

**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
)	
	)	Requested Hearing Date: December 30, 2009 at 1:00 p.m. (ET)
	)	Requested Objection Deadline: December 28, 2009 at 10:00 a.m. (ET)

DEBTORS' MOTION FOR AN ORDER, PURSUANT TO SECTIONS 105 AND 363 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULES 2002, 6004 AND 9014, (I) AUTHORIZING THE PRIVATE SALE BY THE DEBTORS OF THE PROPERTY FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS, (II) APPROVING THE PURCHASE AGREEMENT AND (III) GRANTING RELATED RELIEF

Building Materials Holding Corporation (“BMHC”) and its affiliates, as debtors and debtors in possession (collectively, the “Debtors”), hereby submit this Motion (the “Motion”) for the entry of an order, substantially in the form annexed hereto as Exhibit A (the “Proposed Order”), (i) authorizing the private sale (the “Sale”) of that certain real property located at 7777 N. 70th Avenue, Glendale, Arizona 85303 (the “Property”) on an “as is, where is” basis, free and clear of any and all liens, claims, encumbrances and other interests to RBS Investments LLC (or an affiliate thereof) (the “Purchaser”) pursuant to the terms and conditions of that certain Real Estate Purchase and Sale Agreement, dated as of December 14, 2009 (as amended, the “Purchase Agreement”), by and between BMHC (the “Seller”) and the Purchaser, a copy of which is attached as Exhibit 1 to the Proposed Order, (ii) authorizing and approving the

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.

terms of the Purchase Agreement and (iii) granting certain related relief. In support of the relief requested herein, the Debtors rely on the Declaration of Paul S. Street attached hereto as Exhibit B, and respectfully represent as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are sections 105(a) and 363 of the Bankruptcy Code, along with Bankruptcy Rules 2002, 6004 and 9014.

RELIEF REQUESTED

2. By this Motion, the Debtors, pursuant to sections 105(a) and 363 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code"), and Rules 2002, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), request the Court to enter an order, among other things, authorizing and approving the Sale pursuant to the terms and conditions of the Purchase Agreement.

3. As a result of the Debtors' need to consummate the Sale prior to the end of 2009, by separate motion the Debtors are concurrently requesting a shortened notice period with respect to this Motion.

BACKGROUND

4. 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”).

5. 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 (5) regional construction services facilities.

6. 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.

7. On the Petition Date, the Debtors filed their proposed chapter 11 plan (the “Plan”) and accompanying disclosure statement (the “Disclosure Statement”). Since the Petition Date, the Debtors 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 on December 17, 2009, this Court entered an order [Docket No. 1182] confirming the Plan,

which is anticipated to have an effective date (the “Effective Date”) of January 4, 2010. To implement this restructuring, the Debtors have obtained \$80 million in debtor-in-possession financing, which the Court approved on a final basis on July 1, 2009 [Docket No. 132].

RECENT AMENDMENT TO THE TAX CODE

8. On November 6, 2009, Congress enacted the Worker, Homeownership, and Business Assistance Act of 2009 (the “2009 Act”). Among other things, the 2009 Act extends the net operating loss (“NOL”) carryback period from two (2) years to as much as five (5) years for tax years beginning in or ending in 2008 or 2009. The Act sets no limit on carrybacks for the first four (4) years of the carryback period, but for year five (5), the carryback is limited to 50% of the taxpayer’s taxable income in that year. The following chart calculates how much cash the Debtors could receive in the form of a tax refund under the 2009 Act:

<i>Tax Year</i>	<i>Cash Available</i>	<i>Recovery Rate</i>	<i>Cash Potential</i>	<i>Tax Rate</i>	<i>Implied Loss</i>
2004	\$29,774,769	50%	\$14,887,385	35%	\$42,535,384
2005	\$67,337,036	100%	\$67,337,036	35%	\$192,391,531
2006		100%		35%	
2007		100%		35%	
	\$97,111,805		\$82,224,421		\$234,926,916

Thus, under the 2009 Act, the Debtors can receive as much as \$82.2 million in cash relating to taxes paid in 2004 and 2005. However, since the Debtors have not sustained net operating losses from continuing operations in 2009 in the amount of \$82.2 million, they will be able to realize approximately \$973,665 of tax refunds if the Court approves the Sale, and it is consummated before the Effective Date of the Plan and before the end of 2009. The consummation of this Sale provides a substantial benefit to the Debtors’ estates.

BASIS FOR RELIEF REQUESTED

9. By this Motion, the Debtors request the Court to enter an order, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code and Bankruptcy Rules 2002, 6004 and 9014,

(a) authorizing the Sale pursuant to the Purchase Agreement, (b) authorizing and approving the Purchase Agreement and (c) granting related relief.

I. Debtors' Marketing Efforts for Sale

10. The Debtors, together with their professional advisors, have been marketing the Property since well before the Petition Date. In doing so, the Debtors entered into an agreement with Colliers International to market the property beginning in December 2008. Since that time, the Property has been shown to at least twenty (20) interested parties and listed through several widely-used commercial real estate services, including, without limitation, CoStar, LoopNet and Colliers' internet website. As a result of these efforts, which also included the preparation and targeted circulation of detailed marketing brochures for the Property, the Debtors received three (3) offers for the Property, the highest of which was for a purchase price of \$2,700,000. However, this offer required the Debtors to, among other things, lease back one-half of the Property. The additional offers were for substantially less than the Purchase Price (as defined below).

11. Once the 2009 Act was enacted, the Debtors redoubled their marketing efforts by reducing the asking price for the Property to \$3 million and contacting potential real estate purchasers. Thereafter, three (3) offers of less than \$3 million were received for the Property, including an offer from the Purchaser. The financial capability of each of these offerors was confirmed, and each was provided the same contract and advised to submit its highest and best bid for the Property by December 14, 2009. Bids were received and the highest offer was made by the Purchaser and subsequently accepted by the Debtors, thereby resulting in the Debtors agreeing to the Purchase Price (as defined below) and the terms and conditions of the Purchase Agreement.

12. In light of the foregoing, the Debtors believe that the Purchase Price, together with the anticipated tax benefits from the Sale, as outlined above, provide fair and reasonable value for the Property.

II. Summary of Proposed Terms of the Sale²

13. Pursuant to the terms and conditions of the Purchase Agreement, and subject to this Court's approval, the Debtors propose to sell to the Purchaser the Property on "as is, where is basis" free and clear of all liens, claims, encumbrances and other interests. The material terms and conditions of the Purchase Agreement are as follows:

- A. PROPERTY TO BE CONVEYED. Seller shall sell and the Purchaser shall purchase that certain real property located at 7777 N. 70th Avenue, Glendale, Arizona 85303, City of Glendale, County of Maricopa, State of Arizona, which consists of an approximately Thirty-Nine Thousand (39,000) square foot building and approximately Ten and Twenty-Three One-Hundredths (10.23) acres of land and which is more particularly described in Exhibit A to the Purchase Agreement, together with the following: (i) all easements, rights-of-way and other rights and benefits running with the Property, if any, which are owned by Seller and which are appurtenant to the Property and (ii) all buildings, structures, fixtures and other improvements located on the Property.
- B. PURCHASE PRICE, TERMS AND CONDITIONS. The total purchase price ("Purchase Price") for the Property shall be Two Million Nine Hundred Thousand Dollars and No/100ths (\$2,900,000.00).
- C. ESCROW MONEY DEPOSIT. Upon the execution of the Purchase Agreement by the Purchaser and Seller, the Purchaser will deposit earnest money in the amount of One Hundred Thousand Dollars and No/100ths (\$100,000.00) (the "Earnest Money Deposit") to be held in an interest bearing account by First American Title. The Earnest Money Deposit shall be non-refundable, unless otherwise provided in the Purchase Agreement. In the event the Seller is unable to deliver title to the Property to the Purchaser and the Title Policy referred to in Section 4 of the Purchase Agreement, or the Court does not approve the transaction as

² This summary of the Purchase Agreement is provided for the Court's convenience only. To the extent this summary differs in any way from the terms and conditions of the Purchase Agreement, the actual terms of the Purchase Agreement shall control. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Purchase Agreement.

contemplated in Section 5 of the Purchase Agreement, the Earnest Money Deposit shall be refunded to the Purchaser and the Purchase Agreement shall be cancelled. At Closing, the Earnest Money Deposit shall be applied to the Purchase Price.

- D. BROKERAGE COMMISSIONS. The Parties acknowledge that the Purchaser is represented by Eric Bell of Colliers International, and the Seller is represented by Marcus Muirhead and Kim Soule of Colliers International. At the close of escrow, subject to approval of such brokerage fees from the Court as described in Section 9 of the Purchase Agreement, a brokerage fee equal to Six percent (6%) of the total purchase price shall be paid out of escrow, with Two and Five-Tenths percent (2.5%) of such brokerage fee paid to the Purchaser's Broker and Three and Five-Tenths percent (3.5%) of such broker fee paid to the Seller's Broker.
- E. "AS IS, WHERE IS" TRANSACTION. Except as otherwise specifically stated in the Purchase Agreement, the Purchaser agrees that the Seller shall not be responsible or liable to the Purchaser for any conditions affecting the Property, as the Purchaser is purchasing the Property AS-IS, WHERE-IS, and WITH ALL FAULTS. The Purchaser or anyone claiming by, through or under the Purchaser, hereby fully releases the Seller, its officers, directors, employees, representatives and agents for any cost, loss, liability, damage, expense, demand, action or cause of action arising from or related to conditions affecting the Property. The Purchaser further acknowledges and agrees that the Purchase Agreement shall be give full force and effect according to each of its expressed terms and provisions, including, but not limited to, those relating to unknown and suspected claims, damages and causes of action. This covenant releasing the Seller shall be a covenant running with the Property and shall be binding upon the Purchaser.
- F. CLOSING. The closing of the transaction contemplated in the Purchase Agreement shall take place on or before December 31, 2009.
- G. BANKRUPTCY COURT APPROVAL. The closing of the transaction contemplated by the Purchase Agreement shall be conditioned on the Seller obtaining approval from the Court.

