

**IN RE:**

### Debtors.

**Ref. Docket No. 1186**

## 068301.1001

“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,

**THE COURT HEREBY FINDS THAT:<sup>3</sup>**

**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.

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<sup>3</sup> 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 constitutes 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 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. Subject to the terms and conditions of the Purchase Agreement, including, without limitation, Section 8.2 thereof, it shall be the sole responsibility of the Debtors, not that of the Purchaser, to satisfy the tax lien on the Property asserted by Maricopa County to the extent such tax lien is validly perfected and secured and not otherwise exempt pursuant to section 1146(a) of the Bankruptcy Code.

11. 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.

12. 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**

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

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

Dated: Wilmington, Delaware  
December 30, 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 RBS Investments LLC, a[n] (collectively, the "Buyer").

### RECITALS

WHEREAS, Seller is the owner of real property located at 7777 N. 70<sup>th</sup> 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  
Phoenix, AZ 85018

And:

Marshallmore Properties LLC  
22822 N. 19th Ave  
Phoenix, 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. Baum  
Name: Eric Baum  
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 15<sup>th</sup> 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. Acord  
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 16<sup>th</sup> 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:

Its:

BUYER:

RBS Investments, LLC,  
an Arizona limited liability company

By:

Its: