

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:)	
)	Chapter 11
BUILDING MATERIALS HOLDING)	
CORPORATION, <i>et al.</i> , ¹)	Case No. 09-12074 (KJC)
)	
Debtors.)	Jointly Administered
)	
)	Objection Deadline: July 13, 2009 at 4:00 p.m. (ET) (requested)
)	Hearing Date: July 16, 2009 at 4:30 p.m. (ET) (requested)
)	
)	Ref. Docket Nos. 16 and 66

**DEBTORS' SUPPLEMENTAL MOTION FOR AN ORDER (A) INCREASING THE
DEBTORS' AUTHORIZATION TO PAY CERTAIN PREPETITION CLAIMS OF
SHIPPERS, WAREHOUSEMEN, AND MECHANIC'S/MATERIALMAN'S LIEN
CLAIMANTS; AND (B) AUTHORIZING FINANCIAL INSTITUTIONS TO HONOR
AND PROCESS RELATED CHECKS AND TRANSFERS**

Building Materials Holding Corporation and its affiliates, as debtors and debtors in possession (collectively, the "***Debtors***"), submit this Motion (the "***Motion***") for the entry of an order substantially in the form annexed hereto as ***Exhibit A*** (a) increasing the Debtors' authorization to pay, in the ordinary course of business, certain prepetition claims of shippers, warehousemen, and mechanic's/materialman's lien claimants; and (b) authorizing banks and other financial institutions to receive, process, honor, and pay checks or electronic transfers used by the Debtors to pay the foregoing and to rely on the representations of such Debtors as to

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.

which checks are issued and authorized to be paid in accordance with this Motion. In support thereof, the Debtors respectfully represent:²

JURISDICTION AND VENUE

1. The Court has jurisdiction to consider this Motion 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.

RELIEF REQUESTED

2. By this Motion, the Debtors, pursuant to sections 105, 363, 1107(a), and 1108 of title 11 of the United States Code (the "***Bankruptcy Code***") and Rule 6004 of the Federal Rules of Bankruptcy Procedure (the "***Bankruptcy Rules***"), seek entry of an order authorizing, but not obligating, them to pay, in the ordinary course of business and in the sound exercise of their business judgment, certain prepetition Shipping Charges, Warehousing Charges, and Materialman's Lien Claims (each as defined herein) as provided herein in an aggregate amount not to exceed \$2,250,000.³

3. The Debtors also seek entry of an order authorizing banks and other financial institutions to receive, process, honor, and pay checks or electronic transfers used by the Debtors to pay the foregoing and to rely on the representations of such Debtors as to which checks are issued and authorized to be paid in accordance with this Motion.

² A description of the Debtors' business and the reasons for filing these Chapter 11 Cases is set forth in the Declaration of Paul S. Street in Support of Chapter 11 Petitions and First Day Relief (the "***Street Declaration***"), filed on June 16, 2009 [Docket No. 4]. This Motion is supported by the Street Declaration.

³ This amount represents an increase from the amount requested by the Debtors in their request for first day relief. The basis for the increase is described in paragraphs 13-14 below.

BACKGROUND

4. On June 16, 2009 (the "*Petition Date*"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the "*Chapter 11 Cases*"). The Debtors continue to operate their businesses and manage their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in the Chapter 11 Cases.

5. The Debtors are one of the largest providers of residential building products and construction services in the United States. The Debtors distribute building materials, manufacture building components (e.g., millwork, floor and roof trusses, and wall panels), and provide construction services to professional builders and contractors through a network of 31 distribution facilities, 43 manufacturing facilities, and five regional construction services facilities.