III. The Sale Should be Approved

14. For the reasons explained in detail below, the Debtors believe that the approval of a private sale of the Property to the Purchaser pursuant to the terms and conditions of the Purchase Agreement is not only appropriate but in the best interest of the Debtors, their estates

and creditors. Section 363(b)(1) of the Bankruptcy Code provides: “The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Section 105(a) of the Bankruptcy Code provides: “The Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). In pertinent part, Bankruptcy Rule 6004 states that, “all sales not in the ordinary course of business may be by private sale or by public auction.” Fed. R. Bankr. P. 6004(f)(1). With respect to the notice required in connection with a private sale, Bankruptcy Rule 2002(c)(1) states, in pertinent part, that,

. . . the notice of a proposed use, sale or lease of property . . . shall include . . . the terms and conditions of any private sale and the deadline for filing objections. The notice of a proposed use, sale or lease of property, including real estate, is sufficient if it generally describes the property.

Fed. R. Bankr. P. 2002(c)(1).

15. To approve the use, sale, or lease of property out of the ordinary course of business, this Court must find some articulated business justification for the proposed action. *See In re Abbotts Dairies of Pa. Inc.*, 788 F.2d 143, 145-47 (3d Cir. 1986) (implicitly adopting the articulated business justification and good faith tests of *Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983)); *see also In re Delaware & Hudson Ry. Co.*, 124 B.R. 169, 175-76 (D. Del. 1991) (concluding that the Third Circuit had adopted a “sound business purpose” test in *Abbotts Dairies*).

16. Generally, courts have applied four (4) factors in determining whether a sale of a debtor’s assets should be approved: (a) whether a sound business reason exists for the proposed transaction; (b) whether fair and reasonable consideration is provided; (c) whether the transaction has been proposed and negotiated in good faith; and (d) whether adequate and reasonable notice is provided. *See Lionel*, 722 F.2d at 1071 (setting forth the “sound business

purpose” test); *Abbotts Dairies*, 788 F.2d at 145-57 (implicitly adopting the articulated business justification test and adding the “good faith” requirement); *Delaware & Hudson Ry.*, 124 B.R. at 176 (“Once a court is satisfied that there is a sound business reason or an emergency justifying the pre-confirmation sale, the court must also determine that the trustee has provided the interested parties with adequate and reasonable notice, that the sale price is fair and reasonable and that the purchaser is proceeding in good faith.”).

17. This fundamental analysis does not change if the proposed sale is private, rather than public. *See, e.g., In re Ancor Exploration Co.*, 30 B.R. 802, 808 (Bankr. N.D. Okla. 1983) (“[T]he bankruptcy court should have wide latitude in approving even a private sale of all or substantially all of the estate assets not in the ordinary course of business under § 363(b)”). The bankruptcy court “has ample discretion to administer the estate, including authority to conduct public or private sales of estate property.” *In re WPRV-TV, Inc.*, 143 B.R. 315, 319 (D.P.R. 1991), vacated on other grounds, 165 B.R. 1 (D.P.R. 1992); *accord, In re Canyon P’ship*, 55 B.R. 520, 524 (Bankr. S.D. Cal. 1985). Here, the proposed private sale of the Property to the Purchaser meets all of these requirements and should be approved.

A. Proceeding by Private Sale Reflects an Exercise of the Debtors’ Business Judgment

18. There is a sound business justification for the Debtors’ preference to proceed with a private sale to the Purchaser, rather than conducting a public sale of the Property. The Debtors submit that an order granting the relief requested herein is a matter within the sound discretion of the Court and would be consistent with the provisions of the Bankruptcy Code. See 11 U.S.C. §105(a). As a result of the Purchaser’s interest in the Property, and its willingness to provide fair and reasonable consideration based on that interest, the Debtors believe that their estates and creditors would benefit from the approval of the Sale without the added time, energy and expenses associated with a public auction. Indeed, if the Debtors were forced to conduct a

public auction for the Property, they would not be guaranteed the commitment of the Purchaser to purchase the Property, much less at the price and the value to be provided through the proposed private sale and related Purchase Agreement, including the significant tax benefits to be realized as a result of the 2009 Act if the Sale is completed prior to the end of 2009.

19. The Debtors believe that a private sale of the Property to the Purchaser under the terms and conditions of the Purchase Agreement is more likely to close in a timely and efficient manner than a public auction because, in the Debtors' informed business judgment, the agreement provides them with a strong indication that the Purchaser is motivated to close the contemplated transaction in such a manner. While the tax benefits of the 2009 Act may be considerable, the window of opportunity to apply for these benefits is short. The 2009 Act will not be available to the Debtors unless they consummate the Sale before the close of 2009. Given the Purchaser's strong desire to close on an expedited basis so that it can obtain access to the Property as soon as practicable, the Debtors believe that the Sale – as opposed to a lengthy auction process which is unlikely to garner much interest from outside Purchasers – represents the best opportunity to extract immediate and meaningful value from the Property in the form of the Purchase Price and anticipated tax benefits.

B. The Purchase Price is Fair and Reasonable

20. The Debtors believe that the Purchase Price is a fair and reasonable price for the Property. The Purchase Price under the Purchase Agreement was the result of extensive and arm's length negotiations. Moreover, as discussed above, on account of the 2009 Act, the expedited sale of the Property will result in a great tax advantage to the Debtors. The Debtors have carefully considered and analyzed the Purchaser's offer as set forth in the Purchase Agreement and have concluded that a sale of the Property pursuant to the Purchase Agreement

will result in obtaining maximum value for the Property and is in the best interests of their estates and creditors. In consideration of the foregoing, the Debtors believe that the Purchase Price provides fair and reasonable value for the Property.

C. The Sale is Proposed in Good Faith

21. The Debtors submit that the sale transaction contemplated herein and in the Purchase Agreement has been proposed in good faith, as the agreement was the product of good faith, arm's length negotiations between the Debtors, on the one hand, and the Purchaser, on the other, and was negotiated with the active involvement of the Debtors' officers and professionals. The Debtors believe and submit that the Sale is not the product of collusion or bad faith. Further, no evidence suggests that the Purchase Agreement is anything but the product of arm's length negotiations between the Debtors, the Purchaser and their respective professionals.

D. Adequate and Reasonable Notice of Sale Has Been Provided

22. The Debtors intend to provide adequate notice of the proposed Sale to all parties in interest, as required by the applicable procedural rules. *See* Fed. R. Bankr. P. 2002(c)(1) (notice must contain "the terms and conditions of any private sale and the time fixed for filing objections."); *see also, Delaware & Hudson Ry.*, 124 B.R. at 180 (the disclosures necessary in such a sale notice need only include the terms of the sale and the reasons why such a sale is in the best interests of the estate and do not need to include the functional equivalent of a disclosure statement). The Debtors intend to send copies of this Motion and the Purchase Agreement to all parties that have expressed any interest, or the Debtors believe may have an interest, in purchasing the Property. The notified parties will have the opportunity to submit other offers during the period prior to the objection deadline set forth herein. Consistent with their fiduciary duties to their estates, the Debtors will consider any and all such offers.

E. The Sale Should be Free and Clear of Liens, Claims, and Interests

23. In accordance with section 363(f) of the Bankruptcy Code, a debtor in possession may sell property under section 363(b) “free and clear of any interest in such property of an entity other than the estate” if any one of the following conditions is satisfied: (a) such a sale is permitted under applicable non-bankruptcy law; (b) the party asserting such a lien, claim, or interest consents to such sale; (c) the interest is a lien and the purchase price for the property is greater than the aggregate amount of all liens on the property; (d) the interest is the subject of a bona fide dispute; or (e) the party asserting the lien, claim, or interest could be compelled, in a legal or equitable proceeding, to accept a money satisfaction for such interest. 11 U.S.C. § 363(f).

24. The Debtors believe that their prepetition and postpetition lenders will consent to the Sale pursuant to the terms set forth in the Purchase Agreement and as set forth herein. Furthermore, bankruptcy courts have held that they have the equitable power to authorize sales free and clear of interests that are not specifically covered by section 363(f). *See, e.g., In re Trans World Airlines, Inc.*, 2001 WL 1820325, at *3, 6 (Bankr. D. Del. Mar. 27, 2001); *Volvo White Truck Corp. v. Chambersburg Beverage, Inc. (In re White Motor Credit Corp.)*, 75 B.R. 944, 948 (Bankr. N.D. Ohio 1987). Considering that any remaining objections to this Motion must be resolved by consent of the objecting party or the Court, the Sellers expect that they can satisfy at least the second and fifth subsections of section 363(f).

F. Sale of Purchased Assets and Assignment of Contracts are Proposed in Good Faith

25. The Debtors additionally request the Court to find that the Purchaser be entitled to the protections provided by section 363(m) of the Bankruptcy Code in connection with the Sale. Section 363(m) of the Bankruptcy Code provides, in pertinent part:

The reversal or modification on appeal of an authorization under subsection (b) . . . of this section of a sale . . . of property does not affect the validity of a sale . . . under such authorization to an entity that purchased . . . such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale . . . were stayed pending appeal.

