

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

IN RE:

**BUILDING MATERIALS HOLDING
CORPORATION, et al.,¹**

Debtors.

)
) **Chapter 11**
)
) **Case No. 09-12074 (KJC)**
)
) **Jointly Administered**
)
) **Objection Deadline: January 20, 2010 at 4:00 p.m. (ET)**
) **Hearing Date: January 27, 2010 3:00 p.m. (ET)**
)
)
) **Ref. Docket Nos. 103 and 240**

**APPLICATION OF PETER J. SOLOMON COMPANY FOR ALLOWANCE
AND APPROVAL OF PAYMENT OF RESTRUCTURING TRANSACTION
FEE AND FINANCING TRANSACTION FEE**

Pursuant to sections 327, 328(a) and 330 of chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code") and Rule 2016 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Peter J. Solomon Company ("PJS") hereby applies (the "Application") to the Court for entry of an order, substantially in the form annexed hereto as Exhibit A, for allowance and approval of the payment by Building Materials Holding Corporation ("BMHC") and its affiliates, as debtors and debtors in possession (collectively, the "Debtors") in the above-captioned cases, of (i) the Restructuring Transaction Fee of (a) \$2,500,000 less (b) applicable credits (as described below) in the aggregate amount of \$2,450,000 and (ii) the Financing Transaction Fees of \$1,700,000 (each as defined below), incurred by PJS as investment banker and financial advisor to the Debtors in their chapter 11 cases, all as provided for in that certain engagement letter between BMHC and PJS, dated March

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.

31, 2009 (the "Engagement Letter"). In support of this Application, PJS respectfully represents as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction to consider this Application pursuant to 28 U.S.C. sections 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. section 157(b). Venue is proper pursuant to 28 U.S.C. sections 1408 and 1409.

GENERAL BACKGROUND

2. On June 16, 2009 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the "Chapter 11 Cases"). In addition, on the Petition Date, the Debtors filed a proposed chapter 11 plan (the "Plan") and accompanying disclosure statement (the "Disclosure Statement"). The Debtors filed several amended versions of the Plan and Disclosure Statement since that time, and by order entered on October 22, 2009 [Docket No. 768] (the "Disclosure Statement Order"), the Court approved the Disclosure Statement. Pursuant to the Disclosure Statement Order, the Court held a confirmation hearing on December 17, 2009 (the "Confirmation Date") at which the Plan was confirmed.

RELEVANT BACKGROUND

3. Shortly after the Petition Date, on June 26, 2009, the Debtors filed their *Application Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code for an Order Authorizing the Debtors to Retain and Employ Peter J. Solomon as Investment Banker and Financial Advisor Nunc Pro Tunc to the Petition Date, and Waiving Certain Requirements of Local Rule 2016-2* [Docket No. 103] (the "Retention Application"). By way of the Retention Application, the Debtors requested the Court to enter an order, pursuant to sections 327(a) and 328(a) of the Bankruptcy Code, Bankruptcy Rule 2014 and Rule 2014-1 of the Local Rules of

Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), authorizing the Debtors to employ and retain PJS as their investment banker and financial advisor, *nunc pro tunc* to the Petition Date, on the terms set forth in the Retention Application and the Engagement Letter.

4. Under the Engagement Letter, PJS is entitled to a monthly fee (each, a "Monthly Fee," and collectively, the "Monthly Fees") equal to \$200,000 per month, payable in advance on each monthly anniversary of the date of the Engagement Letter for a minimum of three months, and thereafter on a month-to-month basis, pro rated for any partial months. Pursuant to the Engagement Letter, PJS is also entitled to be reimbursed for out-of-pocket expenses reasonably incurred in connection with its provision of services in the Chapter 11 Cases, including, without limitation, reasonable overnight travel and lodging, communication charges, research and courier services ("Expense Reimbursement").

5. The Engagement Letter also provides that in the event the Debtors renegotiate and/or restructure the Senior Secured Bank Debt (as defined in the Engagement Letter), including through a chapter 11 case (a "Restructuring Transaction"), PJS shall be entitled to a transaction fee (the "Restructuring Transaction Fee") in an amount equal to \$2,500,000 less any Monthly Fees paid and not previously credited and less 50% of any Financing Transaction Fee paid (as defined below). For the avoidance of doubt, all Monthly Fees paid by the Debtors to PJS since the inception of PJS's engagement with the Debtors through the Confirmation Date shall be credited against the Restructuring Transaction Fee. Any Monthly Fees that have or will accrue, but remain unpaid as of the Confirmation Date, shall not be paid as they would otherwise be credited against the Restructuring Transaction Fee.

