, other than accrued but unpaid salary and expenses as of the date of termination of their employment, and (ii) terminating such agreements.

14.8 Approval of Percentage Completion Schedule. Seller shall have approved *Exhibit 8.*

14.9 Waiver and Release of Contingent Consideration. Davis Brothers, Randolph Davis and George Davis shall have executed and delivered to Seller a waiver and release, in a form acceptable to Seller (the "Contingent Consideration Waiver"), that waives and releases the right to receive any and all amounts due and payable at any time, before or after Closing, to Davis Brothers, Randolph Davis and/or George Davis from Seller as Contingent Consideration under the under the 2006 Purchase Agreement and the Contingent Consideration Agreement that have not previously been paid.

## 15. ITEMS TO BE DELIVERED AT CLOSING BY THE SELLER

At Closing, the Seller shall, unless waived by Buyer, deliver the following items to Buyer:

15.1 Bill of Sale. A duly executed warranty bill of sale (in a form reasonably acceptable to Buyer) conveying the Purchased Assets to Buyer;

15.2 Automobile Titles. Duly executed titles to the vehicles and other rolling stock included in the Equipment; and

15.3 Sale Order. A certified copy of the Sale Order and Notice of Entry.

## 16. ITEMS TO BE DELIVERED AT CLOSING BY BUYER

At Closing, Buyer shall, unless waived by Seller, deliver the following items to Seller:

16.1 Purchase Price. The Purchase Price to be paid at Closing in accordance with Sections 3.1 and 4.1.

16.2 Contingent Consideration Waiver. Buyer shall have delivered, or caused Davis Brothers, Randolph Davis and George Davis to have delivered, to Seller the duly executed Contingent Consideration Waiver.

## 17. TERMINATION

17.1 Grounds for Termination This Agreement may be terminated:

(a) by mutual written agreement of all of the parties;

(b) by Buyer or Seller if the Closing has not been effected on or prior to the close of business on December 31, 2009; provided, however, that the right to terminate this Agreement pursuant to this Section 17.1(b) shall not be available to any party whose willful failure to fulfill any of such party's obligations contained in this Agreement has been the cause of, or resulted in, the failure of the Closing to have occurred on or prior to the aforesaid date; and/or

(c) by Seller or Buyer if any applicable law shall be enacted or become applicable that makes the transactions contemplated hereby or the consummation of the Closing illegal or otherwise prohibited, or if any judgment, injunction, order or decree enjoining any

party from consummating the transactions contemplated hereby is entered, and such judgment, injunction, order or decree shall become final and non-appealable.

17.2 Effect of Termination. If this Agreement is terminated pursuant to Section 17.1(a)-(c), all obligations of the parties hereunder shall terminate without liability of any Party to any other Party, except as provided in Section 18.6. The representations and warranties made herein shall not survive beyond a termination of this Agreement and no party shall have any liability for breach of any representation or warranty upon a termination of this Agreement prior to the Closing.

## 18. MISCELLANEOUS

18.1 No Other Agreements. This Agreement and all schedules and Exhibits hereto and the Transition Services Agreement constitute the entire agreement between the parties with respect to its subject matter. All prior and contemporaneous negotiations, proposals and agreements between the parties are included in, and superseded by, this Agreement. Any changes to this Agreement must be agreed to in writing signed by an authorized representative of each of Buyer and Seller.

18.2 Waiver. Either Buyer or Seller may waive the performance of any obligation owed to it by another party hereunder for the satisfaction of any condition precedent to the waiving party's duty to perform any of its covenants, including its obligations to close. Any such waiver shall be valid only if contained in writing signed by an authorized representative of each of Buyer and Seller.

18.3 Public Announcements. No public announcements of this Agreement shall be made unless Buyer and Seller have mutually agreed on the timing, distribution and contents of such announcements, except as may be required by applicable securities laws or regulations or the requirements of any securities exchange or market.