11 U.S.C. § 363(m).

26. Section 363(m) of the Bankruptcy Code thus protects the purchaser of assets sold pursuant to section 363 from the risk that it will lose its interest in the purchased assets if the order allowing the sale is reversed on appeal. By its terms, section 363(m) applies to sales of interests in tangible assets. The Third Circuit has indicated that section 363(m) of the Bankruptcy Code also protects the assignee of a debtor's interest in executory contracts under section 365 of the Bankruptcy Code. *See Krebs Chrysler-Plymouth, Inc. v. Valley Motors, Inc.*, 141 F.3d 490, 497-98 (3rd. Cir. 1998).

27. Although the Bankruptcy Code does not define "good faith purchaser," the Third Circuit, construing section 363(m), has stated that "the phrase encompasses one who purchases in 'good faith' and for 'value'." *Abbotts Dairies*, 788 F.2d at 147. To constitute lack of good faith, a party's conduct in connection with the sale must usually amount to "fraud, collusion between the purchaser and other bidders or the trustee or an attempt to take grossly unfair advantage of other bidders." *Id.* (citing *In re Rock Indus. Mach. Corp.*, 572 F.2d 1195, 1198 (7th Cir. 1978)). See also *In re Bedford Springs Hotel, Inc.*, 99 B.R. 302, 305 (Bankr. W.D. Pa. 1989); *In re Perona Bros., Inc.*, 186 B.R. 833, 839 (D.N.J. 1995). Due to the absence of a bright line test for good faith, the determination is based on the facts of each case, concentrating on the "integrity of [an actor's] conduct during the sale proceedings." *In re Pisces Leasing Corp.*, 66 B.R. 671, 673 (E.D.N.Y. 1986) (quoting *Rock Indus. Machinery Corp.*, 572 F.2d at 1198 (7th Cir. 1978)).

28. As required by section 363(m) of the Bankruptcy Code, both the Debtors and the Purchaser have acted in good faith in negotiating the sale of the Property. There is no evidence of fraud or collusion in the terms of the Purchase Agreement. To the contrary, as previously discussed, the Sale will be the culmination of meaningful negotiations in which the parties were ably represented by sophisticated advisors. The Purchaser is not an insider of the Debtors as that term is defined in section 101(31) of the Bankruptcy Code, and all negotiations have been conducted on an arm's length, good faith basis.

29. All known parties with an interest in the Property will receive notice of the Sale and will be provided an opportunity to be heard. The Debtors submit that such notice is adequate for entry of the Proposed Order and satisfies the requisite notice provisions required under sections 363(b) and 365 of the Bankruptcy Code. Under the circumstances, the Purchaser should be afforded the benefits and protections that section 363(m) provides to a good faith purchaser.

G. Authorizing the Exemption of the Sale Transaction from Stamp and Similar Taxes Is Appropriate

30. Under section 1146(a) of the Bankruptcy Code, the “transfer . . . or the making or delivery of an instrument of transfer under a plan confirmed under section 1129 of this title, may not be taxed under any law imposing a stamp or similar tax.” 11 U.S.C. § 1146(a).³ Courts have broadly construed this provision to include sales and transfers that occur outside the corners of an actual chapter 11 plan of reorganization and before or after confirmation of that chapter 11 plan so long as the sales relate to a debtor's reorganization. *See CCA P'ship v. Dir. of Revenue*, State of Del. (*In re CCA P'ship*), 70 B.R. 696 (Bankr. D. Del. 1987), *aff'd* 72 B.R. 765

³ Prior to the enactment of the Bankruptcy Abuse Prevention Consumer Protection Act (“BAPCPA”) in 2005, section 1146(a) of the Bankruptcy Code was section 1146(c).

(D. Del. 1987), *aff'd*, *Dir. of Revenue. State of Del. v. CCA P'Ship*, 833 F.2d 304 (3d Cir. 1987); See also *City of New York v. Jacoby-Bender, Inc. (In re Jacoby-Bender, Inc.)*, 758 F.2d 840, 842 (2d Cir. 1985) (holding that section 1146(c) of the Bankruptcy Code applied when the “transfer, is necessary to the consummation of a plan”); *In re United Press Int'l, Inc.*, Case No. 91-B-13955 (FSC), 1992 Bankr. LEXIS 842, at *4 (Bankr. S.D.N.Y. May 18, 1992) (section 1146(c) exemption applied to section 363 sale where “value of debtor's assets . . . likely to deteriorate [during] time necessary to . . . confirm a plan”); But see *Baltimore County, Md. v. Hechinger Liquidation Trust (In re Hechinger Inv. Co. of Del., Inc.)*, 335 F.3d 243, 257 (3d Cir. 2003) (holding “that a real estate transaction is made 'under a plan confirmed under section 1129' [of the Bankruptcy Code] only where the sale is authorized by the terms of a previously confirmed Chapter 11 plan”). Notwithstanding the Third Circuits' decision in *Hechinger*, the Third Circuit's approach in *Hechinger*, is generally viewed as too “restrictive [an] interpretation of transfers 'under a plan confirmed.’” *In re Webster Classic Auctions, Inc.*, 318 B.R. 216, 218 (Bankr. M.D. Fla. 2004) (adopting an alternative to the holdings in the Second Circuit on the one hand, and the Third and Fourth Circuits on the other, that the only requirements to receive the safe harbors of § 1146(a) should be (1) a “plan of reorganization specifically contemplating a sale of property, and [(2)] the plan must ultimately be confirmed in order for a debtor to take advantage of § 1146(c)'s safe harbor.” *Id.* at 219.). The court in *Webster Classic Auctions*, found that while the *Hechinger* bright-line interpretation is “appealing in its alleged simplicity, this temporal interpretation largely ignores the practical reality of chapter 11 reorganization cases.” *Id.* at 218. The seeds of a better reasoned approach are found in the Supreme Court's holding in *Florida Dept. of Revenue v. Piccadilly Cafeterias, Inc.*, 128 S.Ct. 2326 (2008).

31. Notwithstanding the Supreme Court's holding that the Bankruptcy Code's stamp-tax exemption does not apply to transfers made before a plan is confirmed under chapter 11, “[t]he Supreme Court did not, however, adopt *Hechinger's* interpretation that 'under a plan confirmed' necessarily meant *authorized* by the plan. Instead, [citing *NVR Homes, Inc. v. Clerks of the Circuit Courts of Anne Arundel County (In re NVR, LP)*, 189 F.3d 442 (4th Cir. 1999)]:. Congress struck a most reasonable balance. If a debtor is able to develop a chapter 11 reorganization and obtain confirmation, then the debtor is to be afforded relief from certain taxation to facilitate the implementation of the reorganization plan. Before a debtor reaches this point, however, the state and local tax systems may not be subjected to federal interference.” *In re New 118th, Inc.*, 398 B.R. 791, 797 (Bankr. S.D.N.Y. 2009) (internal citations omitted). Further, the court in *New 118th, Inc.*, went on to find that the Supreme Court “did not address whether the exemption could apply to a pre-confirmation sale that closed post-confirmation.” *Id.* (finding that “the post-confirmation delivery of the deed, and hence, the transfer, satisfies *Piccadilly's* “simple, bright-line rule). “Furthermore, the Supreme Court's adoption of the *NVR* standard, and by extension, the reasoning of *Jacoby-Bender*, suggests that the § 1146(a) exemption applies to a post-confirmation *transfer* that follows a pre-confirmation sale if the transfer facilitates the implementation of the plan, or in the words of *Jacoby-Bender*, is necessary to the consummation of the plan.”. *New 118th, Inc.*, 398 B.R. at 797 (2009).

32. Here, the Debtors' sale of the Property is an essential element of their reorganization efforts. Moreover, the Debtors have confirmed the Plan prior to consummation of the Sale contemplated by the Purchase Agreement. Therefore, the Sale should be deemed to be “under a plan” for purposes of section 1146(a) of the Bankruptcy Code.

**IV. Relief from Fourteen-Day Waiting Period
Under Bankruptcy Rule 6004(h) Is Appropriate**

33. Bankruptcy Rule 6004(h) provides, in relevant part, that an “order authorizing the use, sale, or lease of property . . . is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” The Debtors request the order approving the Sale to be effective immediately by providing that the ten-day stay period under Bankruptcy Rule 6004(h) is waived.

34. The purpose of Bankruptcy Rule 6004(h) is to provide sufficient time for an objecting party to appeal before an order can be implemented. See Advisory Committee Notes to Fed. R. Bankr. P. 6004(h). Although Bankruptcy Rule 6004(h) and the Advisory Committee Notes are silent as to when a court should “order otherwise” and eliminate or reduce the ten-day stay period, Collier on Bankruptcy suggests that the fourteen-day stay period should be eliminated to allow a sale or other transaction to close immediately “where there has been no objection to the procedure.” 10 Collier on Bankruptcy 15th Ed. Rev., ¶6004.10 (L. King, 15th rev. ed. 1988). Furthermore, Collier’s provides that if an objection is filed and overruled, and the objecting party informs the court of its intent to appeal, the stay may be reduced to the amount of time actually necessary to file such appeal. Id.