6. In addition to the foregoing, the Engagement Letter provides that in the event the Debtors raise capital from any bank, financial institution or other financing source (a "Financing Transaction"), PJS shall be entitled to one or more transaction fees (a "Financing Transaction Fee") in an amount equal to the following percentages of the gross proceeds of any such Financing Transaction, payable upon the closing thereof: 1% of any capital raised in the form of Senior Debt; and 3% of any capital raised in the form of Mezzanine Debt (each as defined in the Engagement Letter).²

7. By order dated July 16, 2009 [Docket No. 240] (the "Retention Order"), the Court approved the Retention Application. Pursuant to the Retention Order, any fees payable to PJS pursuant to the Engagement Letter, including, without limitation, any Monthly Fees, Restructuring Transaction Fee, and Financing Transaction Fee, shall be subject to review pursuant to the standards set forth in section 328(a) of the Bankruptcy Code and shall not be subject to the standards set forth in section 330 of the Bankruptcy Code. However, under the Retention Order, the Office of the United States Trustee for the District of Delaware maintains the right to object to any Restructuring Transaction Fee and Financing Transaction Fees based on the reasonableness standard set forth in section 330 of the Bankruptcy Code.

8. As of the filing of this Application, in accordance with the terms and conditions of the Engagement Letter, and that certain *Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Professionals* [Docket No. 201] (the "Interim

² In this regard, the Engagement Letter further provides that: (i) if any Financing Transaction is consummated in more than one stage, all such stages together shall be deemed a single Financing Transaction, consummated on the date of closing of the first such stage but with consideration in respect of each stage payable upon the consummation thereof; and (ii) PJS shall not be entitled to a Financing Transaction Fee with respect to any DIP financing or revolving credit facility related to the Debtors' exit financing from chapter 11 that is structured as a rollover or extension of the Debtors' DIP financing, however, PJS shall be entitled to a Financing Transaction Fee with respect to arranging a revolving credit facility which may involve, but is not necessarily limited to, a new administrative agent and group of lenders some of which may be existing lenders to the Debtors.

Compensation Order"), PJS has received payment from the Debtors for Monthly Fees and Expense Reimbursement since the inception of its engagement with the Debtors in April 2009 through and including October 31, 2009. PJS anticipates that prior to the hearing on this Application, it will receive payment from the Debtors on account of its Monthly Fee and Expense Reimbursement for November 2009.³ PJS is eligible for a pro rated Monthly Fee for the period December 1 to December 17 however has elected to not separately apply for this fee since it would be credited against the Restructuring Transaction Fee as described above. In aggregate the Monthly Fees and hold back amounts that PJS has applied for and anticipates being paid total \$1,600,000 for the April to November time period. In the event that the aggregate Monthly Fees paid to PJS by the Debtors total greater or less than \$1,600,000, the credit against the Restructuring Transaction Fee will be adjusted as applicable.

SUMMARY OF PJS COMPENSATION REQUEST

9. Financing Transaction Fee. As of the filing of this Application, in accordance with the terms and conditions of the Engagement Letter and the Retention Order, PJS is eligible for, and has earned, Financing Transaction Fees of \$1,700,000. During the term of the engagement, PJS raised Senior Debt capital in the form of an \$80,000,000 Debtor In Possession Financing facility (the "DIP Financing") and Senior Debt capital in the form of the \$90,000,000 Exit Credit Facilities (defined below). The Exit Credit Facilities are not a rollover or extension of the DIP Financing and, accordingly, pursuant to the terms of the Engagement Letter and the Retention Order, PJS has earned a 1% Financing Transaction Fee for each such Senior Debt financing. The aggregate Financing Transaction Fees due is, therefore, \$1,700,000. As

³ In accordance with the Interim Compensation Order, a portion of the Monthly Fees have been held back and PJS anticipates such amounts will be paid following the quarterly interim compensation hearings. The calculation of applicable credits against the Restructuring Transaction Fee assume these held back amounts will be paid in full.

described in paragraph 11 below, under the terms of the Engagement Letter any Financing Transaction Fees are to be credited 50% toward the Restructuring Transaction Fee.