6. The Debtors operate under two brand names: BMC West® and SelectBuild®.

- ***BMC West.*** Under the BMC West brand, the Debtors market and sell building products, manufacture building components, and provide construction services to professional builders and contractors. Products include structural lumber and building materials purchased from manufacturers, as well as manufactured building components such as millwork, trusses, and wall panels. Construction services include installation of various building products and framing. The Debtors currently offer these products and services in major metropolitan markets in Texas, Washington, Colorado, Idaho, Utah, Montana, North Carolina, California, and Oregon.
- ***SelectBuild.*** Under the SelectBuild brand, the Debtors offer integrated construction services to production homebuilders, as well as commercial and multi-family builders. Services include wood framing, concrete services, managing labor and construction schedules, and sourcing materials. The Debtors currently offer

these services in major metropolitan markets in California, Arizona, Nevada and Illinois.

7. On the Petition Date, the Debtors filed their proposed chapter 11 plan (the "**Plan**") and accompanying disclosure statement (the "**Disclosure Statement**"). As set forth in greater detail in the Plan and Disclosure Statement, the Plan contemplates a restructure of the Debtors' balance sheet and ownership structure, as well as an immediate cash distribution to unsecured creditors and an opportunity for such creditors to receive full payment from the Reorganized Debtors, depending on business performance. The Debtors believe that the restructuring proposal embodied in the Plan provides the Debtors' creditors with the best means of maximizing value of the Debtors and their businesses. To implement this restructuring, the Debtors have obtained a commitment to provide \$80 million in the form of debtor-in-possession financing, which the Court approved on an interim basis on June 17, 2009.

**SHIPPING CHARGES, WAREHOUSING CHARGES, AND
MECHANIC'S/MATERIALMAN'S LIEN CLAIMS**

8. The Debtors have developed a complex supply chain and distribution network that includes shipping and warehousing raw materials, building products, and manufactured building components. The Debtors depend upon the services of shippers, truckers, expeditors, customs brokers, and other carriers (collectively, the "**Shippers**") to assure the timely shipping and delivery of (a) raw materials and building products to the Debtors and (b) building products and manufactured building components to customers in the ordinary course of the Debtors' business. The Debtors utilize approximately 115 Shippers to move building products and manufactured building components to and from their manufacturing and distribution facilities. On average, the Debtors pay approximately \$5,800,000 to the Shippers annually for delivery and/or distribution of raw materials, building products and manufactured building components.

9. The Debtors' suppliers of raw materials and building products typically warehouse the shipments of raw materials pursuant to the underlying purchase agreement. However, occasionally, the Debtors must use third-party warehousemen (collectively, the "*Warehousemen*") for the storage of raw materials and building products prior to their delivery to the Debtors. In addition, while the Debtors generally store these raw materials and building products, as well as any building components they have manufactured, in one of their 79 warehouses across the United States, occasionally the Debtors rely on Warehousemen to store these items before they are delivered to the Debtors' customers.

10. To avoid undue delay and to facilitate the continued operation of the Debtors' business, the Debtors seek immediate authority to pay, on a case-by-case basis and in their sole discretion, the prepetition claims of the Shippers (the "*Shipping Charges*") and the prepetition claims of the Warehousemen (the "*Warehousing Charges*") to ensure that the Debtors can continue to send, receive, and store raw materials, building products and manufactured building components, including those raw materials, building products and manufactured building components currently in the possession of the Shippers and Warehousemen.

11. The Debtors also do business with a number of third parties who could potentially assert liens against the Debtors and their property or their customers' property for amounts the Debtors owe to those third parties, including mechanic's liens and materialman's liens (the "*Materialman's Lien Claimants*," and together with the Shippers and the Warehousemen, the "*Possessory Claimants*"). For example, the Debtors operate as a subcontractor on various construction projects and are obligated to pay certain other subcontractors for services performed. If the Debtors have obligations due and owing to any of

these subcontractors, the subcontractors may be able to assert a lien on the Debtors' customers' property or the Debtors' tooling and other equipment located on the jobsites. As a result, the Debtors will not be able to receive payment from their customers (who require lien releases from the Debtors' suppliers and subcontractors before they will pay the Debtors) or retrieve the tooling and other equipment unless they pay the amounts due to the subcontractors.