35. Promptly closing the Sale is of critical importance to the Purchaser and to the Debtors’ efforts to preserve and maximize the value of their estates through, among other things, the realization of the significant tax savings described at length herein. To obtain maximum value for the Purchased Asset, and to be eligible to receive the tax benefits available under the 2009 Act, the Sale must proceed quickly so that the Purchaser can gain access to the Property as soon as practicable and the Debtors can close the Sale prior to the end of the calendar

year. Accordingly, the Debtors request the Court to waive the fourteen-day stay period under Bankruptcy Rule 6004(h).

NOTICE

36. No trustee or examiner has been appointed in these Chapter 11 Cases. The Debtors have provided notice of 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) any persons who have filed a request for notice in the Chapter 11 Cases pursuant to Bankruptcy Rule 2002; and (e) all parties known to the Debtors who have an interest in or rights to the Property. Debtors also intend to serve the notice of the filing of this Motion on all parties known to the Debtors that have expressed interest in the possible purchase of the Property. Due to the nature of the relief requested, the Debtors respectfully submit that no further notice of this Motion is required.

NO PRIOR REQUEST

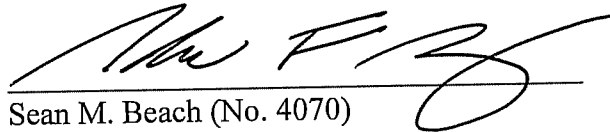
37. No prior request for the relief sought in this Motion has been made to this or any other court.

Remainder of page intentionally left blank

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

Dated: Wilmington, Delaware
December 18, 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
Matthew K. Kelsey
200 Park Ave, 47th Floor
New York, NY 10166-0193
Telephone: 212.351.4000
Facsimile: 212.351.4035

and

Aaron G. York
Jeremy L. Graves
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
	)	Requested Hearing Date: December 30, 2009 at 1:00 p.m. (ET)
	)	Requested Objection Deadline: December 28, 2009 at 10:00 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) All Parties Known to the Debtors Who Have an Interest In or Rights To the Property; 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 105 and 363 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004 and 9014, (I) Authorizing the Private Sale by the Debtors of the Property Free and Clear of Liens, Claims, Encumbrances and Other Interests, (II) Approving the Purchase Agreement and (III) Granting Related Relief** (the “Sale Motion”).

PLEASE TAKE FURTHER NOTICE that the Debtors have filed a motion (the “Motion to Shorten”) requesting that any objections to the relief requested in the Sale Motion be filed with the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801 on or before **December 28, 2009 at 10:00 a.m. (ET)** (the “Objection Deadline”). You must also serve a copy of any objection upon the undersigned counsel to the Debtors so as to be received on or before the Objection Deadline.

PLEASE TAKE FURTHER NOTICE THAT PURSUANT TO THE MOTION TO SHORTEN, THE DEBTORS HAVE REQUESTED THAT A HEARING TO CONSIDER THE SALE MOTION BE HELD ON DECEMBER 30, 2009 AT 1:00 P.M. (ET) BEFORE THE HONORABLE KEVIN J. CAREY AT THE UNITED STATES BANKRUPTCY COURT

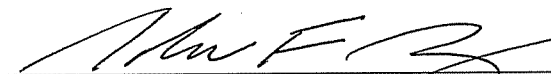
¹ The Debtors, along with the last four digits of each Debtor's tax identification number, are as follows: Building Materials Holding Corporation (4269), BMC West Corporation (0454), SelectBuild Construction, Inc. (1340), SelectBuild Northern California, Inc. (7579), Illinois Framing, Inc. (4451), C 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.

FOR THE DISTRICT OF DELAWARE, 824 NORTH MARKET STREET, 5TH FLOOR,
COURTROOM NO. 5, WILMINGTON, DELAWARE 19801.

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

Dated: Wilmington, Delaware
December 18, 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

“Purchase Agreement”), by and between Building Materials Holding Corporation (the “Seller”) and the Purchaser, a copy of which is attached hereto as Exhibit 1, (ii) authorizing and approving the terms of the Purchase Agreement and (iii) granting certain related relief; and a hearing (the “Hearing”) on the Motion and the Sale contemplated therein having been held before the Court on December 30, 2009; and it appearing from the affidavit of service filed with the Court and from the record that due and sufficient notice of the Motion, the Hearing, and the relief sought in connection therewith having been provided to all parties in interest; and it further appearing that no other or further notice hereof is required; and this Court having reviewed and considered the Motion and objections thereto; and this Court having heard statements of counsel and the evidence presented at the Hearing in support of the relief requested in the Motion; and it appearing that the relief requested in the Motion is in the best interest of the Debtors’ estates, their creditors, and other parties in interest; and it further appearing that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and after due deliberation and sufficient cause therefore, it is hereby

THE COURT HEREBY FINDS THAT:³

Jurisdiction, Final Order and Statutory Predicates

A. This Court has jurisdiction to hear and determine the Motion and to grant the relief requested in the Motion pursuant to 28 U.S.C. §§ 157(b)(1) and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N) and (O). Venue is proper in this District and in this Court pursuant to 28 U.S.C. §§ 1409 and 1409. The statutory predicates for the relief sought in the Motion are sections 105(a) and 363 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004 and 9014.

³ Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate pursuant to Rule 7052 of the Bankruptcy Rules.

B. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. §158(a). Notwithstanding Bankruptcy Rules 6004(h), 6006(d) and 7062, this Court expressly finds that there is no just reason for delay in the implementation of this Order, and expressly directs entry of judgment as set forth herein.

C. The Property constitute property of the Debtors' estates and title thereto is vested in the Debtors' estates within the meaning of section 541(a) of the Bankruptcy Code.

Corporate Authority

D. The Seller has have full corporate power and authority to execute and deliver the Purchase Agreement and all other documents contemplated thereby and to consummate the Sale. The Sale has been duly and validly authorized by all necessary corporate actions of the Seller and the other Debtors. No consents or approvals other than the authorization and approval of this Court or those that have previously been obtained are required for the Seller or the other Debtors party to any of the documents executed in connection with the Purchase Agreement to consummate the Sale.

Notice of Hearing

E. As evidenced by the affidavits of service previously filed with this Court and the record herein and based on the representations of counsel at the Hearing, due, proper, timely, adequate, and sufficient notice of the Motion, the Sale and the Hearing have been provided as set forth in the Motion. Such notice constitutes good and sufficient notice of the Motion, the Sale and the Hearing and no other or further notice of the Motion, the Sale and the Hearing is or shall be required.

F. Notice has been provided to, and a reasonable opportunity to object or to be heard regarding the Motion, the Sale and the Hearing has been afforded to, all interested persons and

entities, including, among others: (i) all parties known to the Debtors that have expressed interest in the possible purchase of the Property; (ii) the Office of the United States Trustee for the District of Delaware; (iii) counsel to the agent for the prepetition first lien secured lenders; (iv) counsel to the agent under the Debtors' postpetition debtor in possession financing; (v) all parties that have requested or are entitled to receive notice as of the date of service pursuant to Bankruptcy Rule 2002; (vi) all parties known to the Debtors who have an interest in or rights to the Property; (vii) all taxing authorities having jurisdiction over any of the Property, including the Internal Revenue Service; and (viii) the Attorney(s) General in the State(s) where the Property is located.

Sound Business Judgment

G. The Debtors have articulated good and sufficient reasons for this Court to grant the relief requested in the Motion regarding the Sale, the approval of the Purchase Agreement and all other matters related to the Sale and/or the Motion. The relief requested in the Motion is within the reasonable business judgment of the Debtors, and is in the best interests of the Debtors, their estates and creditors and other parties in interest. The disclosures made by the Debtors concerning the Purchase Agreement, the Motion, the Sale and the Hearing were good, complete and adequate.

H. The Debtors have demonstrated good, sufficient, and sound business purpose and justification and compelling circumstances for entry into the Purchase Agreement and the consummation of the Sale pursuant to section 363(b) of the Bankruptcy Code, in that the immediate consummation of the Sale to the Purchaser is necessary and appropriate to maximize the value to the Debtors' estates and thereby are in the best interests of the Debtors, their creditors, and other parties in interest, and the payment of all costs related to the foregoing.

Good Faith of Purchaser

I. The Purchaser is not an "insider" of any of the Debtors, as that term is defined in section 101(31) of the Bankruptcy Code. The Purchase Agreement was negotiated, proposed, and entered into by the Seller and the Purchaser without collusion, in good faith, from arm's length bargaining positions and is substantively and procedurally fair to all parties. The Seller and the Purchaser thoroughly negotiated the terms and conditions of the Purchase Agreement in good faith and the Purchaser has entered into the Purchase Agreement in good faith and is a good faith Purchaser within the meaning of section 363(m) of the Bankruptcy Code and, therefore, is entitled to the protections and immunities afforded thereby. Neither the Debtors nor the Purchaser have engaged in any conduct that would prevent the application of section 363(m) of the Bankruptcy Code or cause the application of, or implicate, section 363(n) of the Bankruptcy Code to the Purchase Agreement, or to otherwise prevent the consummation of the Sale. In the absence of a stay pending appeal, the Purchaser will be acting in good faith within the meaning of section 363(m) of the Bankruptcy Code in closing the transactions set forth in the Purchase Agreement at any time after entry of this Order.

Highest and Best Offer

J. In part because of certain tax benefits which the Debtors shall receive on account of an expedited Sale, the offer of the Purchaser, upon the terms and conditions set forth in the Purchase Agreement, including without limitation, the form and total consideration to be realized by the Debtors: (i) is the highest or otherwise best offer received by the Debtors with respect to the Property to be purchased thereunder; (ii) is fair and reasonable; (iii) is in the best interest of the Debtors, their estates and creditors; and (iv) constitutes full, fair, and adequate consideration

and reasonably equivalent value for the Property to be purchased under the Bankruptcy Code and under the laws of the United States, any state, territory, or possession.