18.4 Notices. All notices, requests, demands and other communications called for or contemplated hereunder shall be in writing and shall be deemed to have been duly given when delivered to the party to whom addressed or when received by a party if sent by telecopy (or 3 days after mailing if sent by registered or certified mail, return receipt requested, prepaid and addressed) at the following addresses, or at such other addresses as the parties may designate by written notice in the manner aforesaid:

To Buyer: c/o George and Randolph Davis  
8780 Prestige Court  
Rancho Cucamonga, CA 91730  
Facsimile: (909) 944-7952

In each case, with copies to: Kevin Welch  
Patten, Faith & Sandford  
635 West Foothill Blvd.  
Monrovia, CA 91016  
Facsimile: (626) 303-2391

To Seller:

c/o Building Materials Holding Corporation  
720 Park Boulevard, Suite 200  
Boise, ID 83712-7714  
Attn: Paul Street  
Facsimile: (208) 331-4477

Copies to:

Gregory T. Davidson  
Gibson, Dunn & Crutcher LLP  
1881 Page Mill Road  
Palo Alto, CA 94304  
Facsimile: (650) 849-5333

18.5 Third Party Beneficiary. Nothing contained herein shall create or give rise to any third-party beneficiary rights for any individual as a result of the terms and provisions of this Agreement, except as expressly provided herein.

18.6 Confidential Information.

(a) Except as may be deemed necessary or advisable by the Buyer in relation to the Bankruptcy Case, the parties agree that all information acquired from the other in connection with the negotiation, execution and consummation of this Agreement is confidential and shall not be disclosed to any other party (other than attorneys, accountants and agents of the party) without the written consent of the other; provided that following the Closing Buyer may disclose information relating to the Business as it may deem necessary or advisable. Notwithstanding anything herein to the contrary, any party to this Agreement (and their employees, representatives, or other agents) may disclose to any and all persons, without limitation of any kind, the Tax treatment and Tax structure of the transactions contemplated by this Agreement (the "Transactions") and all materials of any kind (including opinions or other Tax analyses) that are provided to it relating to such Tax treatment and Tax structure; provided, however, that this sentence shall not permit any disclosure that otherwise is prohibited by this Agreement (i) until the earlier of (x) the date of the public announcement of discussion relating to the Transactions, and (v) the date of the public announcement of the Transactions; or (ii) if such disclosure would result in a violation of federal or state securities laws; or (iii) to the extent not related to the Tax aspects of the transaction. Moreover, nothing in this Agreement shall be construed to limit in any way any party's ability to consult any Tax advisor regarding the Tax treatment or Tax structure of the Transactions.

(b) Buyer agrees to hold in the strictest secrecy and confidence any confidential or proprietary information or materials belonging to Seller or Seller's affiliates that are not generally known to the public ("Seller Confidential Information"), including information regarding Seller's or Seller's affiliates' operations, proposed business, financial information, customer information, processes and intellectual property. Buyer agrees not to reveal, publish or disclose, directly or indirectly, in whole or in part, any Seller Confidential Information to any third party, nor make use of any Confidential Information for Buyer's own benefit or for the benefit of any third party without the prior written consent of Seller. All Seller Confidential Information, including all copies thereof, will be destroyed or returned immediately at such time as Seller requests. Notwithstanding the return or destruction of the Confidential Information or

the termination of any transactions between Buyer and Seller, Buyer will continue to be bound by the obligations under this Agreement. Buyer agrees to immediately notify Seller when any information comes to Buyer's attention which might indicate that there has been a loss of confidentiality with respect to the Confidential Information. In such event, Buyer agrees to take all reasonable steps to limit the scope of such loss. In the event that Buyer is requested in any proceeding to disclose any Confidential Information, Buyer will provide Seller with prompt written notice of that fact so that Seller may seek (with Buyer's cooperation, if so requested) an appropriate protective order or confidential treatment. If Buyer is nonetheless compelled to disclose any Confidential Information, Buyer will furnish only that portion of the Confidential Information which is legally required and will exercise Buyer's best efforts to obtain reliable assurance that confidential treatment will be accorded the Confidential Information. Notwithstanding the foregoing provisions, following the Closing, Buyer may disclose Confidential Information relating to the Business as it may deem necessary or advisable. In addition, the term "Seller Confidential Information" does not include information which Buyer can show by competent proof (i) is or becomes generally available to the public other than as a result of a disclosure by Buyer or Buyer's representatives, (ii) becomes available to Buyer on a non-confidential basis from a source other than Seller or one of Seller's representatives which has represented to Buyer that it is not bound by a confidentiality agreement with, or other contractual, legal or fiduciary obligation of confidentiality to Seller or any other party with respect to any portion of the Confidential Information, or (iii) was known to Buyer on a non-confidential basis prior to its disclosure to Buyer by Seller or one of Seller's representatives or affiliates.

