

BACKGROUND

2. On June 16, 2009 (the "*Petition Date*"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the "*Chapter 11 Cases*"). The Debtors continue to operate their businesses and manage their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in the Chapter 11 Cases. On June 26, 2009, the Office of the United States Trustee (the "*U.S. Trustee*") appointed the official committee of unsecured creditors (the "*Creditors' Committee*").

3. The Debtors are one of the largest providers of residential building products and construction services in the United States. The Debtors distribute building materials, manufacture building components (e.g., millwork, floor and roof trusses, and wall panels), and provide construction services to professional builders and contractors through a network of 31 distribution facilities, 43 manufacturing facilities, and five regional construction services facilities.

4. The Debtors operate under two brand names: BMC West® and SelectBuild®.

- ***BMC West.*** Under the BMC West brand, the Debtors market and sell building products, manufacture building components, and provide construction services to professional builders and contractors. Products include structural lumber and building materials purchased from manufacturers, as well as manufactured building components such as millwork, trusses, and wall panels. Construction services include installation of various building products and framing. The Debtors currently offer these products and services in major metropolitan markets in Texas, Washington, Colorado, Idaho, Utah, Montana, North Carolina, California, and Oregon.
- ***SelectBuild.*** Under the SelectBuild brand, the Debtors offer integrated construction services to production homebuilders, as

well as commercial and multi-family builders. Services include wood framing, concrete services, managing labor and construction schedules, and sourcing materials. The Debtors currently offer these services in major metropolitan markets in California, Arizona, Nevada and Illinois.

5. On the Petition Date, the Debtors filed their proposed chapter 11 plan (the "*Plan*") and accompanying disclosure statement (the "*Disclosure Statement*"). The Debtors filed several amended versions of the Plan and Disclosure Statement since that time. The Court approved the Disclosure Statement by order entered on October 22, 2009. To implement their restructuring, the Debtors have obtained \$80 million in debtor-in-possession financing, which the Court approved on a final basis on July 1, 2009.

THE BOULDERS LEASE

6. On September 13, 2005, Boulders West, LLC (the "*Landlord*") and A.C. Houston Lumber Co. entered into that certain unexpired lease (as amended on February 25, 2004, July 26, 2004, March 1, 2005, and June 25, 2005 and assigned, the "*Boulders Lease*") for the property described therein located at 45-491 Golf Center Parkway, Indio, California (the "*Premises*"). On September 20, 2005, the Boulders Lease was assigned to Boulders West Components, LLC and on April 1, 2006 it was assigned to TWF Construction, Inc. (the "*Tenant*" and together with the Landlord, the "*Parties*").

7. The Boulders Lease encompasses four (4) buildings totaling 62,000 square feet on approximately 9.17 acres and runs through March 31, 2016. As of the prepetition assignment of the Boulders Lease from Boulders West Components, LCC to TWF Construction, Inc., the rent for the Boulders Lease was \$59,155 per month, increased by 3% annually (currently, \$66,579.48 per month). Throughout the course of 2008 and 2009, as the Debtors have experienced a precipitous decline in their revenues, the Boulders Lease rent payments have

become a large burden on the Debtors and their estates as the profitability of the operations conducted on the Premises have declined. Accordingly, the Debtors have renegotiated the Boulders Lease to reduce the monthly base rent, subject to subsequent recapture of foregone rent payments by the Landlord in the event the Debtors' operations conducted on the Premises become more profitable. To facilitate this transaction, the Parties have agreed to an amendment of the Boulder Lease (the "***Fifth Amendment***") whereby the base rent due on account of the Boulder Lease will be reduced from \$66,479.48 per month to \$46,579.48 per month, effective as of October 1, 2009 and continuing until March 1, 2011 – a savings of \$360,000, subject to recapture pursuant to a provision under which the Tenant shall pay Landlord 10% of its cumulative Earnings Before Interest Taxes Depreciation and Amortization, up to \$360,000, on April 30, 2011.

BASIS FOR RELIEF REQUESTED

I. The Debtors' Fifth Amendment of the Boulders Lease Should Be Approved Pursuant to Section 363(b) of the Bankruptcy Code

8. Section 363(b)(1) of the Bankruptcy Code permits a debtor-in-possession to use property of the estate "other than in the ordinary course of business" after notice and a hearing. 11 U.S.C. § 363(b)(1). Uses of estate property outside the ordinary course of business may be authorized if the debtor demonstrates a "sound business purpose." *See In re Lionel Corp.*, 722 F. 2d 1063, 1071 (2d Cir. 1983) ("The rule we adopt requires that a judge determining a 363(b) application expressly find from the evidence presented before him... a good business reason to grant such an application."); *Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999) ("In determining whether to authorize the use, sale or lease of property of the

estate under [section 363(b)], courts require the debtor to show that a sound business purpose justifies such actions.").