12. To avoid undue delay and to facilitate the continued operation of the Debtors' business, the Debtors seek immediate authority to pay and discharge, on a case-by-case basis and in their sole discretion, the prepetition claims of all Materialman's Lien Claimants that have given or could give rise to a lien against the Debtors' or the Debtors' customers' property (the "***Materialman's Lien Claims***," and together with the Shipping Charges and the Warehousing Charges, the "***Possessory Claims***") regardless of whether such Materialman's Lien Claimants have already perfected their interests.

THE PRIOR ORDER

13. In light of the importance of being able satisfy the Possessor Claims in order to receive payment from their customers and to retrieve their property, the Debtors filed a motion [Docket No. 16] (the "***Prior Motion***") requesting that the Court enter an order authorizing them to, *inter alia*, pay the Possessory Claims. At the time the Prior Motion was filed, the Debtors estimated the outstanding prepetition invoices of the Possessory Claimants. The Debtors based this estimation upon information that was available to members of the Debtors' corporate office staff, such as historical payment trends. Due to the confidential nature of the Debtors' bankruptcy preparations, the Debtors' corporate office staff was unable to gather data from field-level management relating to the actual outstanding amounts of the invoices of the Possessory Claimants. On the basis of this information, the Debtors requested that the Court

enter an order authorizing them to pay up to \$1,133,000 on account of prepetition Shipping Charges, Warehousing Charges, and Materialman's Lien Claims. The Court entered the requested order on June 17, 2009 [Docket No. 66] (the "**Prior Order**").

14. Subsequently, the Debtors have been able to more accurately estimate the amount of the prepetition invoices of the Possessory Claimants. The Debtors now estimate that the prepetition invoices of the Possessory Claimants total approximately \$2,250,000. In order to ensure that the Debtors are able to continue to receive payments from their customers and to retrieve their goods, tooling and other equipment, the Debtors request that they be authorized to pay up to \$2,250,000 on account of prepetition Possessory Claims.

BASIS FOR RELIEF REQUESTED

A. The Court Should Authorize Payment of the Possessory Claims

(1) The Court May Authorize Payment of the Possessory Claims Pursuant to Section 363 of the Bankruptcy Code

15. The Court may grant the relief requested herein pursuant to section 363 of the Bankruptcy Code. Section 363(b) allows the court to authorize the payment of prepetition claims outside of the ordinary course of business. *See, e.g., Armstrong World Indus., Inc. v. James A. Phillips, Inc. (In re James A. Phillips, Inc.)*, 29 B.R. 391, 397 (S.D.N.Y. 1983) (relying on section 363 to authorize a contractor to pay the prepetition claims of some suppliers who were potential lien claimants because the payments were necessary to induce general contractors to release funds owed to the debtors); *In re Tropical Sportswear Int'l Corp.*, 320 B.R. 15 (Bankr. M.D. Fla. 2005) (recognizing section 363 as a source of authority and allowing payment of the prepetition claims of vendors whose supplies would take four to six weeks to replace).

16. The Shippers and Warehousemen possess goods that the Debtors need to continue their ongoing business operations. Absent payment of the Shipping and Warehousing Charges, the Shippers and Warehousemen may refuse to deliver these necessary goods to the Debtors and/or may prevent the Debtors from recovering these goods. The Shippers and Warehousemen may refuse to deliver goods in their possession to the Debtors because under state law, these Shippers and Warehousemen may have a lien on the goods in their possession that secures the Debtors' obligations to pay for their services.⁴ Thus, the Shippers and Warehousemen may be unwilling to release the goods in their possession to which they may be entitled to liens, because releasing possession of the goods may convert their claims against the Debtors from secured to unsecured. Because the Debtors' business depends upon the timely delivery and distribution of raw materials, building products, and manufactured building components, avoiding such a scenario is vital to the Debtors' continuing business operations and the success of these Chapter 11 Cases.