10. Restructuring Transaction Fee. As of the filing of this Application, in accordance with the terms and conditions of the Engagement Letter and the Retention Order, PJS is eligible for, and has earned, a Restructuring Transaction Fee of \$50,000. This amount is calculated as follows: (a) \$2,500,000, less (b) \$1,600,000, which represents the sum of the total Monthly Fees anticipated to be paid, less (c) \$850,000, which is the required credit for 50% of the Financing Transaction Fees.

11. In the aggregate, pursuant to this application, PJS requests allowance and approval of a Financing Transaction Fee of \$1,700,000 and a Restructuring Transaction Fee of \$50,000. The total amount of fees requested to be allowed and approved pursuant to this Application is \$1,750,000.00. PJS holds a \$200,000 retainer which it has agreed with the Debtors to credit against the total fees allowed and approved pursuant to this Application. Therefore, total fees payable to PJS, net of the \$200,000 retainer, and of amounts previously paid as Monthly Fees, is \$1,550,000.00. The invoice for all such fees due to PJS is attached hereto as Exhibit B.

SUMMARY OF SERVICES RENDERED BY PJS

12. The following summary of services rendered by PJS prior to and during the Chapter 11 Cases is not intended to be a detailed or exhaustive description of the work performed.

A. Debtor-in-Possession Financing

13. PJS was intimately involved in assisting the Debtors to raise capital in the form of DIP Financing. Prior to the Petition Date, the Debtors and PJS approached

approximately 34 banks and other financial institutions to provide financing. PJS, on the Debtors' behalf, made numerous inquiries regarding potential lenders' level of interest and willingness to enter into a confidentiality agreement with the Debtors. Five outside parties indicated an interest in providing financing to the Debtors and were willing to sign confidentiality agreements to receive additional information.

14. PJS assisted the five potential DIP lenders with due diligence, including arranging and attending conference calls between the potential DIP lenders, their counsel and financial advisors, and the Debtors' management. Additionally, PJS assisted the potential DIP lenders in conducting their review and analysis of the Debtors' business, the DIP budget (the "DIP Budget"), 13-week cash flow forecast, liquidity needs, and collateral. Three potential DIP lenders, apart from the Debtors' prepetition lenders, submitted preliminary DIP Financing proposals. PJS assisted the Debtors in reviewing and comparing the various DIP Financing proposals with the potential DIP lenders. PJS analyzed the terms of the various proposals and advised the Debtors' board of directors in their decision to select the DIP Financing proposal submitted by the Debtors' prepetition lenders for which Wells Fargo Bank, N.A. served as agent. PJS assisted the Debtors in negotiating and finalizing the DIP documents with Wells Fargo Bank, N.A.

15. In addition, PJS provided the following services in connection with the DIP Financing:

- a. assisting the Debtors' management in evaluating the liquidity needs of the business and determining the required size of the DIP Financing;
- b. working with the Debtors and their advisors to develop the DIP Budget;
- c. negotiating the terms of the DIP including pricing, structure and covenants; and

- d. assisting in preparations for the hearings at which the Debtors sought and obtained interim and final approval of the DIP Financing.

B. Sale Process

16. Prior to and during the Chapter 11 Cases, PJS in coordination with the Debtors' other professionals assisted and advised the Debtors in connection with the Debtors' efforts to sell substantially all of their assets or attract an investor to assist the company in its efforts to reorganize through an infusion of new capital. Prior to the Petition Date, PJS initiated a competitive sale process that extended throughout the Chapter 11 Cases. Throughout that process, PJS worked diligently to identify potential strategic and financial buyers and investors. To gauge and generate interest among potential purchasers, PJS prepared and circulated a "teaser" setting forth certain public information regarding the assets being sold by the Debtors. PJS also assisted the Debtors' management in preparing detailed financial forecasts to be presented to prospective buyers. In the course of its search for a bidder or investor for the Debtors' assets, PJS contacted (or was contacted by) 66 potential purchasers. The Debtors, with the assistance of PJS, negotiated NDAs with 21 such purchasers. PJS assisted such potential purchasers with diligence by, among other things: (a) coordinating access to a data room (the "Data Room") to which such purchasers were provided access upon signing an NDA; (b) facilitating and participating in meetings, conference calls and site visits among the prospective purchasers and the Debtors' management; and (c) maintaining ongoing discussions with the potential purchasers in order to ensure that such purchasers' data and information requests were promptly addressed. On or about August 28, 2009, after concluding the diligence process, 3 parties submitted letters of intent to recapitalize the company in conjunction with a plan of reorganization. PJS together with the other advisors thoroughly reviewed the proposals and analyzed them for among other things the relative value that each proposal offered to each

constituency. PJS communicated the results of the analysis to all constituencies including the board of directors, secured lenders, and representatives and professionals for the unsecured creditor committee.