No Fraudulent Transfer

K. The consideration for the Property constitutes: (i) reasonably equivalent value under the Bankruptcy Code and the Uniform Fraudulent Transfer Act; (ii) fair consideration under the Uniform Fraudulent Conveyance Act; and (iii) reasonably equivalent value, fair consideration, and fair value under any other applicable laws of the United States, any state, territory, or possession.

L. Except as expressly set forth in the Purchase Agreement, the Purchaser shall not have any liability or obligations for any lien, claim, encumbrance, or interest, or other obligation of or against the Debtors, related to the Property by reason of the transfer of the Property to the Purchaser. The Purchaser shall not be deemed, as a result of any action taken in connection with the purchase of the Property to: (i) be a successor (or other such similarly situated party) to the Debtors; or (ii) have, de facto or otherwise, merged with or into the Debtors. The Purchaser is not acquiring or assuming any liability, warranty, or other obligation of the Debtors, except as expressly provided for under the Purchase Agreement.

Validity and Free and Clear Nature of Transfers

M. The transfer of the Property to the Purchaser pursuant to the Purchase Agreement will be, as of the closing of the Sale (the "Closing Date"), a legal, valid, and effective transfer of good and marketable title of such property and assets and vests, or will vest, the Purchaser with all right, title, and interest of the Seller to the Property, free and clear of all liens, claims, encumbrances, and interests of any kind or nature, on an "as is, where is" basis, as set forth in the Purchase Agreement, arising or relating thereto at any time prior to the Closing Date, except as

otherwise provided for under the Purchase Agreement, because one or more of the standards set forth in section 363(f) of the Bankruptcy Code have been satisfied.

N. The Purchaser would not have entered into the Purchase Agreement and would not consummate the transactions contemplated thereby if the sale of the Property to the Purchaser, was not free and clear of all liens, claims, encumbrances, and interests of any kind or nature whatsoever, except as otherwise provided for under the Purchase Agreement, or if the Purchaser would, or in the future could, be liable for any of such liens, claims, encumbrances, and interests.

O. The Seller may sell the Property free and clear of all liens, claims, encumbrances, and interests, except as otherwise provided for under the Purchase Agreement, because, in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Those non-Debtor parties with interests in the Property which did not object, or which withdrew their objections, to the Sale or the Motion are deemed to have consented to the Sale pursuant to sections 363(f)(2) and 365 of the Bankruptcy Code. Those non-Debtor parties with interests in the Property which did object fall within one or more of the other subsections of sections 363(f) and 365 of the Bankruptcy Code, and such objections are expressly overruled. Accordingly, all persons having such liens, claims, encumbrances, and interests of any kind or nature whatsoever against or in any of the Property, except as otherwise provided for under the Purchase Agreement, shall be forever barred, estopped, and permanently enjoined from pursuing or asserting such liens, claims, encumbrances, and interests against the Purchaser or any of its respective assets, property, successors, or assigns.

P. Except as otherwise provided for under the Purchase Agreement, the transfer of the Property to the Purchaser will not subject the Purchaser to any liability for claims against the

Debtors by reason of such transfers under the laws of the United States, any state, territory, or possession thereof, including, without limitation, claims relating to the operation of the Debtors' business.

Q. The Sale, this Order and the Purchase Agreement are being implemented and authorized under the Plan, and the Debtors have demonstrated (i) good, sufficient, and sound business purposes and justifications and (ii) compelling circumstances for the Sale pursuant to section 363(b) of the Bankruptcy Code in that, among other things, absent the Sale the value of the Debtors' estates will be harmed.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

General Provisions

1. The Motion is granted and approved, and the Sale contemplated thereby and by the Purchase Agreement is approved.

2. Any and all objections to the Motion or the relief requested therein that have not been withdrawn, waived, or settled, and all reservations of rights included therein, are hereby overruled on the merits.

Approval of the Purchase Agreement

3. The Purchase Agreement and all other ancillary documents and all of the terms and conditions thereof are hereby approved.

4. The consideration provided by the Purchaser for the Property under the Purchase Agreement is fair and reasonable and shall be deemed for all purposes to constitute value under the Bankruptcy Code or any other applicable law, and the Sale may not be avoided, or costs or damages imposed or awarded, under section 363(n) of the Bankruptcy Code, or any other provision of the Bankruptcy Code.

5. Pursuant to sections 363(b) and (f) of the Bankruptcy Code, the Seller is authorized and empowered to take any and all actions necessary or appropriate to:

(a) consummate the Sale of the Property to the Purchaser pursuant to, and in accordance with, the terms and conditions of the Purchase Agreement; (b) close the Sale as contemplated in the Purchase Agreement and this Order and to pay, without further Order of this Court, all costs and commissions due and owing by the Debtors relating to the Sale, including, without limitation, the brokerage commissions provided for in the Purchase Agreement; and (c) execute and deliver, perform under, consummate, implement, and close fully the Purchase Agreement, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Purchase Agreement and the Sale, all without further order of this Court.

6. The terms and provisions of this Order shall be binding in all respects upon the Debtors, their estates, all creditors, officers, directors, advisors, members, managers, and all holders of equity in the Debtors, all holders of any claim(s) (whether known or unknown) against the Debtors, any holders of liens, claims, encumbrances, or interest against or on all or any portion of the Property, the Purchaser, and all successors and assigns of the Purchaser, and any trustees, if any, subsequently appointed in the Chapter 11 Cases or upon a conversion to chapter 7 under the Bankruptcy Code of the Chapter 11 Cases.

Transfer of Property

7. Pursuant to sections 105(a), 363(b), and 363(f) of the Bankruptcy Code, the Debtors are authorized to transfer the Property to the Purchaser in accordance with the terms of the Purchase Agreement and, upon consummation of the transaction contemplated by the Current Purchase Agreement, the Property shall be transferred to the Purchaser on an “as is, where is” basis as provided for under the Purchase Agreement and free and clear of any liens, claims,

encumbrances, and interests, except as otherwise provide for under the Purchase Agreement. The transfer of the Property to the Purchaser pursuant to the Purchase Agreement constitutes a legal, valid, and effective transfer of good and marketable title of the Property, and vests or will vest the Purchaser with all right, title, and interest to the Property, free and clear of all liens, claims, encumbrances, and interests, except as otherwise provided for under the Purchase Agreement, whether arising prior to or subsequent to the Petition Date and whether imposed by agreement, law, equity, or otherwise.

8. Except as expressly permitted or otherwise specifically provided in the Purchase Agreement or this Order, all persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax, and regulatory authorities, lenders, trade and other creditors holding liens, claims, encumbrances, or interests against or in the Debtors or the Property (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or noncontingent, senior or subordinated) arising under or out of, in connection with, or in any way relating to, the Property, the operation of the Seller's business prior to the Closing Date or the sale of the Property to the Purchaser hereby are forever barred, estopped, and permanently enjoined from asserting against the Purchaser or its respective successors or assigns, its property or the Property, such respective liens, claims, encumbrances, or interests.

9. Upon consummation of the transaction set forth in the Purchase Agreement, the Purchaser shall be authorized to file termination statements or lien terminations in any required jurisdiction to remove any record, notice filing, or financing statement recorded to attach, perfect, or otherwise notice any lien or encumbrance that is extinguished or otherwise released pursuant to this Order under section 363 of the Bankruptcy Code and any other related provision of the Bankruptcy Code. This Order shall be effective as a determination that, except as

otherwise provided for under the Purchase Agreement, at the Closing Date, all liens, claims, encumbrances, and interests of any kind or nature whatsoever existing as to the Property prior to the Closing Date have been unconditionally released, discharged, and terminated, and the conveyances described herein have been effected, with such liens, claims, encumbrances, and interests attaching to the proceeds of the Sale, and shall be binding upon and shall govern the acts of all entities, including without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to insure any title or state of title in or to any of the Property. Each and every federal, state, and local governmental agency or department is hereby authorized to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Purchase Agreement.

10. If any person or entity that has filed financing statements or other documents or agreements evidencing liens, claims, encumbrances, and interests in all or any portion of the Property shall not have delivered to the Debtors prior to the Closing Date, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, or releases of all liens, claims, encumbrances, and interests which the person or entity has or may assert with respect to all or any portion of the Property, the Purchaser is hereby authorized to execute and file such statements, releases, and other documents on behalf of such person or entity or otherwise record a certified copy of this Order, which shall constitute conclusive

evidence of the release of all liens, claims, encumbrances, and interests against or in the Property.

11. Upon this Order becoming final, all persons and entities are hereby forever prohibited and enjoined from taking any actions that would adversely affect or interfere with the ability of the Seller to sell and transfer the Property to the Purchaser in accordance with the terms of the Purchase Agreement and this Order.

Additional Provisions

12. The automatic stay provisions of section 362 of the Bankruptcy Code are vacated and modified to the extent necessary to implement the terms of the Purchase Agreement. All persons or entities that are presently, or on the Closing Date may be, in possession of a portion or all of the Property are hereby directed to surrender possession of the Property to the Purchaser on the Closing Date.

13. The transactions contemplated by the Purchase Agreement are undertaken by the Purchaser without collusion and in good faith, as that term is defined in section 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorization provided herein to consummation the Sale shall not affect the validity of the sale to the Purchaser, unless such authorization and consummation of such Sale are duly stayed pending such appeal. The Purchaser is a good faith purchaser of the Property within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to all of the protections afforded by section 363(m) of the Bankruptcy Code.

