

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

<b>IN RE:</b>	)	<b>Chapter 11</b>
<b>BUILDING MATERIALS HOLDING CORPORATION, et al.,<sup>1</sup></b>	)	<b>Case No. 09-12074 (KJC)</b>
<b>Debtors.</b>	)	<b>Jointly Administered</b>
	)	<b>Ref. Docket No. 164</b>

**CERTIFICATION OF COUNSEL REGARDING DEBTORS'  
PROPOSED ORDER AUTHORIZING REJECTION OF THAT CERTAIN  
UNEXPIRED LEASE WITH FOUR EMBARCADERO CENTER VENTURE**

On July 10, 2009, the Debtors filed their Motion for an Order Authorizing Rejection of That Certain Unexpired Lease With Four Embarcadero Center Venture and the Associated Sublease With PCAP Managers, LLC [Docket No. 164] (the “*Motion*”). The Motion requests authority to reject a lease (as amended, the “*San Francisco Lease*”) for the use and occupancy of the premises commonly known as Four Embarcadero Center in San Francisco, California (the “*Premises*”). The hearing on the Motion has been adjourned several times while the Debtors evaluated options for leasing a reduced amount of space in the Premises. The hearing on the Motion is presently scheduled for January 27, 2009.

The Debtors have now decided to vacate the Premises and reject the San Francisco Lease on December 31, 2009. As a result, the Debtors respectfully request the Court to enter the proposed Order Authorizing Rejection of That Certain Unexpired Lease With Four

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

Embarcadero Center Venture (the “*Rejection Order*”), substantially in the form annexed hereto as Exhibit A.

The Rejection Order provides that the San Francisco Lease shall be rejected effective as of December 31, 2009. In addition, as part of the discussions with the counsel for the landlord for the Premises, Four Embarcadero Center Venture (the “*Landlord*”), the Debtors have reached agreement on the dollar amount of the rejection damages claim that the Landlord will have against the lessee, Building Materials Holding Corporation. Specifically, after taking into account the limitation on a lessor’s rejection damages under section 502(b)(6) of the Bankruptcy Code, the parties have agreed that the Landlord shall have an Allowed General Unsecured Claim against Building Materials Holding Corporation in the amount of \$1,274,714. Nonetheless, because the Debtors are requesting the Court to enter the Rejection Order before they expect to physically return the Premises on or before December 31, 2009, the Rejection Order also contains a provision reserving the Landlord’s right to assert a claim (including, if applicable, an administrative expense claim), (i) if the Premises are in unsatisfactory condition upon return; or (ii) if the Debtors have not vacated the Premises on or before December 31, 2009. The Rejection Order provides that the Landlord must assert any such claim within thirty days of the entry of the Rejection Order. Of course, the Debtors similarly reserve their rights to dispute any such claim.

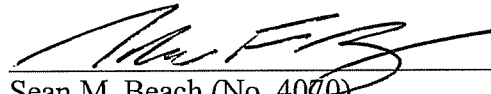
Finally, the Debtors wish to point out that the Motion requested the rejection of a sublease with respect to the Premises (the “*Sublease*”). The Sublease has expired by its own terms since the Motion was filed; thus, the Rejection Order does not reference the Sublease.

Counsel for the Landlord has agreed to the form of Rejection Order. In addition, the Official Committee of Unsecured Creditors does not oppose entry of the Rejection Order.

Accordingly, the Debtors respectfully request that the Court enter the Rejection Order at its earliest convenience without further notice or a hearing.

Dated: Wilmington, Delaware  
December 29, 2009

YOUNG CONAWAY STARGATT &  
TAYLOR, LLP



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ATTORNEYS FOR DEBTORS  
AND DEBTORS IN POSSESSION

**EXHIBIT A**  
**Rejection Order**



interests of the Debtors' estates, their creditors, and other parties in interest; and notice of the Motion and the opportunity for a hearing on the Motion was appropriate under the particular circumstances; and the Court having reviewed the Motion and the related Certification of Counsel; and the Court having determined that the legal and factual bases set forth in the Motion and in the Certification of Counsel establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED:**

1. The Motion is granted as set forth below.
2. Pursuant to section 365(a) of the Bankruptcy Code, the Debtors are authorized to reject the San Francisco Lease effective as of December 31, 2009.
3. As a result of the rejection of the San Francisco Lease, Four Embarcadero Center Venture shall have an Allowed General Unsecured Claim against Building Materials Holding Corporation in the amount of \$1,274,714.
4. This Order shall not impair Four Embarcadero Center Venture's right to assert a claim (including, if applicable, an administrative expense claim), nor impair the Debtors' right to dispute any such claim, (i) if the San Francisco Lease premises are in unsatisfactory condition upon return, or (ii) if the Debtors have not vacated the San Francisco Lease premises on or before December 31, 2009; provided, however, that Four Embarcadero Center Venture must assert any such claim within thirty days of the date of entry of this Order.
5. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

6. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such motion and the requirements of Bankruptcy Rule 6006(c) and the Local Bankruptcy Rules are satisfied by such notice.

7. To the extent Bankruptcy Rule 6004(h) is applicable, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

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

Date: Wilmington, Delaware  
December \_\_, 2009

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Kevin J. Carey  
Chief United States Bankruptcy Judge