17. The Debtors, along with PJS and other advisors, engaged the potential bidders in extensive, good faith, negotiations that resulted in several revised proposals which were analyzed and communicated to all constituencies. However, upon conclusion of the negotiations, the Debtors decided that the Plan and Disclosure Statement represented a better outcome for the Debtors and each of their constituents.

C. Restructuring Transaction⁴

18. Prior to and during the Chapter 11 Cases, PJS assisted the Debtors with their efforts to reorganize pursuant to a confirmed plan of reorganization. The Debtors, with the assistance of PJS and its other advisors, engaged in good faith, arm's-length negotiations with significant holders of the Debtors' prepetition secured indebtedness under its prepetition credit agreement to develop a way to de-lever the Debtors' business, while at the same time providing the Debtors' unsecured creditor constituency with a recovery. These negotiations culminated in the Plan, which was confirmed on December 17, 2009, by that certain *Order Confirming Joint Plan of Reorganization for the Debtors Under Chapter 11 of the Bankruptcy Code Amended December 14, 2009* [Docket No. 1182].

19. PJS was responsible for the preparation of the liquidation analysis and feasibility analysis contained in the Disclosure Statement related to the Plan. These detailed analyses of the potential recoveries to the Debtors' stakeholders under liquidation and reorganization scenarios were repeatedly revisited to take into consideration the latest available

⁴ Capitalized terms used in this section and not defined herein have the respective meanings ascribed to them in the Disclosure Statement.

financial performance, updated asset appraisals, revised assessments of creditor claims, proposed capital structures, proposed covenant packages and various proposals in regard to the type, timing and amount of distributions to be made to stakeholders pursuant to the Plan. As the restructuring progressed, PJS continually coordinated the efforts of the management team and advisors to provide accurate assessments of the potential impacts on plan feasibility of various plan alternatives at key decision points, including assessing the financial impacts of shutting down or selling certain business to maximize recoveries under recent tax law changes and the feasibility of numerous proposals for disposition of excess real estate and cash flow and negotiating extensive financial covenant mechanisms. PJS communicated these extensive analysis and potential plan implications to relevant constituencies including the board, secured lenders and representatives and professionals for the unsecured creditors committee among others.

20. Due in substantial part to the efforts of PJS, the Effective Date of the Plan occurred on January 4, 2010.

D. Exit Credit Facilities

21. In addition to its efforts in regard to the DIP Financing, PJS was instrumental in raising capital in the form of the Alternative Exit Credit Facility (as defined below) that allowed the Debtors, on the Effective Date of the Plan, to emerge from chapter 11 as a reorganized entity. In fact, as the Court will recall from the Confirmation Hearing testimony, PJS successfully assisted the Debtors to raise two separate exit credit facilities. Initially, PJS assisted the Debtors in negotiating the extensive terms of a \$103.5 million exit credit facility that consisted of a \$50 million revolving loan and \$53.5 million in term loans (the "Exit Credit Facility"), the \$135 million "Take Back" credit facility distributed to the prepetition secured lenders, and the associated Intercreditor Agreement. These negotiations required, among other

things, highly technical analysis of the numerous terms and conditions of these agreements to assess their impact on all aspects of the Debtors' Plan. As a result of this effort the Debtors finalized the terms of these credit facilities and paid to the prospective lenders a commitment fee to secure the \$103.5 million exit financing package. The Debtors were prepared to use this Exit Credit Facility to exit chapter 11 until the more favorable Alternative Exit Credit Facility became available to the Debtors as a result of PJS's efforts to identify and assist the Debtors to take advantage of the benefits afforded by the Worker, Homeownership, and Business Assistance Act of 2009 (the "2009 Act").

22. While PJS was assisting the Debtors to finalize the documentation relative to the initial Exit Credit Facility, the 2009 Act became law. Under the 2009 Act, the Debtors became eligible for a significant tax refund due to a special one-time tax provision which, with respect to calendar year 2009, allows the carryback of net operating losses for a five-year period as opposed to the normal two-year period. PJS, together with the Debtors' other advisors, assessed the potential impact of the change in tax law and advised the Debtors on potential strategies to maximize the benefit available to the Debtors. PJS conducted a stand alone valuation of the Davis Brothers business to assist the Debtors in determining whether to retain or sell the business as part of the overall strategy for maximizing the value available for all constituencies. PJS concluded that the tax refund could be used to enter into a more favorable exit financing package than what was contemplated in the initial \$103.5 million Exit Credit Facility.