14. The consideration provided by the Purchaser for the Property under the Purchase Agreement is fair and reasonable and may not be avoided under section 363(n) of the Bankruptcy Code. Each and every person or entity is hereby barred, estopped, and permanently

enjoined from commencing or continuing an action seeking relief under section 363(n) of the Bankruptcy Code.

15. Other than with respect to the Plan, nothing contained in any plan of reorganization or liquidation, or order of any type or kind entered in the Chapter 11 Cases, any subsequent chapter 7 case into which any of the Chapter 11 Cases may be converted, or any related proceeding subsequent to entry of this Order shall conflict with or derogate from the provisions of the Purchase Agreement or the terms of this Order.

16. The failure specifically to include any particular provision of the Purchase Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of this Court that the Purchase Agreement be authorized and approved in their entirety.

17. The Purchase Agreement and any related agreements, documents, or other instruments may be modified, amended, or supplemented by the parties thereto, in a writing signed by such parties, and in accordance with the terms thereof, without further order of the Court, provided that such modification, amendment, or supplement does not have a material adverse effect on the Seller's estate.

18. The Debtors are authorized to make and/or obtain such modifications, amendments, or waivers of the Debtors' postpetition debtor in possession financing facility as the Debtors' deem appropriate in order to effectuate the Sale and the transactions contemplated by the Purchase Agreement.

19. Pursuant to Rules 6004(h) and 7062, to the extent applicable, the Court finds that there is no reason for delay in the implementation of this Order and this Order shall be effective immediately upon entry and the Sellers and the Purchaser are authorized to close the Sale immediately upon entry of this Order.

20. This Court shall retain jurisdiction to, among other things, interpret, implement, and enforce the terms and provisions of this Order and the Purchase Agreement, and all amendments thereto, and any waivers and consents thereunder, and of each of the documents or agreements executed in connection therewith in all respects, including, but not limited to (a) retaining jurisdiction to resolve any disputes arising under or related to the Purchase Agreement and (b) adjudicate all issues concerning any liens, claims, encumbrances, or interests alleged in and to the Property.

21. The making or delivery of an instrument of transfer pursuant to the Sale, this Order and the Purchase Agreement are being implemented and authorized under the confirmed Plan and, pursuant to 1146(a) of the Bankruptcy Code, may not be taxed under any law imposing a stamp tax or similar tax.

22. The provisions of this Order are non-severable and mutually dependent.

Dated: Wilmington, Delaware
December ____, 2009

Kevin J. Carey
Chief United States Bankruptcy Judge

EXHIBIT 1

Purchase Agreement

REAL ESTATE PURCHASE AND SALE AGREEMENT

This Real Estate Purchase and Sale Agreement, together with all exhibits and other documents made a part hereof (collectively, the "Agreement"), dated as of December 14, 2009 (the "Effective Date"), is made by and between Building Materials Holding Corporation, a Delaware corporation (the "Seller"), and BBS Investments LLC, a[n] _____ (collectively, the "Buyer").

RECITALS

WHEREAS, Seller is the owner of real property located at 7777 N. 70th Avenue, Glendale, Arizona 85303, City of Glendale, County of Maricopa, State of Arizona, which consists of an approximately Thirty-Nine Thousand (39,000) square foot building and approximately Ten and Twenty-Three One-Hundredths (10.23) acres of land and which is more particularly described in Exhibit A attached hereto (the "Property")

WHEREAS, Buyer desires to purchase and Seller desires to sell the Property on the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, for and in consideration of the purchase price hereinafter set forth, and the mutual covenants and agreements of the parties, the parties covenant and agree as follows:

1. **Property to be Conveyed.** Seller shall sell and Buyer shall purchase the Property together with the following: (i) all easements, rights-of-way and other rights and benefits running with the Property, if any, which are owned by Seller and which are appurtenant to the Property and (ii) all buildings, structures, fixtures and other improvements located on the Property

2. **Purchase Price; Terms and Conditions.** The total purchase price ("Purchase Price") for the Property shall be Two Million Nine Hundred Thousand Dollars and No/100ths (\$ 2,900,000.00)

2.1 **Escrow Money Deposit.** Upon the execution of this Agreement by the Buyer and Seller, the Buyer will deposit earnest money in the amount of One Hundred Thousand Dollars and No/100ths (\$100,000.00) to be held in an interest bearing account by First American Title Company, 2425 Camelback Road, Suite 300, Phoenix, AZ 85016, Attention: Neil Moffett (the "Closing Agent"). The Earnest Money Deposit shall be non-refundable, unless otherwise provided herein. In the event the transaction proposed by this Agreement does close, the Earnest Money Deposit will be applied to the Purchase Price

3. **Conveyance of Title** Title to the Property shall be conveyed by a special warranty deed (the "Deed").

4. **Title Commitment; Title Policy.** Seller shall cause to be delivered to Buyer or Buyer's agent, a commitment for an owner's ALTA title insurance policy (the "Title Commitment") issued by First American Title Company (the "Title Company"). On the Closing Date (defined below), or as soon as practical after the Closing Date, Seller shall cause the Title Company to issue an owner's ALTA title insurance policy issued in the amount of the Purchase Price, insuring title to the Property in Buyer (the "Title Policy").

5. **Bankruptcy Court Approval** The Closing of the transaction contemplated by the Agreement shall be conditioned on Seller obtaining approval from the Bankruptcy Court *In re. Building Materials Holding Corporation, et al*, case no. 09-12074 and related proceedings.

6. **Seller Deliveries** Within five (5) days of the Effective Date, Seller shall deliver to Buyer or Buyer's Broker (defined below), copies of any surveys, environmental reports, drawings and plans concerning the Property in Seller's possession

7. **Disclaimer of Warranties and Covenants.**

7.1 EXCEPT AS OTHERWISE SPECIFICALLY STATED IN THIS CONTRACT, SELLER HEREBY SPECIFICALLY DISCLAIMS ANY WARRANTY, GUARANTY OR REPRESENTATION, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, OR CONCERNING (i) THE NATURE AND CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL AND GEOLOGY, AND THE SUITABILITY THEREOF AND OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH BUYER MAY ELECT TO CONDUCT THEREON, AND THE EXISTENCE OF ANY ENVIRONMENTAL HAZARDS OR CONDITIONS THEREON (INCLUDING THE PRESENCE OF ASBESTOS) OR COMPLIANCE WITH ALL APPLICABLE LAWS, RULES OR REGULATIONS; (ii) THE NATURE AND EXTENT OF ANY RIGHT-OF-WAY, LEASE, POSSESSION, LIEN, ENCUMBRANCE, LICENSE, RESERVATION, CONDITION OR OTHERWISE; (iii) THE VALUE, COMPLIANCE WITH THE PLANS AND SPECIFICATIONS, SIZE, LOCATION, AGE, USE, DESIGN, QUALITY, DESCRIPTIONS, SUITABILITY, STRUCTURAL INTEGRITY, OPERATION, TITLE TO, OR PHYSICAL OR FINANCIAL CONDITION OF THE IMPROVEMENTS OR ANY OTHER PORTION OF THE PROPERTY, AND (iv) THE COMPLIANCE OF THE PROPERTY OR ITS OPERATION WITH ANY LAWS, ORDINANCES OR REGULATIONS OF ANY GOVERNMENT OR OTHER BODY. BUYER ACKNOWLEDGES THAT IT WILL INSPECT THE PROPERTY AND BUYER WILL RELY SOLELY ON ITS OWN INVESTIGATION OF THE PROPERTY AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY SELLER. BUYER FURTHER ACKNOWLEDGES THAT THE INFORMATION PROVIDED AND TO BE PROVIDED WITH RESPECT TO THE PROPERTY WAS OBTAINED FROM A VARIETY OF SOURCES AND SELLER (i) HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION; AND (ii) DOES NOT MAKE ANY REPRESENTATIONS AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION. BUYER EXPRESSLY ACKNOWLEDGES THAT, IN CONSIDERATION OF THE AGREEMENTS OF SELLER HEREIN, EXCEPT AS OTHERWISE SPECIFIED HEREIN, SELLER MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW,

INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF CONDITION, HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, IN RESPECT OF THE PROPERTY. BUYER ACKNOWLEDGES AND AGREES THAT THE PROVISIONS OF THIS PARAGRAPH 7 WERE A MATERIAL FACTOR IN THE DETERMINATION OF THE PURCHASE PRICE FOR THE PROPERTY.

7.2 Except as otherwise specifically stated in this Agreement, Buyer agrees that Seller shall not be responsible or liable to Buyer for any conditions affecting the Property, as Buyer is purchasing the Property AS-IS, WHERE-IS, and WITH ALL FAULTS. Buyer or anyone claiming, by, through or under Buyer, hereby fully releases Seller, its officers, directors, employees, representatives and agents for any cost, loss, liability, damage, expense, demand, action or cause of action arising from or related to conditions affecting the Property. Buyer further acknowledges and agrees that this Agreement shall be given full force and effect according to each of its expressed terms and provisions, including, but not limited to, those relating to unknown and suspected claims, damages and causes of action. This covenant releasing Seller shall be a covenant running with the Property and shall be binding upon Buyer.

7.3 Survival The foregoing provisions of this Article 8, including the waivers and releases by Buyer, shall survive the Closing and the recordation of the Deed, and shall not be deemed merged into the Deed or other documents and instruments delivered at Closing.

