

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

IN RE:)	
)	Chapter 11
BUILDING MATERIALS HOLDING CORPORATION, et al.,¹)	Case No. 09-12074 (KJC)
Debtors.)	Jointly Administered
)	RELATED DOCKET NO. <u>1097</u>

**DECLARATION OF BRADLEY I. DIETZ IN SUPPORT OF 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**

I, Bradley I. Dietz, do hereby declare under penalty of perjury, that:

1. I am the Managing Director and head of the Restructuring Group of Peter J. Solomon Company ("*PJSC*"), and resident in PJSC's office at 520 Madison Avenue, New York, New York 10022.

2. On June 26, 2006, Building Materials Holding Corporation and the other above captioned debtors and debtors-in-possession (collectively, the "*Debtors*") in these chapter 11 cases (the "*Chapter 11 Cases*") filed an Application to Employ Peter J.

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

Solomon as Investment Banker and Financial Advisor (Docket No. 103). The Court entered an order approving such motion on July 16, 2009 (Docket No. 240).

3. At the commencement of these Chapter 11 Cases, the Debtors filed their proposed chapter 11 plan (the "**Plan**") and accompanying disclosure statement (the "**Disclosure Statement**"). The Debtors have since filed several amended versions of the Plan and Disclosure Statement. The Court approved the Disclosure Statement by order entered on October 22, 2009 (Docket No. 768), and the hearing to confirm the Plan is currently scheduled for December 17, 2009, with an anticipated effective date (the "**Effective Date**") of late 2009 or early 2010.

4. I submit this Declaration in respect of the *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* (the "**Motion**") (Docket No. 1097).²

5. On December 8, 2009, the Debtors filed the Motion, pursuant to which the Debtors sought approval of (a) the private sale (the "**Sale**") by C Construction, Inc. (the "**Seller**") to Davis Development Company Inc. (the "**Purchaser**") of the Ontario Framing Business pursuant to the terms and conditions of the asset purchase agreement

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

attached to the Motion as Exhibit B (the "*Current APA*"), free and clear of liens, claims, encumbrances, and interests, except as set forth in the Current APA, and (b) the wind down of business operations of the Debtors in the State of Illinois (the "*Illinois Business Wind Down*").

6. I have reviewed the Motion and am familiar with the facts alleged therein and relief requested. Except as otherwise indicated, I have personal knowledge of the matters set forth herein or have gained knowledge of such matters from the Debtors' employees or other retained advisers (including, those that report to me in the ordinary course of my responsibilities). If I were called upon to testify, I could and would testify competently to the facts set forth herein, and I am authorized to submit this Declaration on behalf of the PJSC.³

7. Over the past few months, PJSC professionals have worked with the Debtors' management and other advisors to identify non-core assets and assess the costs and benefits of selling such assets. A discounted cash flow valuation was performed in respect of the Sale using financial forecasts that were provided by the Debtors for the respective businesses. The Debtors' cash flow forecasts incorporated their views in respect of the Ontario Framing Business' future revenues and profitability as well as the still lagging construction market.

8. Taking the foregoing into account, PJSC professionals calculated a net present value of future Ontario Framing Business operations of \$14.6 million.

9. In light of the foregoing, I believe that the projected tax benefits that the Debtors could realize by operation of the Worker, Homeownership, and Business

³ Certain of the disclosures herein relate to matters within the knowledge of other employees of PJSC and are based on information provided by them.

Assistance Act of 2009 (the "*2009 Act*") as a result of selling the Ontario Framing Business appears to offer the Debtors greater recovery than continued operation of the Ontario Framing Business. Under the 2009 Act, the Debtors will receive significant tax benefits from Sale. In pertinent part, the 2009 Act contains a special one-time tax provision which, with respect to calendar year 2009, allows the carryback of net operating losses for a five-year period as opposed to the normal two-year period. The original purchase price under the 2006 Purchase Agreement was approximately \$78.6 million. Three and a half years later, the current tax basis of the Ontario Framing Business (under the 2006 Purchase Agreement) is \$58,765,666. Under the 2009 Act, if the Debtors are able to effectuate the sale of the Ontario Framing Business both before the end of calendar year 2009 and before the Effective Date of the Plan, the Debtors could carryback the net loss generated from this transaction and apply that net loss against profits made in 2004 and 2005. Under the Internal Revenue Code, as revised by the 2009 Act, the Debtors will be entitled to receive a federal tax refund of approximately \$20,567,983 in cash on account of the Sale of the Ontario Framing Business.

Dated: December 15, 2009



Bradley I. Dietz
Managing Director of Peter J. Solomon Company