(c) The parties shall be entitled to injunctive or other equitable relief as a remedy for any breach of the provisions of this Section 18.6. Any failure or delay by a party in exercising any right, power or privilege in this Section 18.6 shall not operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise of any right, power or privilege hereunder.

(d) Buyer and Seller shall not, and shall use their reasonable efforts to cause their respective affiliates to not, in any communications with customers, clients or suppliers of Buyer or Seller, with the press or other media, or otherwise in statements to third parties, not criticize, ridicule or make any statement which disparages or is derogatory of Buyer, Seller or The Merjant Group or any of their respective directors or officers.

18.7 Assignment. The parties shall not assign this Agreement without the prior written consent of the other parties. Any attempt to assign this Agreement without prior written consent shall be void *ab initio*. Notwithstanding the foregoing, Buyer, at its discretion, may assign this Agreement, and all of its rights and obligations hereunder to Davis Brothers Framing, Inc. without the prior written consent of Seller, provided that Buyer provide Seller with prior written notice of such assignment.

18.8 Nonsurvival of Representations and Warranties. All representations, warranties, covenants and agreements of Buyer and Seller made herein or in any other agreement delivered pursuant to this Agreement shall not survive beyond the Closing and there shall be no liability or obligation in respect thereof, whether such liability or obligation has accrued prior to or after the Closing, on the part of any party or any of its officers, directors, employees, agents or affiliates;



provided, however, that all covenants and agreements, including without limitation, any covenants and agreements in Sections 3.4, 6.2, 6.3 9.1, 9.2 11.1 and 11.2, which, by their terms, contemplate performance after the Closing, shall survive in accordance with their terms.

18.9 Choice of Law; Jurisdiction. This Agreement shall be governed by, and any disputes or controversies related hereto, shall be interpreted in accordance with the laws of the State of California without regard to the conflicts of laws provisions that would apply the laws of any other jurisdiction, except as may be governed by the Bankruptcy Code. Without limiting any party's right to appeal any order of the Bankruptcy Court, (i) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the transactions contemplated hereby, and (ii) any and all proceedings related to the foregoing shall be filed and maintained only in the Bankruptcy Court, and Buyer and Seller hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court and shall receive notices at such locations as indicated in Section 18.4. Buyer and Seller hereby irrevocably waive, to the fullest extent permitted by applicable law, any objection which they may now or hereafter have to the laying of venue of any such dispute brought in such court or any defense of inconvenient forum for the maintenance of such dispute. Each of the Parties agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Each of Buyer and Seller hereby consents to process being served by any party to this Agreement in any suit, action or proceeding by delivery of a copy thereof in accordance with the provisions of Section 18.4.

18.10 Waiver of Jury Trial. EACH OF THE PARTIES TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY.

18.11 Paragraph Headings. The Section and Section paragraph headings contained herein are for convenience only and shall have no substantive bearing on the interpretation of this Agreement.

18.12 Rules of Interpretation. The following rules of interpretation shall apply to this Agreement, the Exhibits hereto, and any certificates, reports or other documents or instruments made or delivered pursuant to or in connection with this Agreement, unless otherwise expressly provided herein or therein, and unless the context hereof or thereof clearly requires otherwise:

(a) A reference to any document or agreement shall include such document or agreement as amended, modified or supplemented from time to time in accordance with its terms, and if a term is said to have the meaning assigned to such term in another document or agreement and the meaning of such terms therein is amended, modified or supplemented, then the meaning of such term herein shall be deemed automatically amended, modified or supplemented in a like manner.

(b) References to the plural include the singular, the singular the plural and the part the whole.

(c) The words "include," "includes," and "including" are not limiting.

(d) A reference to any law includes any amendment or modification to such law which is in effect on the relevant date.

(e) A reference to any person or entity includes its successors, heirs and permitted assigns.