9. Once the debtor articulates a business justification for a particular form of relief, courts review the debtor's request under the "business judgment rule." *See, e.g., Myers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996) (noting that under normal circumstances, courts defer to a trustee's judgment concerning use of property under Bankruptcy Code section 363(b) when there is a legitimate business justification). The business judgment rule "is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company." *Official Comm. of Subordinated Bondholders v. Integrated Resources, Inc. (In re Integrated Resources, Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)); *see also In re Helm*, 335 B.R. 528, 539 (Bankr. S.D.N.Y. 2006) ("The business judgment rule requires the Court to determine whether a reasonable business person would make a similar decision under similar circumstances.") (quoting *In re Vencor, Inc.*, Case No. 99-3199, 2003 Bankr. LEXIS 659, 2003 WL 21026737 at *3 (Bankr. D. Del. Apr. 30, 2003)).

10. The Boulders Lease, as amended, is at a market rate and provides the Debtors with commercial real estate that is sufficient to meet their needs for the foreseeable future without incurring any of the relocation costs that would be associated with moving to a different location. By agreeing to the Fifth Amendment, the Debtors have been able to reduce their rent obligations related to the Premises from \$66,479.48 per month to \$46,479.48 per month – a savings of \$360,000 during the course of the Boulders Lease. Moreover, because the Debtors have been able to reach a consensual agreement with the Landlord, the proposed

transaction allows the Debtors to rationalize their monthly lease obligations without burdening their estates with rejection damages claims. Because the Fifth Amendment will benefit the Debtors' estates by reducing the Debtors' monthly lease payment obligations by \$20,000 per month (subject to recapture) while providing the Debtors with ample commercial real estate, and because the Debtors will not suffer any harm from entering into the transaction, the Debtors' Fifth Amendment of the Boulders Lease is accordingly an exercise of sound business judgment.

II. The Debtors Should Be Authorized to Assume the Boulders Lease, As Amended

11. Section 365(a) of the Bankruptcy Code provides, in pertinent part, that a debtor-in-possession, "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. §365(a). The purpose of section 365(a) is to allow a trustee to maximize the value of the debtor's estate by assuming executory contracts that benefit the estate and rejecting those that do not. *See, e.g., In re Fleming Companies, Inc.*, 499 F.3d 300, 304 (3d Cir. 2007) (noting that section 365(a) allows "the trustee to maximize the value of the debtor's estate by assuming executory contracts . . . that benefit the estate and rejecting those that do not.") (internal citations and quotations omitted); *Dye v. Sandman Assocs., L.L.C. (In re Sandman Assocs., L.L.C.)*, 251 B.R. 473, 481 (W.D. Va. 2000) ("The authority granted by section 365 allows the trustee or debtor in possession to pick and choose among contracts, assuming those that are favorable, and rejecting those that are not.").

12. A debtor's decision to assume or reject an unexpired lease or executory contract is subject to court review under the "business judgment" standard, which is satisfied when a debtor shows that assumption would be beneficial to its estate and reflects a reasonable exercise of business judgment. *See, e.g., NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 523 (1984) (describing the business judgment test as the "traditional" test); *Sharon Steel Corp. v. Nat'l Fuel*

Gas Dist. Corp., 872 F.2d 36, 40 (3d Cir. 1989) (same); *In re Helm*, 335 B.R. 528, 538 (Bankr. S.D.N.Y. 2006) ("The decision to assume or reject an executory contract is within the sound business judgment of the debtor-in-possession...."); *In re G Survivor Corp.*, 171 B.R. 755, 757 (Bankr. S.D.N.Y. 1994) ("In determining whether a debtor may be permitted to reject an executory contract, courts usually apply the business judgment test. Generally, absent a showing of bad faith, or an abuse of business discretion, the debtor's business judgment will not be altered.") (internal citations omitted); *In re III Enters., Inc. V*, 163 B.R. 453, 469 (Bankr. E.D. Pa. 1994) ("Generally, a court will give great deference to a debtor's decision to assume or reject an executory contract. A debtor need only show that its decision to assume or reject the contract is an exercise of sound business judgment—a standard which [the courts] have concluded many times is not difficult to meet."). Accordingly, courts approve the assumption or rejection of an executory contract or unexpired lease unless evidence is presented that the debtor's decision to assume or reject "is so manifestly unreasonable that it could not be based on sound business judgment, but only on bad faith, or whim or caprice." *In re Richmond Metal Finishers, Inc.*, 756 F.2d 1043, 1047 (4th Cir. 1985).