23. On an expedited basis, PJS approached four parties to assess their interest in providing a short duration loan as a bridge to the receipt of the tax refund. Simultaneous with this effort, PJS engaged with Wells Fargo Bank, N.A. to evaluate its ability in connection with its

subsidiary, Wells Fargo Foothill, to put in place a more favorable asset backed revolving credit facility than what was contemplated in the previously negotiated facilities. Over the span of approximately three weeks, PJS, together with the debtors and their advisors, was able to coordinate the necessary diligence and fully negotiate all the terms and conditions of a more favorable Exit Credit Facility totaling \$90 million, which Facility consisted of a \$40 million senior secured term loan that has a first priority interest in the tax refund and a \$50 million senior secured revolving credit facility that has a first priority claim on all the other assets of the company (the "Alternative Exit Credit Facility"). In connection with the Alternative Exit Credit Facility, PJS revised the liquidation and feasibility analysis of the Plan. The Alternative Exit Credit Facilities improved the feasibility of the Plan and specifically offered lower fees and substantially less onerous covenants than the previously negotiated \$103.5 million Exit Credit Facility. PJS prepared various schedules detailing the benefits of the Alternative Exit Credit Facility and successfully defended its merits by offering expert testimony at the December 17, 2009 confirmation hearing in which the Alternative Exit Credit Facility was contested.

E. Financial Monitoring and Business Plan Review

24. Prior to and during the Chapter 11 Cases, PJS assisted the Debtors and their other advisors with monitoring the financial and operational performance of the Debtors, including:

- a. reviewing and analyzing historical and forecasted financial information, monthly divisional operating reports, comparisons of actual performance versus forecast and compliance with DIP Financing covenants;
- b. assisting the Debtors in developing a detailed financial model to be used as a tool for strategic planning and forecasting;
- c. preparing financial analyses related to the DIP Budget, the Debtors' liquidity position, working capital needs and cash flow forecasts;

- d. analyzing the plan feasibility impacts of recent changes to the tax laws which allowed for the Debtors to recover a substantial tax refund;
- e. reviewing potential alternatives for retaining NOL's and mitigating the potential tax liabilities of the go forward business; and
- f. assisting the Debtors' management and their other advisors in assessing the risks and opportunities related to the business and the cash flow forecast.

F. Communications and Negotiations with Various Constituencies and Representatives

25. Prior to and during the Chapter 11 Cases, PJS developed analyses and participated in discussions and meetings to further negotiations with and supply information to the Debtors' key creditor constituencies, including the Debtors' prepetition secured lenders, the DIP lenders, the committee of unsecured creditors (the "Committee"), and other parties in interest and their advisors, as well as the Debtors and their professionals. Among other things, PJS's involvement included:

- a. preparing materials for and participating in conference calls with the Debtors' board of directors;
- b. arranging and attending meetings between the advisors to the Committee and the Debtors' management team;
- c. facilitating diligence requests and organizing meetings and conference calls with the Debtors' management and maintaining an ongoing dialogue with the DIP lenders, and advisors to the Committee; and
- d. providing frequent updates on the sale process and discussing the Debtors' year-to-date financial results, the DIP Budget, the financial projections, the Debtors' near-term liquidity outlook and other elements of the Chapter 11 Cases.

RELIEF REQUESTED

26. By this Application, pursuant to sections 327, 328(a) and 330 of the Bankruptcy Code and Bankruptcy Rule 2016, PJS requests this Court to enter an order for allowance and approval of the Debtors' payment of: (i) the Restructuring Transaction Fee in the

amount of \$50,000 (which is \$2,500,000 less (a) \$1,600,000 Monthly Fees anticipated to be paid by the Debtors to PJS from the inception of its engagement with the Debtors through the Confirmation Date and less (b) \$850,000, which is 50% of the Financing Transaction Fees to be paid by the Debtors to PJS); and (ii) the Financing Transaction Fee in the amount of \$1,700,000 incurred by PJS as investment banker and financial advisor to the Debtors in their chapter 11 cases. The aggregate fees requested to be allowed and approved, including the Restructuring Transaction Fee and the Financing Transaction Fee are \$1,750,000.00. PJS has agreed with the Debtors to credit the \$200,000 pre-petition retainer paid by the Debtors to PJS against the fees allowed and approved in connection with this Application, leaving a balance due from the Debtors of \$1,550,000.00.

