

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

IN RE:)	
)	Chapter 11
BUILDING MATERIALS HOLDING CORPORATION, et al.,¹)	Case No. 09-12074 (KJC)
)	
Debtors.)	Jointly Administered
)	
)	Ref. Docket No. <u>1173</u>

ORDER PURSUANT TO SECTIONS 363(b) AND 365(a) OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTORS (I) TO AMEND THE LICENSING AGREEMENT WITH MICROSOFT LICENSING, GP AND TO ASSUME THE LICENSING AGREEMENT, AS AMENDED; AND (II) TO REJECT THE FINANCING AGREEMENT WITH CIT TECHNOLOGY FINANCING SERVICES

Upon consideration of the motion (the "*Motion*") of Building Materials Holding Corporation and its affiliates, as debtors and debtors in possession (collectively, the "*Debtors*") for entry of an order authorizing the Debtors (i) to amend the Licensing Agreement² and to assume the Licensing Agreement, as amended; and (ii) to reject the related Financing Agreement, all as set forth in the Motion; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. sections 1408 and 1409; and the Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and notice of the Motion and the

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

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

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

IT IS HEREBY ORDERED:

1. The Motion is granted as set forth below.
2. Pursuant to section 363(b) of title 11 of the United States Code (the "*Bankruptcy Code*"), the Debtors are authorized to enter into the Amendment to the Licensing Agreement and are authorized and empowered to take any and all steps and to perform such other and further actions as are necessary to carry out, effectuate, or otherwise enforce the terms, conditions, and provisions of the Amendment.
3. Pursuant to section 365(a) of the Bankruptcy Code, the Debtors are authorized to assume the Licensing Agreement, as amended by the Amendment.
4. The Debtors have no cure obligations in connection with the assumption of the Licensing Agreement, as amended by the Amendment, and Microsoft is hereby barred, enjoined, and prohibited from asserting any additional amounts on account of the Debtors' cure obligations under section 365 of the Bankruptcy Code or otherwise from the Debtors or their estates with respect to the Licensing Agreement.
5. Pursuant to section 365(a) of the Bankruptcy Code, the Debtors are authorized to reject the Financing Agreement, and the Financing Agreement is deemed rejected effective as of the date of entry of this Order.

6. In accordance with that certain *Order Pursuant to Sections 501, 502, and 1111(a) of the Bankruptcy Code, Bankruptcy Rules 2002 and 3003(c)(3), and Local Rule 2002-1(e) Establishing Bar Dates for Filing Proofs of Claim and Approving the Form and Manner of Notice Thereof* [Docket No. 248], any claim for damages allegedly arising from the rejection of the Financing Agreement (a "**Rejection Damages Claim**") must be filed on or before the date which is thirty (30) days from the entry of this Order (the "**Rejection Bar Date**"). Any holder of a Rejection Damages Claim which fails to timely file a proof of such claim on or before the Rejection Bar Date shall not be treated as a creditor for purposes of receiving any distributions under the Plan.

7. The Debtors do not waive any claims they may have against CIT, whether or not such claims arise under, are related to the rejection of, or are independent of the Financing Agreement.

8. Nothing herein shall prejudice the rights of the Debtors to argue that any Rejection Damages Claim is limited by applicable nonbankruptcy law or to the remedies available under any applicable termination provision of such Financing Agreement, or that any such claim is an obligation of a third party, and not that of the Debtors or their estates.

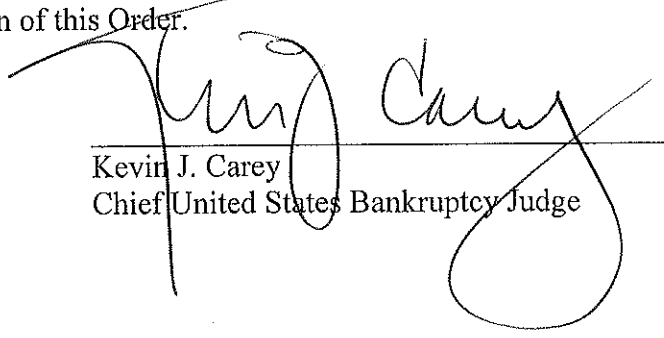
9. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

10. 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.

11. 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.

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

Dated: Wilmington, Delaware
January 4, 2009 *2010*



Kevin J. Carey
Chief United States Bankruptcy Judge