17. As noted above, the Materialman's Lien Claimants have the right to assert liens against the Debtors and their property or their customers' property for the amounts the Debtors owe to them. If the Debtors are unable to satisfy the Materialman's Lien Claims, in many instances they will be unable to receive payment from their customers, who require that the Debtors secure lien releases from their suppliers and subcontractors before they will remit payment to the Debtors. The vitality of the Debtors' businesses during the pendency of the

⁴ For example, section 7-307 of the Uniform Commercial Code provides, in pertinent part, that a "carrier has a lien on the goods covered by a bill of lading or on the proceeds thereof in its possession for charges after the date of the carrier's receipt of the goods for storage or transportation, including demurrage and terminal charges, and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law." See U.C.C. section 7-307(a) (2008).

Chapter 11 Cases depends upon the Debtors' ability to receive payment from these and other customers.

18. For these reasons, the Debtors' ability to satisfy the Possessory Claims is essential to the success of these Chapter 11 Cases and to the preservation of the value of the Debtors' estates.

(2) The Court May Also Authorize Payment of the Possessory Claims Pursuant to Section 105(a) of the Bankruptcy Code and the "Necessity of Payment" Doctrine

19. The Debtors' proposed payment of the Possessory Claims should also be authorized pursuant to section 105(a) of the Bankruptcy Code and the "doctrine of necessity."

20. Section 105(a) of the Bankruptcy Code empowers the Court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(a). A bankruptcy court's use of its equitable powers to "authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept." *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989). "Under [section] 105, the court can permit pre-plan payment of a pre-petition obligation when essential to the continued operation of the debtor." *In re NVR L.P.*, 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) (citing *Ionosphere Clubs*, 98 B.R. at 177); accord *In re Just for Feet, Inc.*, 242 B.R. 821, 825 (D. Del. 1999) ("To invoke the necessity of payment doctrine, a debtor must show that payment of the prepetition claims is 'critical to the debtor's reorganization.'") (quoting *In re Financial News Network, Inc.*, 134 B.R. 732, 736 (Bankr. S.D.N.Y. 1991)); see also *In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) ("[T]o justify payment of a pre-petition unsecured creditor, a debtor must show that the payment is necessary to avert a serious threat to the Chapter 11 process.").

21. In a long line of well-established cases, federal courts have consistently permitted postpetition payment of prepetition obligations where necessary to preserve or enhance the value of a debtor's estate for the benefit of all creditors. *See, e.g., Miltenberger v. Logansport Ry.*, 106 U.S. 286, 311-12 (1882) (payment of pre-receivership claim prior to reorganization permitted to prevent "stoppage of [crucial] business relations"); *In re Lehigh & New Eng. Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (holding that "if payment of a claim which arose prior to reorganization is essential to the continued operation of the...[business] during reorganization, payment may be authorized even if it is made out of [the] corpus"); *Dudley v. Mealey*, 147 F.2d 268 (2d Cir. 1945), *cert. denied* 325 U.S. 873 (1945) (extending doctrine for payment of prepetition claims beyond railroad reorganization cases); *Michigan Bureau of Workers' Disability Comp. v. Chateaugay Corp. (In re Chateaugay Corp.)*, 80 B.R. 279 (S.D.N.Y. 1987), *appeal dismissed*, 838 F.2d 59 (2d Cir. 1988) (approving lower court order authorizing payment of prepetition wages, salaries, expenses, and benefits).