BASIS FOR RELIEF REQUESTED

27. As previously set forth, pursuant to the Engagement Letter and the Retention Order, upon confirmation of a plan in the Chapter 11 Cases, PJS is entitled to a Restructuring Transaction Fee in the amount of \$2,500,000 (less applicable credits). In light of the fact that the plan was confirmed on December 17, 2009, PJS requests relief for payment of the Restructuring Transaction Fee.

28. Also as described more fully above, upon the closing of a Financing Transaction, PJS shall be entitled to a Financing Transaction Fee in an amount equal to 1% of any capital raised in the form of Senior Debt and 3% of any capital raised in the form of Mezzanine Debt. In order to finance the company during the chapter 11 proceedings, PJS, acting as financial advisor and investment banker, assisted the Debtors in raising \$80,000,000 of DIP Financing. This capital raise is a Financing Transaction under the Engagement Letter, and entitles PJS to 1% of this amount as a Financing Transaction Fee (i.e., \$800,000). In order to

facilitate the Debtors' emergence from chapter 11 on the Effective Date of the Plan, finance in part the distributions to be made under the Plan, pay the fees and expenses associated therewith, repay in full the Debtors' obligations under the DIP Financing, replace letters of credit issued and outstanding under the DIP Financing, and provide working capital and general corporate purposes of the Debtors, PJS assisted the Debtors to raise capital in the form of the Exit Credit Facility and the Alternative Exit Credit Facility. While both of these financings, arguably, qualify as Financing Transactions, PJS only seeks a Financing Transaction Fee for the Alternative Exit Credit Facility in the amount of \$90 million, the Facility that was ultimately used by the Debtors on the Effective Date of the Plan. The Exit Credit Facilities are not a rollover or extension of the DIP Financing and, accordingly, this capital raise qualifies as a Financing Transaction under the Engagement Letter, such that, PJS is entitled to 1% of this amount as a Financing Transaction Fee (i.e., \$900,000). PJS therefore is entitled to total Financing Transaction Fees of \$1,700,000.

29. The Monthly Fees payable to PJS through November 2009 have been approved by the Court in connection with PJS's first and second quarterly fee applications. In accordance with the Engagement Letter and the Retention Order, PJS hereby confirms that any amounts previously received and anticipated to be received by PJS from the Debtors since the inception of its engagement with the Debtors through the Confirmation Date on account of Monthly Fees and associated hold back amounts shall be credited against the Restructuring Transaction Fee.⁵ As noted above, the total amount of these Monthly Fees and hold backs is \$1,600,000 covering the period of April – December 17, 2009. Pending hearing on this

⁵ Notwithstanding the fact that (i) any payments received by PJS from the Debtors since the commencement of its engagement through the Confirmation Date on account of Monthly Fees and (ii) 50% of any Financing Transaction Fee paid are to be credited against the Restructuring Transaction Fee, out of an abundance of caution PJS seeks allowance and approval of the full amount of the Restructuring Transaction Fee.

Application, PJS is not currently requesting payment of, or filing a separate Monthly Fee application for, the Monthly Fee associated with the pro-rated portion of December prior to Confirmation since this fee would be fully credited against the Restructuring Transaction Fee.

30. PJS respectfully submits that the Restructuring Transaction Fee and the Financing Transaction Fees each fulfill the requirements of sections 328 and 330 of the Bankruptcy Code. As discussed above, PJS has, among other things, spent a significant amount of time, energy and resources analyzing the Debtors' business operations and plan, soliciting potential bidders and investors, coordinating diligence efforts of interested parties, participating in negotiations regarding the Debtors' DIP Financing, exit financing, and exit structures, negotiating associated documentation and preparing the liquidation and feasibility analyses for the Disclosure Statement. The professional services which are the subject of this Application, and serve as the basis for PJS's receipt of the Restructuring Transaction Fee and the Financing Transaction Fee, were rendered in connection with the Chapter 11 Cases and in discharge of PJS's professional responsibilities as investment banker and financial advisor to the Debtors.