(f) Where the character or amount of any asset or liability or item of income or expense is required to be determined or any consolidation or other accounting computation is required to be made for purposes of this Agreement or any Exhibit hereto or certificate, report or other document or instrument made or delivered pursuant to or in connection with this Agreement, such determination or computation shall be done in accordance with generally accepted accounting principles at the time in effect, to the extent applicable, except where such principles are inconsistent with the express requirements hereof or of such exhibit, certificate, report, document or instrument.

(g) The words "hereof," "herein," "hereunder" and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement.

(h) All Schedules, including the Disclosure Schedule, and Exhibits to this Agreement constitute material terms of this Agreement and are incorporated fully into the terms of this Agreement.

18.13 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original, but which shall together constitute but one agreement.

18.14 Attorney's Fees. In any legal action, proceeding or arbitration arising out of this Agreement, regardless of which party hereto initiated such action, the prevailing party shall be entitled to recover reasonable attorney's fees and costs.

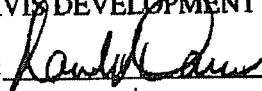
18.15 Approval of Bankruptcy Court. Notwithstanding anything herein to the contrary, all of Seller's obligations under this Agreement are subject to approval of the Bankruptcy Court.

*DS* *16*

The parties have executed this Asset Purchase Agreement on the day and year first written above.

**BUYER:**

DAVIS DEVELOPMENT COMPANY, INC.


By: 

Name:

Title:

**SELLER:**

C CONSTRUCTION, INC.

By: 

Name:

Title:

**PAUL S. STREET**  
Vice President & Secretary

## EXHIBIT 1

### Contracts

#### Building Contracts

Job #	Job Description	Current Contract
06-01877-067	Traditions II - 17	82,869.00
06-01878-067	Reflections II - 6	91,195.00
06-01879-067	Sycamore - 15/16	282,281.00
06-01880-006	Los Arboles - 6B	177,459.00
06-01881-061	Chu Commercial Building	75,000.00
no # assigned	Buenaterra - 8B (Founders Walk)	148,387.00
no # assigned	Market Street - 6B	228,786.00
no # assigned	Reflections II - 7	93,076.00
no # assigned	Sycamore - 17	137,412.00
no # assigned	Traditions II - 18	82,827.00
06-00103-000	Archstone Gateway Apts.	19,483,754.50
06-00519-050	Four Quartets - 5	249,660.00
06-00581-001	Main Street Village Apts.	9,473,221.66
06-01353-001	College Park Apartments	5,798,559.20
06-01453-010	Cole Street	132,956.00
06-01703-010	The Park - 1 (Spectrum Bldg A)	13,130,450.00
06-01835-033	Force Residence	438,912.25
06-01837-005	WNG Warner Center 195, LLC	3,194,021.00
06-01838-072	Pointe Brea Apartments	4,773,592.00
06-01839-005	Rancho Workforce Apts.	2,751,212.50
06-01840-067	Reflections II - M	97,279.50
06-01842-006	Market Street - 4B	210,491.10
06-01843-005	The Courtyard at Old Town	2,711,725.43
06-01844-033	Romero & Luo Residences	58,627.00
06-01846-066	Medallion - 8B	136,034.00
06-01847-012	Willow Walk - 5	325,796.00
06-01848-052	The Cottages - 2B	1,134,354.75
06-01849-001	University Hills - Comm. Bldg.	347,590.00
06-01850-067	Sycamore - 11	123,652.00
06-01851-067	Traditions II - 13	73,794.00
06-01852-006	Buenaterra - 6 (Founders Wlk)	178,890.10
06-01853-067	Reflections II - 1	88,314.00
06-01854-006	Market Street - 4C	207,529.55
06-01855-067	Sycamore - 12	135,145.00
06-01856-012	Willow Walk - 6	450,733.00
06-01857-023	Connor's Residence Remodel	37,150.00