22. The "doctrine of necessity" functions in a chapter 11 reorganization as a mechanism by which the bankruptcy court can exercise its equitable power to allow payment of critical prepetition claims not explicitly authorized by the Bankruptcy Code. *See In re Boston & Me. Corp.*, 634 F.2d 1359, 1382 (1st Cir. 1980) (recognizing the existence of a judicial power to authorize trustees to pay claims for goods and services that are indispensably necessary to the debtors' continued operation); *In re Just for Feet, Inc.*, 242 B.R. 821, 824 (D. Del. 1999) ("[C]ourts have used their equitable power under section 105(a) of the Code to authorize the payment of pre-petition claims when such payment is deemed necessary to the survival of a debtor in a chapter 11 reorganization."). The doctrine is frequently invoked early in a reorganization, particularly in connection with those chapter 11 sections that relate to payment of

prepetition claims. The court in *In re Structurelite Plastics Corp.*, 86 B.R. 922, 931 (Bankr. S.D. Ohio 1988), observed the decisional authority which supports "the principle that a bankruptcy court may exercise its equity powers under section 105(a) to authorize payment of prepetition claims where such payment is necessary to 'permit the greatest likelihood of survival of the debtor and payment of creditors in full or at least proportionately.'" (quoting *In re Chateaugay Corp.*, 80 B.R. at 287). The court stated that "a per se rule proscribing the payment of prepetition indebtedness may well be too inflexible to permit the effectuation of the rehabilitative purposes of the Code." *Id.* at 932. The rationale for the doctrine of necessity rule is consistent with the paramount goal of chapter 11 – "facilitating the continued operation and rehabilitation of the debtor...." *Ionosphere Clubs*, 98 B.R. at 176.

23. As stated above, payment of the Possessory Claims is essential to the uninterrupted operation of the Debtors' business. In turn, maintenance of the Debtors' business during these Chapter 11 Cases is crucial to the Debtors' ability to rehabilitate for the benefit of all stakeholders. Hence, this Court should exercise its equitable powers to grant the relief requested herein.

B. The Court Should Authorize the Debtors' Banks to Pay the Claims Described Herein

24. In connection with the foregoing, the Debtors respectfully request that the Court enter an order that (a) authorizes all applicable banks and financial institutions to receive, process, honor, and pay all checks presented for payment of, and to honor all fund transfer requests made by the Debtors related to, the claims the Debtors request authority to pay in this Motion, regardless of whether the checks were presented, or fund transfer requests were submitted, before or after the Petition Date and (b) provides that all banks and other financial institutions may rely on the representations of the Debtors with respect to whether any check or

other payment order drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this application, and such banks and other financial institutions shall not have any liability to any party for relying on such representations by the Debtors as provided for herein.

REQUEST FOR WAIVER OF STAY

25. To implement the foregoing, the Debtors seek a waiver of any stay of the effectiveness of the order approving this Motion. Pursuant to Bankruptcy Rule 6004(h), "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 10 days after entry of the order, unless the court orders otherwise." As set forth above, the immediate payment of the Possessory Claims is essential to prevent potentially irreparable damages to the Debtors' operations, value, and ability to reorganize. Accordingly, the Debtors submit that ample cause exists to justify a waiver of the 10-day stay imposed by Bankruptcy Rule 6004(h).

DEBTORS' RESERVATION OF RIGHTS

26. Nothing contained herein is intended or should be construed as an admission of the validity of any claim against the Debtors; a waiver of the Debtors' rights to dispute any claim; or an approval, assumption or rejection of any agreement, contract, or lease under section 365 of the Bankruptcy Code. The Debtors expressly reserve their rights to contest any invoice or claim with respect to the Possessory Claims in accordance with applicable nonbankruptcy law. Likewise, if this Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity of any claim or a waiver of the Debtors' rights to dispute such claim subsequently.

NOTICE

27. No trustee or examiner has been appointed in these Chapter 11 Cases. The United States Trustee formed the official committee of unsecured creditors ("the ***Creditors' Committee***") on June 26, 2009. The Debtors have provided notice of filing of the Motion to: (a) the Office of the United States Trustee for the District of Delaware; (b) counsel to Wells Fargo Bank, as agent under the Debtors' Prepetition Credit Agreement and DIP Facility (as defined in the Plan); (c) counsel to the Creditors' Committee; and (d) any persons who have filed a request for notice in the Chapter 11 Cases pursuant to Bankruptcy Rule 2002. Due to the nature of the relief requested the Debtors respectfully submit that no further notice of this Motion is required.