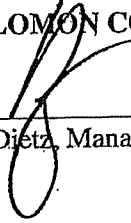
31. PJS submits that its services have been necessary and beneficial to the Debtors, their estates and creditors and critical to Debtors' the successful prosecution of the Chapter 11 Cases. The Restructuring Transaction Fee and the Financing Transaction Fee are both reasonable and provident in light of the Debtors' efforts to date and the anticipated outcome of these chapter 11 bankruptcy proceedings, similar in nature and amount to success fees awarded to comparably skilled practitioners in cases other than those in bankruptcy, and necessary given the variety and the complexity of the issues involved in the Chapter 11 Cases and the pressing need to address those issues on an expedited basis and in a highly competent manner.

32. To the best of PJS's knowledge, information and belief, this Application complies with sections 330 and 331 of the Bankruptcy Code, the Bankruptcy Rules and the Local Rules. Pursuant to the Retention Order, PJS was granted a limited waiver of the information requirements set forth in Local Rule 2016-2 to keep time records in half-hour increments. Such time records have been and will continue to be provided by PJS with any monthly fee applications.

WHEREFORE, PJS respectfully requests the Court to enter an order, substantially in the form attached hereto as Exhibit A, (a) for allowance and approval of fees to PJS of \$1,750,000.00 consisting of: (i) the Restructuring Transaction Fee in the amount of \$50,000 (which is \$2,500,000 less (a) \$1,600,000 Monthly Fees and hold back amounts anticipated to be paid by the Debtors to PJS from the inception of its engagement with the Debtors through the Confirmation Date and less (b) \$850,000 which is 50% of the Financing Transaction Fees to be paid by the Debtors to PJS); and (ii) the Financing Transaction Fees in the amount of \$1,700,000, (b) authorizing PJS to apply the \$200,000 retainer held by PJS against such allowed fees and the Debtors to pay to PJS the remaining amount of such allowed and approved fees, and (c) granting PJS such other and further relief as is just and equitable..

Dated: January 6, 2010

PETER J. SOLOMON COMPANY

By:  _____
Bradley I. Dietz, Managing Director

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

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| In re: BUILDING MATERIALS HOLDING CORPORATION, <i>et al.</i> , ¹ Debtors. | Chapter 11 Case No. 09-12074 (KJC) Jointly Administered Objection Deadline: January 20, 2010 at 4:00 p.m. (ET) Hearing Date: January 27, 2010 at 3:00 p.m. (ET) |
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NOTICE OF APPLICATION

TO: (I) The Office of the United States Trustee for the District of Delaware; (II) Counsel to the Official Committee of Unsecured Creditors; (III) Counsel to Wells Fargo Bank, as Agent Under the Prepetition Credit Facility and the DIP Facility (as Defined in the Chapter 11 Plan Filed by the Debtors in These Cases); (IV) the Fee Auditor; and (V) All Parties That Have Requested Notice Pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure.

PLEASE TAKE NOTICE that Peter J. Solomon Company (“PJS”), investment banker and financial advisor to the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”), has filed the attached **Application of Peter J. Solomon Company for Allowance and Approval of Payment of Restructuring Transaction Fee and Financing Transaction Fee** (the “Application”).

PLEASE TAKE FURTHER NOTICE that objections to the Application, if any, must be filed on or before **January 20, 2010 at 4:00 p.m. (ET)** (the “Objection Deadline”) with the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801. At the same time, you must serve a copy of the objection upon PJS and counsel to the Debtors so as to be received on or before the Objection Deadline.

PLEASE TAKE FURTHER NOTICE THAT A HEARING TO CONSIDER THE APPLICATION WILL BE HELD ON JANUARY 27, 2010 AT 3:00 P.M. (ET) BEFORE THE HONORABLE KEVIN J. CAREY AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 MARKET STREET, 5TH FLOOR, COURTROOM NO. 5, WILMINGTON, DELAWARE 19801.

¹ If applicable, the Debtors, along with the last four digits of each Debtor’s tax identification number, and chapter 11 case number, are as follows: Building Materials Holding Corporation (4269) Case No. 09-12074, BMC West Corporation (0454) Case No. 09-12075, SelectBuild Construction, Inc. (1340) Case No. 09-12076, SelectBuild Northern California, Inc. (7579) Case No. 09-12077, Illinois Framing, Inc. (4451) Case No. 09-12078, C Construction, Inc. (8206) Case No. 09-12079, TWF Construction, Inc. (3334) Case No. 09-12080, H.N.R. Framing Systems, Inc. (4329) Case No. 09-12081, SelectBuild Southern California, Inc. (9378) Case No. 09-12082, SelectBuild Nevada, Inc. (8912) Case No. 09-12083, SelectBuild Arizona, LLC (0036) Case No. 09-12084, and SelectBuild Illinois, LLC (0792) Case No. 09-12085. The mailing address for the Debtors is 720 Park Boulevard, Suite 200, Boise, Idaho 83712.