13. For the same reasons articulated herein that the Debtors' decision to amend the Boulders Lease is a sound exercise of their business judgment, the Debtors' decision to assume the Boulders Lease, as amended, is a sound exercise of their business judgment. Assumption of the Boulders Lease, as amended, will allow the Debtors to conduct business in the Indio, California vicinity under the terms of a market-rate lease which provides the Debtors with an appropriate amount of commercial real estate to meet their needs for the foreseeable future.

14. In light of the foregoing, the Debtors respectfully submit that their amendment of the Boulders Lease is an appropriate exercise of the Debtors' business judgment; is necessary and in the best interest of the Debtors, their creditors, and their estates; should be approved under section 363(b) of the Bankruptcy Code; and the Debtors should be authorized to assume the Boulders Lease, as amended, under section 365 of the Bankruptcy Code.

NOTICE

15. No trustee or examiner has been appointed in these Chapter 11 Cases. The Debtors have provided notice of the filing of the Motion to: (a) the U.S. Trustee; (b) counsel to Wells Fargo Bank, as agent under the Debtors' Prepetition Credit Agreement and DIP Facility (as defined in the Plan); (c) counsel to the Creditors' Committee; (d) the Landlord; and (e) any persons who have filed a request for notice in the Chapter 11 Cases pursuant to Bankruptcy Rule 2002. Due to the nature of the relief requested the Debtors respectfully submit that no further notice of this Motion is required.

NO PRIOR REQUEST

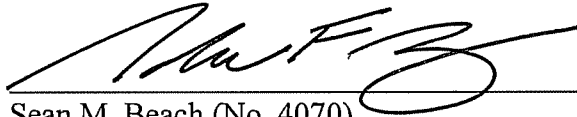
16. No prior request for the relief sought in this Motion has been made to this or any other court.

Remainder of page intentionally left blank

WHEREFORE, the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as the Court may deem just and proper.

Dated: Wilmington, Delaware
December 16, 2009

YOUNG CONAWAY STARGATT &
TAYLOR, LLP



Sean M. Beach (No. 4070)
Donald J. Bowman, Jr. (No. 4383)
Robert F. Poppiti, Jr. (No. 5052)
The Brandywine Building
1000 West St., 17th Floor
Wilmington, DE 19801
Telephone: 302.571.6600
Facsimile: 302.571.1253

---- and ----

GIBSON, DUNN & CRUTCHER LLP
Michael A. Rosenthal (admitted *pro hac vice*)
Matthew K. Kelsey (admitted *pro hac vice*)
Sae M. Muzumdar (admitted *pro hac vice*)
200 Park Ave, 47th Floor
New York, NY 10166-0193
Telephone: 212.351.4000
Facsimile: 212.351.4035

Aaron G. York (admitted *pro hac vice*)
Jeremy L. Graves (admitted *pro hac vice*)
2100 McKinney Ave, Suite 1100
Dallas, TX 75201-6911
Telephone: 214.698.3100
Facsimile: 214.571.2900

ATTORNEYS FOR DEBTORS
AND DEBTORS IN POSSESSION

**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
)	
)	Objection Deadline: December 29, 2009 at 4:00 p.m. (ET)
)	Hearing Date: January 5, 2010 at 11:00 a.m. (ET)

NOTICE OF MOTION

TO: (A) The Office of the United States Trustee for the District of Delaware; (B) Counsel to Wells Fargo Bank, as Agent Under the Prepetition Credit Facility and the DIP Facility (as Defined in the Plan); (C) Counsel to the Official Committee of Unsecured Creditors; (D) the Landlord; and (E) All Parties That Have Requested Notice Pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure.

PLEASE TAKE NOTICE that the above-captioned debtors and debtors in possession (collectively, the “Debtors”) have filed the attached **Debtors’ Motion for an Order Pursuant to Sections 363(b) and 365(a) of the Bankruptcy Code Authorizing the Debtors to Amend the Boulders Lease and to Assume the Boulders Lease, as Amended** (the “Motion”).

PLEASE TAKE FURTHER NOTICE that any objections to the Motion must be filed on or before **December 29, 2009 at 4:00 p.m. (ET)** (the “Objection Deadline”) with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801. At the same time, you must serve a copy of the objection upon the undersigned counsel to the Debtors so as to be received on or before the Objection Deadline.