8. Closing

8.1 Time for Closing. The closing of the transaction herein contemplated (the "Closing") shall take place on or before December 28, 2009 (the "Closing Date") at the offices of the Closing Agent. On or before the Closing Date, Buyer and Seller shall deposit in escrow with Closing Agent all instruments, documents and monies necessary to complete the transaction herein contemplated in accordance with this Agreement. As of the Closing Date, all appropriate documents shall be recorded and the sale proceeds shall be disbursed to Seller. The Buyer and Seller may extend the Closing Date by a written agreement.

8.2 Prorations; Closing Costs. All real estate taxes and assessments (if any) attributable to the Property will be prorated at Closing. Seller will pay all such taxes attributable to any period prior to the Closing Date. Buyer will pay (i) one-half of Closing Agent's closing fee; (ii) the costs of any endorsements to the Title Policy; (iii) the cost of recording the Deed (including the state documentary fee); (iv) all costs incurred by Buyer in connection with Buyer's investigations of the Property; and (v) Buyer's attorneys' fees. Seller will pay (i) one-half of Closing Agent's closing fee; (ii) Title Company's premium for the Title Policy, excluding the costs of any endorsements thereto; and (iii) Seller's attorneys' fees.

8.3 Possession. Buyer shall be entitled to possession of the Property as of the Closing Date.

8.4 Closing Deliveries of Seller. On or before the Closing Date, Seller shall have executed, or caused to be executed, and delivered to the Closing Agent the following documents, if required by this transaction, in a form reasonably acceptable to Buyer and Seller:

- (a) the Deed;
- (b) an affidavit of Seller that evidences it is exempt from the withholding requirements of Section 1445 of the Internal Revenue Code of 1986, as amended; and
- (c) any instruments, records or correspondence called for hereunder which have not previously been delivered.

8.5 Closing Deliveries of Buyer. On or before the Closing Date, Buyer shall have executed, or caused to be executed, and delivered to the Closing Agent the following documents, if required by this transaction, in a form reasonably acceptable to Buyer and Seller:

- (a) the balance of the Purchase Price, as adjusted for pro ratas and costs as provided herein; and,
- (b) any instruments, records or correspondence called for hereunder which have not previously been delivered

8.6 Removal of Seller's Personal Property Seller shall have thirty (30) days from the Closing Date to remove Seller's boxes and other personal property from the Property and Buyer hereby agrees to provide Seller access to remove such items

9. Remedies.

9.1 Seller's Default. In the event that Seller fails to perform any of the material covenants or agreements contained herein which are to be performed by Seller, which failure is not cured within ten (10) days after Buyer's written notice, Buyer may, at its option, (i) terminate this Agreement by giving written notice of termination to Seller whereupon Closing Agent will return the Earnest Money Deposit to Buyer, and Buyer and Seller will be relieved of any further obligations or liabilities hereunder; or (ii) seek specific performance of this Agreement.

9.2 Buyer's Default. In the event that Buyer fails to perform any of the material covenants or agreements contained herein which are to be performed by Buyer, which failure is not cured within ten (10) days after Seller's written notice, Seller may terminate this Agreement by giving written notice of termination to Buyer whereupon Closing Agent will pay the Earnest Money Deposit to Seller and Seller may pursue all other remedies available to Seller under California law.

9.3 Buyer and Seller hereby waive a right to a jury trial for any claims arising out of this Agreement

10. **Attorneys Fees** If a suit, action, or other proceeding arising out of or related to this Agreement is instituted by any party to this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees, expert witness fees, and costs (a) incurred in any settlement negotiations, (b) incurred in preparing for, prosecuting, or defending any suit, action, or other proceeding, and (c) incurred in preparing for, prosecuting or defending any appeal or any suit, action, or other proceeding. This section shall survive Closing and shall survive and remain enforceable notwithstanding any rescission of this Agreement or any determination by a court of competent jurisdiction that all or any portion of the remainder of this Agreement is void, illegal, or against public policy.

11. **Notices** Any notice from Seller to Buyer, or from Buyer to Seller, except where otherwise specifically provided, shall be deemed served effective: (i) upon delivery, if personally delivered, (ii) upon delivery to Federal Express or other similar courier service, marked for next day delivery, addressed as set forth below, (iii) upon receipt if sent by registered or certified mail, return receipt requested, addressed as set forth below, or (iv) upon being sent by facsimile transmission, provided an original is mailed the same day by registered or certified mail, return receipt requested, addressed as set forth below. The notice addresses of the parties are:

If to Buyer: RBS Investments LLC
5123 E Calle Del Norte
Phx, AZ 85018

And: Marshmore Properties LLC
22822 N. 19th Ave
Phx, AZ 85027

With a copy to: _____

If to Seller: Paul Street
Senior Vice President, Chief Administrative
Officer, General Counsel and
Corporate Secretary
Building Materials Holding Corporation
720 Park Boulevard, Suite 200
P.O. Box 700006
Boise, ID 83707

And: _____

12. **Counterparts** This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single instrument, and shall be

effective upon execution of one or more of such counterparts by each of the parties hereto. Signature pages may be detached from individual counterparts and attached to a single or multiple original(s) in order to form a single or multiple original(s) of this Agreement.

13. **Risk of Loss.** Seller shall bear the risk of loss, condemnation, damage or destruction on or before the Closing Date. In the event of any loss or damage to all or any part of the Property, the Buyer shall have the right to (i) terminate this Agreement, in which event the Earnest Money Deposit shall be refunded to the Buyer and each party shall be fully released and discharged from any further obligations under this Agreement, or (ii) close the purchase of the Property and elect to receive all insurance proceeds paid or payable by reason of the loss or damage, or any proceeds received from any governmental entity in the case of a condemnation.

14. **General.** This is the entire agreement of Buyer and Seller with respect to the matters covered hereby and supersedes all prior agreements between them, written or oral. This Agreement may be modified only in writing, signed by Buyer and Seller. Any waivers hereunder must be in writing. No waiver of any right or remedy in the event of default hereunder shall constitute a waiver of such right or remedy in the event of any subsequent default. This Agreement shall be governed by the laws of the state of California. This Agreement is for the benefit only of the parties hereto and shall inure to the benefit of and bind the heirs, personal representatives, successors and assigns of the parties hereto. If any provision of this Agreement, or the application thereof to any person, place or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable or void, the remainder of this Agreement and such provisions as applied to other persons, places and circumstances shall remain in full force and effect.

15. **Time.** Time is of the essence in this Agreement.

16. **Time Calculation, Weekends and Holidays.** In computing any period of time set forth in this Agreement, the day of the act, event, or notice after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless the last day shall fall on a Saturday, Sunday or federal, state or local holiday, in which case, such act, event or notice shall be deemed timely if performed or given on the next succeeding day that is not a Saturday, Sunday or federal, state or local holiday.

17. **Exhibit.** Exhibit A is attached hereto and incorporated herein as if fully set forth.

18. **Liquidated Damages.** SELLER AND BUYER AGREE THAT IF THIS AGREEMENT IS NOT CONSUMMATED BECAUSE OF BUYER'S DEFAULT, IT WOULD BE EXTREMELY DIFFICULT AND IMPRACTICAL TO ASCERTAIN THE EXTENT OF THE DETRIMENT TO SELLER. THE PARTIES HAVE DETERMINED AND AGREED THAT THE ACTUAL AMOUNT OF DAMAGES THAT WOULD BE SUFFERED BY SELLER AS A RESULT OF ANY SUCH DEFAULT IS DIFFICULT OR IMPRACTICAL TO DETERMINE AS OF THE DATE OF THIS AGREEMENT AND THAT THE DEPOSIT AND ANY ESCROW INTEREST IS A REASONABLE ESTIMATE OF THE AMOUNT OF SUCH DAMAGES. FOR THESE REASONS, THE PARTIES AGREE THAT IF THIS PURCHASE AND SALE OF REAL PROPERTY IS NOT CONSUMMATED BECAUSE OF BUYER'S DEFAULT, SELLER SHALL RECEIVE AND IF PREVIOUSLY RELEASED TO SELLER,

SELLER SHALL RETAIN ANY DEPOSIT AND ANY ESCROW INTEREST

Seller _____

Buyer BN

19. **Brokerage Commissions.** The Parties acknowledge that the Buyer is represented by Eric Bell and the Seller is represented by Marcus Muirhead and Kim Soule of Colliers International Buyer's Broker and Seller's Broker shall split the Brokerage Fee equally At close of escrow, subject to approval of such brokerage fees from the Bankruptcy Court as described in Section 9 above, a brokerage fee equal to Six percent (6%) of the total purchase price shall be paid out of escrow, with Three percent (3 0%) paid to the Buyer's Broker and Three percent (3 0%) paid to the Seller's Broker

EXECUTED by the parties as set forth below to be effective as of the first date above written:

BUYER:

B. Auel
Member

SELLER: Building Materials Holding Corporation, a Delaware corporation

By: E. Fium
Name: Eric Fium
Its: V.P. Controller
12/15/2009

EXHIBIT A
Legal Description

**FIRST AMENDMENT
TO REAL ESTATE PURCHASE AND SALE AGREEMENT**

THIS FIRST AMENDMENT TO REAL ESTATE PURCHASE AND SALE AGREEMENT ("First Amendment") is made this 15th day of December, 2009, between Building Materials Holding Corporation, a Delaware corporation (the "Seller") and RBS Investments, LLC, an Arizona limited liability company (the "Buyer");

WHEREAS, Seller and Purchaser are parties to that certain Real Estate Purchase and Sale Agreement dated December 14, 2009 (hereinafter referred to as "Agreement"); and

WHEREAS, Seller and Buyer desire to amend certain sections of the Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and promises exchanged herein and other good and valuable consideration, the adequacy of which is hereby acknowledged, Seller and Buyer hereby agree to the following:

- 1 Section 2 1 of the Agreement shall be deleted and replaced in its entirety with the following:

"2.1 Escrow Money Deposit Upon the execution of this Agreement by the Buyer and Seller, the Buyer will deposit earnest money in the amount of One Hundred Thousand Dollars and No/100ths (\$100,000.00) (the "Earnest Money Deposit") to be held in an interest bearing account by First American Title Company, 2425 Camelback Road, Suite 300, Phoenix, Arizona 85016, Attention: Neal Moffett (the "Closing Agent"). The Earnest Money Deposit shall be non-refundable, unless otherwise provided herein. In the event Seller is unable to deliver title to the Property to Buyer and the Title Policy referred to in Section 4, below, or the Bankruptcy Court does not approve the transaction as contemplated in Section 5 below, the Earnest Money Deposit shall be refunded to Buyer and this Agreement shall be cancelled. At Closing, the Earnest Money Deposit shall be applied to the Purchase Price."