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

Dated: January 6, 2010

PETER J. SOLOMON COMPANY

/s/ Bradley I. Dietz

Bradley I. Dietz, Managing Director

520 Madison Avenue

New York, NY 10022

Telephone: (212) 508-1600

Facsimile: (212) 508-1633

EXHIBIT A

Proposed Order

hearing on the Application was appropriate under the particular circumstances; and the Court having reviewed the Application 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 Application 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 Application is granted as set forth below.
2. Pursuant to sections 327, 328(a) and 330 of Bankruptcy Code and Bankruptcy Rule 2016, PJS is granted allowance and approval of (i) the Restructuring Transaction Fee in the amount of \$50,000, which amount, in accordance with the Engagement Letter and the Retention Order, equals \$2,500,000 less (a) the Monthly Fees paid by the Debtors to PJS from the inception of PJS's engagement with the Debtors through the Confirmation Date and less (b) 50% of the Financing Transaction Fee to be paid by the Debtors to PJS; and (ii) the Financing Transaction Fee in the amount of \$1,700,000.
3. Subject to the terms and conditions of the Engagement Letter, the Retention Order and this Order, the Debtors are authorized to remit payment to PJS on account of the Restructuring Transaction Fee and the Financing Transaction Fee, less the \$200,000 retainer held by PJS, and PJS is authorized to apply the \$200,000 retainer held by it against the balance of the allowed and approved Restructuring Transaction Fee and the Financing Transaction Fee.

4. This Court shall retain jurisdiction with respect to any and all matters arising from or related to the interpretation or implementation of this Order.

Dated: Wilmington, Delaware
January __, 2010

Kevin J. Carey
Chief United States Bankruptcy Judge

EXHIBIT B

Invoice

January 5, 2010

Building Materials Holding Corporation
720 Park Blvd, Suite 200
Boise, ID 83712

Attention: Danny McQuary
Chief Financial Officer

I N V O I C E

| | |
|---|------------------------------|
| Restructuring Transaction Fee amount due per Section 3(b) of Engagement Letter dated March 31, 2009: | \$2,500,000.00 |
| Less gross amount billed for the period April 1, 2009 through November 30, 2009 under Section 3(a) of Engagement Letter dated March 31, 2009: | 1,600,000.00 |
| Less 50% of Financing Fee (below): | <u>850,000.00</u> |
| Net Restructuring Transaction Fee amount | 50,000.00 |
| Financing Fee, as agreed: | <u>1,700,000.00</u> |
| Net Fee amount due | 1,750,000.00 |
| Total fees | 1,750,000.00 |
| Less credit for held retainer | <u>200,000.00</u> |
| Net amount due upon receipt | <u><u>\$1,550,000.00</u></u> |

Please remit payment by wire transfer in U.S. Dollars to:

Bank of America
1185 Avenue of the Americas
New York, NY 10036
ABA # 026 009 593 (ACH transfers, use # 021 000 322)
For further credit to: **Peter J. Solomon, L.P.**
Account number 94292 62215

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

BUILDING MATERIALS HOLDING
CORPORATION, *et al.*,¹

Debtors.

Chapter 11


Case No. 09-12074 (KJC)

Jointly Administered


AFFIDAVIT OF SERVICE

STATE OF DELAWARE)
) SS
NEW CASTLE COUNTY)

Casey S. Cathcart, an employee of the law firm of Young Conaway Stargatt & Taylor, LLP, co-counsel to the above-captioned debtors, being duly sworn according to law, deposes and says that on January 6, 2010, she caused a copy of the **Application of Peter J. Solomon Company for Allowance and Approval of Payment of Restructuring Transaction Fee and Financing Transaction Fee** to be served as indicated upon the parties identified on the attached service lists.


Casey S. Cathcart

SWORN TO AND SUBSCRIBED before me this 6th day of January, 2010.


Notary Public
My Commission Expires: 9/6/2013

ERICA A. BROYLES
NOTARY PUBLIC
STATE OF DELAWARE
My commission expires Sept. 6, 2013

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.

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