*DS M*

**EXHIBIT 1**

**Contracts**

<b>Job #</b>	<b>Job Description</b>	<b>Current Contract</b>
06-01858-067	Traditions II - 14	66,431.00
06-01859-006	Buenaterra - 7A/7B (Fders Wlk)	366,814.00
06-01860-006	Market Street - 5A	225,410.00
06-01861-006	Los Arboles - 5	304,683.00
06-01862-067	Reflections II - 2	91,083.00
06-01863-067	Sycamore - 13	125,707.00
06-01864-006	Market Street - 5B	228,786.00
06-01865-006	Los Arboles - 6A	182,922.00
06-01866-067	Sycamore - 14	136,614.00
06-01867-067	Reflections II - 3	120,076.00
06-01868-067	Traditions II - 15	79,720.00
06-01869-067	Reflections II - 4	92,500.00
06-01870-067	Traditions II - 16	78,004.00
06-01871-005	Terra Vista IV Apts. - M	68,361.00
06-01872-033	Greer Residence	69,141.00
06-01873-006	Market Street - 6A	228,786.00
06-01874-006	Buenaterra -8A (Founders Walk)	178,383.00
06-01875-067	Reflections II - 5	91,342.00
06-01876-033	Parks Residence	162,400.00

*PD*

## **EXHIBIT 2**

### **Equipment**

- See Equipment listed in Exhibit 6
- Miscellaneous hand tools and supplies

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**EXHIBIT 3**

**Intangible Personal Property**

All of the following used, licensed or owned by Seller and used primarily in the Business:

- Customer contacts and relationships
- Vendor contacts and relationships
- The names "Davis Brothers Framing," "Rancho Leasing" and derivations thereof
- Know-how primarily used in the business

**EXHIBIT 4**

**Permits**

- None

*Re M*



**EXHIBIT 5**

**Personal Property and Real Property Leases**

**Personal Property Lease**

**Lessor:** Neopost, Inc.  
**Lessee:** Building Materials Holding Corporation  
**Terms:** 11/1/2009 - 10/31/2012  
**Base Rent:** 27.95/Month  
**Description:** IJ25 w/4lb scale (Postage Meter)

**Real Property Lease**

**Lessor:** Randolph Davis, Sandra Davis, George Davis & Jody Davis  
**Lessee:** C Construction, Inc.  
**Terms:** 7/31/2006 - 7/31/2010  
**Base Rent:** 10,609/Month  
**Description:** Real property located at 8780 Prestige Court in the city of Rancho Cucamonga, County of San Bernardino, State of California