2. Section 19 of the Agreement shall be deleted and replaced in its entirety with the following:

"19. Brokerage Commissions. The Parties acknowledge that the Buyer is represented by Eric Bell of Colliers International, and the Seller is represented by Marcus Muirhead and Kim Soule of Colliers International. At close of escrow, subject to approval of such brokerage fees from the Bankruptcy Court as described in Section 9 above, a brokerage fee equal to Six percent (6%) of the total purchase price shall be paid out of escrow, with Two and Five-Tenths percent (2.5%) of such brokerage fee paid to the Buyer's Broker and Three and Five-Tenths percent (3.5%) of such brokerage fee paid to the Seller's Broker."

Defined Terms. Any capitalized terms not expressly defined in this Amendment shall have the meaning ascribed to them in the Agreement.

Binding Effect. The Agreement, as amended by this Amendment, shall continue in full force and effect subject to the terms and conditions of this Amendment. This Amendment shall bind and inure to the benefit of the Seller and Buyer and their respective successors and permitted assigns. In the event of any conflict between the terms, covenants and conditions of the Agreement and this Amendment, the terms, covenants and conditions of this Amendment shall control.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment as of the day and year first written above.

SELLER:

Building Materials Holding Corporation,
a Delaware corporation

By:

E. Beem

Its:

V.P. Controller

BUYER:

RBS Investments, LLC,
an Arizona limited liability company

By:

B. Auel

Its:

Member

SECOND AMENDMENT
TO REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS SECOND AMENDMENT TO REAL ESTATE PURCHASE AND SALE AGREEMENT ("Second Amendment") is made this 16th day of December, 2009, between Building Materials Holding Corporation, a Delaware corporation (the "Seller") and RBS Investments, LLC, an Arizona limited liability company (the "Buyer");

WHEREAS, Seller and Purchaser are parties to that certain Real Estate Purchase and Sale Agreement dated December 14, 2009 and that certain First Amendment to Real Estate Purchase and Sale Agreement dated December 15, 2009 (hereinafter collectively referred to as "Agreement"); and

WHEREAS, Seller and Buyer desire to amend certain sections of the Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and promises exchanged herein and other good and valuable consideration, the adequacy of which is hereby acknowledged, Seller and Buyer hereby agree to the following:

1. The first sentence of Section 8.1 of the Agreement shall be deleted and replaced in its entirety with the following:

"The closing of the transaction herein contemplated (the "Closing") shall take place on or before December 31, 2009 (the "Closing Date") at the offices of the Closing Agent."

Defined Terms. Any capitalized terms not expressly defined in this Amendment shall have the meaning ascribed to them in the Agreement.

Binding Effect. The Agreement, as amended by the First Amendment, shall continue in full force and effect subject to the terms and conditions of this Second Amendment. This Second Amendment shall bind and inure to the benefit of the Seller and Buyer and their respective successors and permitted assigns. In the event of any conflict between the terms, covenants and conditions of the Agreement, as amended by the First Amendment, and this Second Amendment, the terms, covenants and conditions of this Second Amendment shall control.

(signatures follow on next page)

IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment as of the day and year first written above.

SELLER:

Building Materials Holding Corporation,
a Delaware corporation

By: E. Beem

Its: V.P. Winkler

BUYER:

RBS Investments, LLC,
an Arizona limited liability company

By: _____

Its: _____

EXHIBIT B

Declaration of Paul Street

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 on December 17, 2009, this Court entered an order [Docket No. 1182] confirming the Plan, which is anticipated to have an effective date (the "*Effective Date*") of January 4, 2010.

3. I submit this Declaration (the "*Declaration*") in support of the *Debtors' Motion for an Order, Pursuant to Sections 105 and 363 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004 and 9014, (I) Authorizing the Private Sale by the Debtors of the Property Free and Clear of Liens, Claims, Encumbrances and Other Interests, (II) Approving the Purchase Agreement and (III) Granting Related Relief* (the "*Motion*").²

4. On December 18, 2009, the Debtors filed the Motion, pursuant to which they sought approval of (a) the private sale (the "*Sale*") by Building Materials Holding Corporation (the "*Seller*") to RBS Investments LLC (or an affiliate thereof) (the "*Purchaser*") of that certain real property located at 7777 N. 70th Avenue, Glendale, Arizona 85303 (the "*Property*") on an "as is, where is" basis, free and clear of any and all liens, claims, encumbrances and other interests to pursuant to the terms and conditions of that certain Real Estate Purchase and Sale Agreement, dated as of December 14, 2009 (as amended, the "*Purchase Agreement*"), by and between the Seller and the Purchaser, a copy of which is attached as *Exhibit 1* to the Proposed Order.

5. I have reviewed the Motion and am familiar with the facts alleged therein and the relief requested. I have been involved in, and intimately familiar with, negotiations, on behalf of the Seller and the Debtors, and internal deliberations that resulted in the Sale. Except

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

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 retained advisers 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.³

6. This Declaration is submitted to provide an evidentiary basis for the Court to enter an order approving the Motion.

7. I submit that approval of the Motion and the Purchase Agreement and the consummation of the Sale are in the best interests of the Debtors, their creditors, their estates, and other parties in interest.

8. The Debtors, together with their professional advisors, have been marketing the Property since well before the Petition Date. In doing so, the Debtors entered into an agreement with Colliers International to market the property beginning in December 2008. Since that time, the Property has been shown to at least twenty (20) interested parties and listed through several widely-used commercial real estate services. As a result of these efforts, which also included the preparation and targeted circulation of detailed marketing brochures for the Property, the Debtors received several offers for the Property, the highest of which was for a purchase price of \$2,700,000. However, this offer required the Debtors to, among other things, lease back one-half of the Property. The additional offers were for substantially less than the Purchase Price.

9. Upon the enactment of the Worker, Homeownership, and Business Assistance Act of 2009 (the "*2009 Act*"), the Debtors redoubled their marketing efforts by reducing the asking price for the Property to \$3 million and contacting potential real estate

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

purchasers. Thereafter, three (3) offers of less than \$3 million were received for the Property, including the Purchaser's. The financial capability of each of these offerors was confirmed, and each was provided the same contract and advised to submit its highest and best bid for the Property by December 14, 2009. Bids were received and the highest offer was made by the Purchaser and subsequently accepted by the Debtors, thereby resulting in the Debtors agreeing to the Purchase Price and the Purchase Agreement. In light of this, and given the favorable tax provisions recently enacted in the 2009 Act, the Sale maximizes the value to the Debtors for the Property, is an exercise of sound business judgment, and should be approved.

10. Specifically, the Sale allows the Debtors to crystallize value in two key respects. First, as a result of the 2009 Act, the Debtors will receive significant tax benefits. In my judgment, these benefits enhance the value that the Debtors can receive in the foreseeable future for the Property. In pertinent part, the 2009 Act contains a special one-time tax provision which, with respect to calendar year 2009, that allows the carryback of net operating losses for a five-year period as opposed to the normal two-year period. Under the 2009 Act, if the Debtors are able to effectuate the Sale both before the end of calendar year 2009 and before the Effective Date of the Plan, the Debtors will be entitled to receive a federal tax refund of approximately \$973,665 in cash on account of the Sale. Second, the Debtors will receive significant value from the Sale in form of the Purchase Price provided for under the Purchase Agreement.


11. I submit that there is sound business justification for the Seller's preference to proceed by private sale, rather than conducting a public sale of the Property. As previously set forth, the Debtors, together with their professional advisors, have been marketing the Property since well before the Petition Date to potential buyers. As a result of these efforts, the Debtors and the Purchaser expressed a mutual interest in the purchase and sale of the

Property and engaged in extensive arm's length and good faith negotiations which ultimately resulted in the Debtors agreeing to the Purchase Price and the terms and conditions of the Purchase Agreement. Moreover, as outlined above, failure to complete the proposed Sale both before the Effective Date of the Plan and before the end of 2009 would deprive the Debtors of the ability to realize the tax refund available by virtue of the 2009 Act. In my judgment, and based on advice that I have received from my professional advisors, no other viable transaction, or public auction process, with respect to the Property could be accomplished within this time frame. Accordingly, I believe that the private sale of the Property to the Purchaser is in the best interests of the Debtors' estates and creditors.

Signature page follows

WHEREFORE, for the reasons set forth herein, I believe that the Motion should be approved.

Dated: December 17, 2009



Paul S. Street