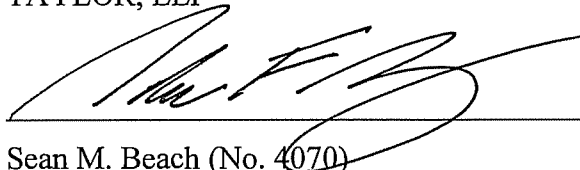
NO PRIOR REQUEST

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

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

Dated: Wilmington, Delaware
July 1, 2009

YOUNG CONAWAY STARGATT &
TAYLOR, LLP



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PROPOSED ATTORNEYS FOR DEBTORS AND
DEBTORS IN POSSESSION

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

IN RE: BUILDING MATERIALS HOLDING CORPORATION, <i>et al.</i>,¹ Debtors.)) Chapter 11)) Case No. 09-12074 (KJC))) Jointly Administered)) Objection Deadline: July 13, 2009 at 4:00 p.m. (ET) (requested)) Hearing Date: July 16, 2009 at 4:30 p.m. (ET) (requested))) Ref. Docket Nos. 16 and 66
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NOTICE OF MOTION

TO: (I) THE OFFICE OF THE UNITED STATES TRUSTEE; (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 PLAN); AND (IV) ALL PARTIES ENTITLED TO NOTICE UNDER RULE 2002-1(b) OF THE LOCAL RULES OF BANKRUPTCY PRACTICE AND PROCEDURE FOR THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

PLEASE TAKE NOTICE that the above-captioned debtors and debtors-in-possession (collectively, the "Debtors") have filed the attached **Debtors' Supplemental Motion for an Order (A) Increasing the Debtors' Authorization to Pay Certain Prepetition Claims of Shippers, Warehousemen, and Mechanic's/Materialman's Lien Claimants; and (B) Authorizing Financial Institutions to Honor and Process Related Checks and Transfers** (the "Supplemental Motion").

PLEASE TAKE FURTHER NOTICE that the Debtors have filed a motion (the "Motion to Shorten") requesting that objections to the Supplemental Motion be filed with the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801 on or before **July 13, 2009 at 4:00 p.m. (ET)**. At the same time, a copy of the objection must also be served upon the undersigned counsel to the Debtors.

PLEASE TAKE FURTHER NOTICE THAT PURSUANT TO THE MOTION TO SHORTEN THE DEBTORS HAVE FURTHER REQUESTED THAT THE HEARING TO

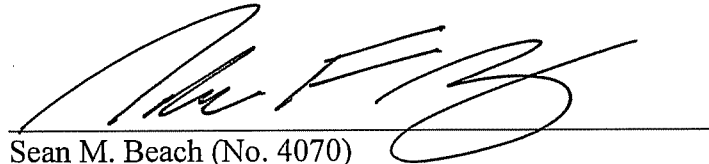
¹ The Debtors, along with the last four digits of each Debtor's tax identification number, are as follows: Building Materials Holding Corporation (4269), BMC West Corporation (0454), SelectBuild Construction, Inc. (1340), SelectBuild Northern California, Inc. (7579), Illinois Framing, Inc. (4451), C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

CONSIDER THE SUPPLEMENTAL MOTION BE HELD ON **JULY 16, 2009 AT 4:30 P.M. (ET)** BEFORE THE HONORABLE KEVIN J. CAREY AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 NORTH MARKET STREET, 5TH FLOOR, COURTROOM NO. 5, WILMINGTON, DELAWARE 19801.