**EXHIBIT 6**

**NBV of Purchased Assets**

9-Nov	Expense Account	Reserve Account	Asset Number	Serial Number	Description	Date in Service	Life Yr. Mo	Model Number	Legacy Asset Number	Cost	Depreciation	Year to Date Depreciation	Depreciation Reserve	MYV
	77335	2590	46933A	1FNP016N33L359680	2003 FORD	1-Sep-03	2.08		TRF FROM CO 55		0	0	0	0
	77335	2590	46966A	1FNP016N41A09029	2004 EXPEDITION XLT	1-Sep-05	3.04		TRF FROM CO 55-	23739.88	0	0	23739.88	0
	77335	2590	48033A	1FNP016S86LA36713	2006 Ford	17-Nov-05	5.00		TRF FROM 55 8762	24545.42	409.09	19227.41	5681.81	5318.19
	77335	2590	50366	2GCEC19R0W1143368	1998 CHEVY PU S/N	1-Jul-06	.06			7500	0	0	2500	0
	77335	2590	50367	2GCEC19T6A1253449	1999 CHEVY PU S/N	1-Jul-06	1.00			8000	0	0	8000	0
	77335	2590	50368	2GCEC19T6A1266783	1999 CHEVY PU S/N	1-Jul-06	1.00			8000	0	0	8000	0
	77335	2590	50370	1GCS19M028109227	2002 CHEVY S10 S/N	1-Jul-06	2.00			7155	0	0	7155	0
	77335	2590	50372	2GCEC19T321388350	2002 CHEVY C1500	1-Jul-06	2.00			13165	0	0	13165	0
	77335	2590	50373	2GCEC19T121396043	2002 CHEVY C1500	1-Jul-06	2.00			13165	0	0	13165	0
	77335	2590	50374	2GCEC19T021342930	2002 CHEVY C1500	1-Jul-06	2.00			13165	0	0	13165	0
	77335	2590	50375	2GCEC19T23139517	2002 CHEVY C1500	1-Jul-06	2.00			13165	0	0	13165	0
	77335	2590	50376	2GCEC19T821338494	2002 CHEVY C1500	1-Jul-06	2.00			13165	0	0	13165	0
	77335	2590	50377	2GCEC19T21339105	2002 CHEVY C1500	1-Jul-06	2.00			0	0	0	0	0
	77335	2590	50378	1F1PXL1453NA37432	2004 FORD F150 S/N	1-Jul-06	2.02			14500	0	0	14500	0
	77335	2590	50379	1GCEC19T748339451	2004 CHEVY	1-Jul-06	2.04			15500	0	0	15500	0
	77335	2590	50380	2GCEC19T411156473	2005 CHEVY	1-Jul-06	3.04			15500	0	3875	15500	0
	77335	2590	50381	1GCEC19T552115549	2005 CHEVY	1-Jul-06	3.04			18500	0	4625	18500	0
	77335	2590	50383	2GCEC19T851273442	2005 CHEVY	1-Jul-06	3.09			18500	411.11	4532.21	16855.53	1644.47
	77335	2590	50384	1GCEC19T862112811	2005 CHEVY S111500	1-Jul-06	4.05			20400	384.91	4234.01	15781.19	4618.81
	77335	2590	50385	2GCEC19T061110737	2006 CHEVY S111500	1-Jul-06	4.05			20400	384.91	4234.01	15781.19	4618.81
	77335	2590	51854	1GCEC192372204174	2002 SILVERADO 1500	12-Dec-06	5.00			54496.55	574.94	6324.34	34697.87	13798.68
	7485	2570	50397		SCAFFOLDING	1-Jul-06	5.10			350	55	55	205	145
	7485	2570	50402	2 - 20" RADIAL ARM	1-Jul-06	7.07	7.09			109.89	1708.79	1708.79	4503.49	5484.51
	7485	2570	50403	2 - 20" RADIAL ARM	1-Jul-06	7.09	8.00			10000	1182.83	1182.83	4408.65	5591.55
	7485	2570	50405	20" RADIAL ARM S/N	1-Jul-06	8.00	8.09			5000	47.63	523.82	1952.38	2047.62
	7485	2570	50408	RADIAL ARM S/N	1-Jul-06	8.09	9.02			5000	489.95	1863.55	3136.45	3136.45
	7485	2570	50409	20" CIRCULAR CUTOFF	1-Jul-06	8.09	9.02			5000	45.45	489.95	1863.55	3136.45
	7485	2570	50836	(13) SAWS	1-Jul-06	5.00				75000	1250	1250	57250	23750
	7485	2570	50386	3 - 1988 GRADALL	1-Jul-06	3.00				35000	0	0	35000	0
	7493	2610	50388	2 - 1997 GRADALL	1-Jul-06	3.00				80000	0	0	80000	0
	7493	2610	50389	2 - 534 D-3 GRADALL	1-Jul-06	3.00				80000	0	0	80000	0
	7493	2610	50390	2 - 544 D-10	1-Jul-06	3.01	554 D-10			120000	0	22702.74	120000	769.83
	7493	2610	50390	2 - 544 D-10	1-Jul-06	3.01	554 D-10			3400	64.15	2630.17	2630.17	2630.17
	7493	2610	50392	2 - 544 D-10	1-Jul-06	3.01	554 D-10			3400	64.15	2630.17	2630.17	2630.17
	7493	2610	50393	2 - 544 D-10	1-Jul-06	3.01	554 D-10			3400	64.15	2630.17	2630.17	2630.17
	7493	2610	50396	2006 GRADALL	1-Jul-06	4.05	544D10			55000	908.82	908.82	33161.7	24751
	7493	2610	50397	4K16 MANASKET	1-Jul-06	5.08				575	799	797.89	327.49	359.68
	7493	2610	50398	180 DEGREE SWING	1-Jul-06	6.00				1900	18.06	198.66	740.37	559.68
	7493	2610	50399	4K16 MANASKET	1-Jul-06	6.00				65000	747.13	8218.43	20637.23	34677.77
	7493	2610	50400	2003 544 D10	1-Jul-06	7.03				750	8.67	94.82	333.42	396.58
	7493	2610	50401	2003 GRADALL BASKET	1-Jul-06	7.03				140000	1386.14	15747.54	83168.3	83168.3
	7493	2610	50406	2 - 544-D10 GRADALL	1-Jul-06	8.05				1500	14.56	166.16	597.02	902.98
	7493	2610	50407	2- TRUSS BOOMS AND	1-Jul-06	8.07				750	9.04	99.44	370.54	379.46
	7493	2610	50407	4K16 MANASKET	1-Jul-06	6.11				1500	0	0	1500	0
	8660	2540	50391	MOBILE OFFICE 20X8	1-Jul-06	.06	Dennis			1500	0	0	1500	0
	8660	2540	50391	MOBILE OFFICE 20X8	1-Jul-06	.06	Dennis			1500	0	0	1500	0
	8660	2540	50393	MOBILE OFFICE 24X8	1-Jul-06	.08	Larry's			1500	0	0	1500	0
	8660	2540	50394	MOBILE OFFICE 20X8	1-Jul-06	.08	Richard's			1500	0	0	1500	0
	8660	2540	50395	MOBILE OFFICE 20X8	1-Jul-06	.10	Bill's			1500	0	0	1500	0
	8660	2540	51594	OFFICE EXPANSION	1-Nov-06	3.10				110783.27	2408.33	26491.63	89108.25	21675.02
	8670	2575	46221A	Kyocera Mita	1-Sep-05	3.05				24068.38	0	0	24068.38	0
	8670	2575	50332	TELEPHONE SYSTEM	1-Jul-06	7.00				0	0	0	0	0
	8670	2575	50334	Fire proof file	1-Jul-06	10.00				0	0	0	0	0
	8670	2575	50350	MINOUTA DI 2510	1-Jul-06	7.00				0	0	0	0	0
	8670	2575	50351	MURATER F-360	1-Jul-06	7.00				0	0	0	0	0
	8670	2575	50358	OFFICE CABINETS	1-Jul-06	4.03				4121.52	80.81	385.91	3113.31	808.21
	8670	2575	50359	CARPET	1-Jul-06	4.04				1204.24	23.16	949.51	949.51	254.73
	8670	2575	50360	GRANITE	1-Jul-06	4.05				538.61	10.54	115.94	432.11	176.5
	8670	2575	50361	OFFICE CABINETS	1-Jul-06	10.00				0	0	0	0	0
	8670	2575	50362	OFFICE CABINETS	1-Jul-06	10.00				0	0	0	0	0