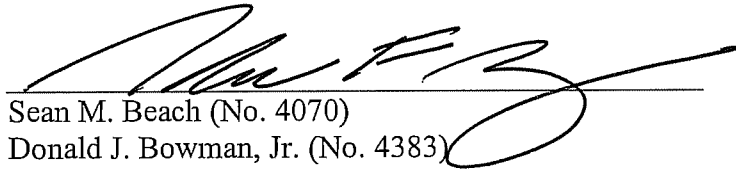
PLEASE TAKE FURTHER NOTICE THAT A HEARING TO CONSIDER THE MOTION WILL BE HELD ON JANUARY 5, 2010 AT 11:00 A.M. (ET) BEFORE THE HONORABLE KEVIN J. CAREY AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 MARKET STREET, 5TH FLOOR, COURTROOM NO. 5, WILMINGTON, DELAWARE 19801.

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.

PLEASE TAKE FURTHER NOTICE that if you fail to respond in accordance with this notice, the Court may grant the relief requested in the Motion without further notice or a hearing.

Dated: Wilmington, Delaware
December 16, 2009

YOUNG CONAWAY STARGATT & TAYLOR, LLP



Sean M. Beach (No. 4070)
Donald J. Bowman, Jr. (No. 4383)
Robert F. Poppiti, Jr. (No. 5052)
The Brandywine Building
1000 West Street, 17th Floor
P.O. Box 391
Wilmington, Delaware 19899-0391
Telephone: (302) 571-6600
Facsimile: (302) 571-1253

----and----

GIBSON, DUNN & CRUTCHER LLP
Michael A. Rosenthal (admitted *pro hac vice*)
Matthew K. Kelsey (admitted *pro hac vice*)
Sae M. Muzumdar (admitted *pro hac vice*)
200 Park Avenue, 47th Floor
New York, New York 10166-0193
Telephone: (212) 351-4000
Facsimile: (212) 351-4035

Aaron G. York (admitted *pro hac vice*)
Jeremy L. Graves (admitted *pro hac vice*)
2100 McKinney Avenue, Suite 1100
Dallas, Texas 75201-6911
Telephone: (214) 698-3100
Facsimile: (214) 571-2900

ATTORNEYS FOR THE DEBTORS
AND DEBTORS-IN-POSSESSION

EXHIBIT A
Proposed Order

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

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

ORDER PURSUANT TO SECTIONS 363(b) AND 365(a) OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTORS TO AMEND THE BOULDERS LEASE AND TO ASSUME THE BOULDERS LEASE, AS AMENDED

Upon consideration of the motion (the "*Motion*") of Building Materials Holding Corporation and its affiliates, as debtors and debtors in possession (collectively, the "*Debtors*"), for entry of an order authorizing the Debtors to amend the Boulders Lease² and to assume the Boulders Lease, as amended, all as set forth in the Motion; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. sections 1408 and 1409; and the Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and notice of the Motion and the opportunity for a hearing on the Motion was appropriate under the particular circumstances; and the Court having reviewed the Motion and having considered the statements

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.

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

in support of the relief requested therein at a hearing before the Court (the "*Hearing*"); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED:

1. The Motion is granted as set forth below.
2. Pursuant to section 363(b) of title 11 of the United States Code (the "*Bankruptcy Code*"), the Debtors are authorized to enter into the Fifth Amendment to the Boulders Lease and are authorized and empowered to take any and all steps and to perform such other and further actions as are necessary to carry out, effectuate, or otherwise enforce the terms, conditions, and provisions of the Fifth Amendment.
3. Pursuant to section 365(a) of the Bankruptcy Code, the Debtors are authorized to assume the Boulders Lease, as amended by the Fifth Amendment.
4. The Debtors have no cure obligations in connection with the assumption of the Boulders Lease, as amended by the Fifth Amendment, and the Landlord is hereby barred, enjoined, and prohibited from asserting any additional amounts on account of the Debtors' cure obligations under section 365 of the Bankruptcy Code or otherwise from the Debtors or their estates with respect to the Boulders Lease.
5. The Debtors are authorized to take any action necessary to effectuate the terms of this Order without further order of the Court.

6. The Court shall retain jurisdiction over any and all matters arising from or related to the interpretation or implementation of this Order.

Dated: Wilmington, Delaware
January ____, 2009

Kevin J. Carey
Chief United States Bankruptcy Judge