PLEASE TAKE FURTHER NOTICE THAT IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE SUPPLEMENTAL MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: Wilmington, Delaware
July 1, 2009

YOUNG CONAWAY STARGATT & TAYLOR, LLP



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PROPOSED ATTORNEYS FOR DEBTORS
AND DEBTORS IN POSSESSION

EXHIBIT A

Proposed Order

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

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

**SUPPLEMENTAL ORDER (A) INCREASING THE DEBTORS' AUTHORIZATION TO
PAY CERTAIN PREPETITION CLAIMS OF SHIPPERS, WAREHOUSEMEN, AND
MECHANIC'S/MATERIALMAN'S LIEN CLAIMANTS; AND (B) AUTHORIZING
FINANCIAL INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND
TRANSFERS**

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 (a) increasing the Debtors' authorization to pay, in the ordinary course of business, certain prepetition claims of shippers, warehousemen, and mechanic's/materialman's lien claimants; and (b) authorizing banks and other financial institutions to receive, process, honor, and pay checks or electronic transfers used by the Debtors to pay the foregoing and to rely on the representations of such Debtors as to which checks are issued and authorized to be paid in accordance with this Order, all as set forth in the Motion; and upon the Street Declaration² in support thereof; and the Court having found that venue of this proceeding and the Motion in this

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

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 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. The Prior Order is hereby amended and superseded with this Order.
3. The Debtors are authorized, but not directed, to pay the prepetition amounts owed on account of Shipping Charges, Warehousing Charges, and Materialman's Lien Claims in an aggregate amount not to exceed \$2,250,000; *provided, however*, that the Debtors are not authorized to pay Materialman's Lien Claims unless the applicable Materialman's Lien Claimant has perfected its claim or, is capable of perfecting or may be capable of perfecting in the future, one or more liens in respect of such claim; *provided further, however*, that such payment shall not be deemed (i) an admission by the Debtors of the extent, validity, perfection, or possible avoidability of the related liens, claims or payments, and (ii) a waiver of the Debtors' rights regarding the extent, validity, perfection, or avoidability of the related liens, claims, or payments. The Debtors' right to challenge the extent, validity, perfection, or avoidability of such liens, claims, or payments is hereby expressly reserved.

4. All applicable banks and other financial institutions are hereby authorized, when requested by the Debtors, to receive, process, honor, and pay any and all checks and transfer requests evidencing amounts paid by the Debtors under this Order whether presented prior to or after the Petition Date. Such banks and financial institutions may rely on the representations of the Debtors with respect to whether any check or other payment order drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this order, and such bank or financial institution shall not have any liability to any party for relying on such representations by the Debtors as provided for herein.

5. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests in respect of payments made in accordance with this Order that are dishonored or rejected.

6. Absent payment of claims pursuant to this Order, nothing herein shall change the nature or priority of the underlying claims.

7. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained herein shall create, nor is intended to create, any rights in favor of, or enhance the status of any claim held by, any person.

8. The Debtors' satisfaction of any liens pursuant to this order shall not be deemed to be an admission that such liens are valid liens and the Debtors retain the right to contest the extent, validity, or perfection of such liens or to seek the avoidance of such liens.

9. Nothing contained in this Order shall be deemed to constitute an assumption or adoption of any executory contract or prepetition or postpetition agreement between the Debtors and the holder of a Possessory Claim, or to require the Debtors to make any of the payments authorized herein.

10. The authorization granted hereby to pay the Possessory Claims shall not create any obligation on the part of the Debtors or their officers, directors, attorneys, or agents to pay the Possessory Claims, and nothing contained in this Order shall be deemed to increase, reclassify, elevate to an administrative expense status, or otherwise affect the Possessory Claims to the extent they are not paid.

11. Nothing in this Order shall be deemed either a grant of administrative priority expense status to, or authority to pay, any amounts that are disputed by the Debtors.

12. Nothing contained in this Order shall be construed as a waiver by the Debtors of their rights to contest any claim or invoice of a Possessory Claimant under applicable law.

13. Nothing in this Order shall prohibit the Debtors from seeking Court authority to increase the prepetition amounts authorized to be paid hereunder.

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

15. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such motion and the requirements of applicable rules.

16. Pursuant to Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

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

Dated: Wilmington, Delaware
July ____, 2009

Kevin J. Carey
Chief United States Bankruptcy Judge