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# EXHIBIT 6

## NBV of Purchased Assets

Expense Account	Reserve Account	Asset Number	Serial Number	Description	Date in Service	Life Tr. Mo	Model Number	Legacy Asset Number	Cost	Depreciation	Year to Date Depreciation	Depreciation Reserve	NBV
8670	2575	50363		2 FIRE CABINETS	1-Jul-06	10.00			0	0	0	0	0
8670	2575	50364		DESK & HURCH	1-Jul-06	5.00			291.72	4.29	47.19	175.89	115.83
8670	2575	50365		SECURITY CAMERA	1-Jul-06	9.00			3268	28.17	309.87	1155.02	2112.98
8670	2575	54698		RICOH WIDE FORMAT	7-May-07	7.00			18996	225.07	2475.77	6672.18	11928.82
9015	2630	50333	L3270200071	LASER PRINTER OKI-	1-Jul-06	5.00			0	0	0	0	0
9015	2630	50335		Printer-Okipage 20	1-Jul-06	5.00			0	0	0	0	0
9015	2630	50336		Plotter Printer	1-Jul-06	5.00			0	0	0	0	0
9015	2630	50337		HP 8150N PRINTER	1-Jul-06	5.00			0	0	0	0	0
9015	2630	50339		(2) P4 2.0, (1) P4	1-Jul-06	5.00			0	0	0	0	0
9015	2630	50340		P4 2.8 DESKTOP	1-Jul-06	5.00			0	0	0	0	0
9015	2630	50341		MCG 17" MONITOR	1-Jul-06	5.00			0	0	0	0	0
9015	2630	50342		SOL SERVER	1-Jul-06	5.00			0	0	0	0	0
9015	2630	50343		MS EXCHANGE 2000	1-Jul-06	3.00			0	0	0	0	0
9015	2630	50344		MS SQL ENTERPRISE	1-Jul-06	3.00			0	0	0	0	0
9015	2630	50345		COMPUTER	1-Jul-06	3.00			0	0	0	0	0
9015	2630	50347		HP2600 LARGE FORMAT	1-Jul-06	5.00			0	0	0	0	0
9015	2630	50348		HP4200 DTN PRINTER	1-Jul-06	5.00			0	0	0	0	0
9015	2630	50349		COLOR LASER PRINTER	1-Jul-06	5.00			0	0	0	0	0
9015	2630	50352		P-4 COMPUTER	1-Jul-06	5.00			0	0	0	0	0
9015	2630	50353		P-4 COMPUTER	1-Jul-06	5.00			0	0	0	0	0
9015	2630	50354		P-4 3.0 COMPUTER	1-Jul-06	5.00			0	0	0	0	0
9015	2630	50355		P-4 3.0 COMPUTER	1-Jul-06	5.00			0	0	0	0	0
9015	2630	50356		P-4 3.0 COMPUTER	1-Jul-06	5.00			0	0	0	0	0
9015	2630	51595		(7) DELL/CISCO	1-Nov-06	3.00			14433.24	0	5154.78	14433.24	0
										9,575.33	174,014.97	819,005.44	250,810.39
										1,169,821.83			

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**EXHIBIT 7**

**Purchase Price Allocation**

- Entire Purchase Price will be allocated as Class V Assets for purposes of IRS Form 8594

*DB*

**EXHIBIT 8**

**Percentage Completion of Building Contracts**

**To come**

Handwritten signature and initials, possibly "D" and "M", located in the bottom right corner of the page.

**TROPHIC LEVELS IN AN OPEN OCEAN**

Job Description Classify Date	Original Contract	Change Orders	Current Contract	Adjusted Current Labor Budget	Labor Cost to Date	% Complete	Earned	Paid	Over/ (Under) Billed	Adj. Current Material Budget	Material \$ Included in Revenue	Material Cost Included in Revenue	Material COGS Factor To WIP	Projected Cost to Revenue	Expenses Not Incorporated	Cost & Earnings Btlpts	Budgeted Gross Profit	JTD Actual Gross Profit	JTD Actual %	Balance to Btl	Contract	
																					Earnings	Ratio
Job Description Classify Date Material Stock - SA	218,796.00		218,796.00	49,922.81	15,496.62	19.51%	44,541.90		(9,541.90)	112,302.00	21,912.44	14,514.40		-	-	(9,541.90)	87,561.19	13,182.49	29.53%	146,144	183,786	
Yellowknife March Material Stock - SA	218,796.00		218,796.00	49,922.81	15,496.62	32.70%	74,823.50		(34,823.50)	112,302.00	36,727.90	15,272.10		-	-	(34,823.50)	87,561.19	27,095.60	29.53%	153,682	183,786	
Following Month Material Stock - SA	218,796.00		218,796.00	96,699.69	31,699.69	85.45%	216,871.67		(14,871.67)	120,000.00	101,545.45	7,454.55		-	-	(14,871.67)	70,796.00	87,328.21	31.04%	34,914	53,786	
Completion Material Stock - SA	218,796.00		218,796.00	96,699.69	96,699.69	100.00%	253,768.00		-	125,000.00	125,000.00	1,268,000.00		-	-	-	72,796.00	22,796.00	24.60%			

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

BUILDING MATERIALS HOLDING  
CORPORATION, *et al.*,<sup>1</sup>

Debtors.

Chapter 11


Case No. 09-12074 (KJC)

Jointly Administered

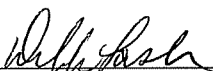
AFFIDAVIT OF SERVICE

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 December 14, 2009, she caused a copy of the foregoing document to be served as indicated upon the parties identified on the attached service list.

  
Casey S. Cathcart

SWORN TO AND SUBSCRIBED before me this 14th day of September, 2009.

  
Notary Public  
My Commission Expires:  
DEBBIE ELLEN LASKIN  
NOTARY PUBLIC  
STATE OF DELAWARE  
My commission expires Dec. 21, 2012

<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.

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