

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- <u>12074</u> ()
)	
Debtors.)	Joint Administration Requested
)	
)	

**DEBTORS' MOTION FOR AN ORDER (A) AUTHORIZING THE
PAYMENT OF CERTAIN PREPETITION CLAIMS OF FOREIGN
VENDORS; 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) authorizing, but not directing, the Debtors to pay the prepetition claims of Foreign Vendors (as defined herein); 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 Motion. In support thereof, the Debtors respectfully represent:²

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 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 contemporaneously with this Motion. This Motion is supported by the Street Declaration.

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 Federal Rules of Bankruptcy Procedure 6003 and 6004, seek entry of an order: (a) authorizing but not directing the Debtors to pay, in their sole discretion, and in the ordinary course of business, as and when due, prepetition claims owing to Foreign Vendors (as defined herein), including claims on account of direct and indirect materials and services provided to the Debtors, as well as import or tax obligations in an aggregate amount not to exceed \$1,250,000 and (b) authorizing the Debtors' banks to receive, process, honor, and pay checks or electronic transfers used by the Debtors to pay prepetition obligations to Foreign Vendors.

BACKGROUND

3. On the date hereof (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 these Chapter 11 Cases, and no committees have been appointed or designated.

4. 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.

5. 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.

6. The Debtors operate in metropolitan areas that have historically outpaced U.S. averages for residential building permit activity (largely in the Southern and Western portions of the United States). Based on National Association of Home Builders building permit activity, the Debtors provide building products and construction services in 9 of the top 25 single-family construction markets.

7. Prior to the Petition Date, the Debtors, with the assistance of their professionals and advisors, pursued several avenues to try to maximize the value of the Debtors' business, including conducting a process to sell the Debtors' business. The Debtors' prepetition

sale process did not, however, yield offers that reflected, in the Debtors' business judgment, the true value of the Debtors' business operations.

8. Contemporaneously with this prepetition marketing and sale effort, the Debtors engaged in good faith, arm's-length negotiations with significant holders of the Debtors' prepetition secured indebtedness to develop a way to de-lever the Debtors' business, while at the same time providing the Debtors' unsecured creditor constituency with a substantial recovery. These negotiations culminated in the proposed chapter 11 plan (the "**Plan**") and accompanying disclosure statement (the "**Disclosure Statement**"), filed contemporaneously with this Motion.

9. 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 Debtors seek to have approved by the Court contemporaneously herewith.

10. As of the Petition Date, the Debtors employ approximately 5,500 people. Approximately 300 of the Debtors' employees are represented by seven unions with whom the Debtors have collective bargaining agreements. For the 12 months ended March 31, 2009, the Debtors' total revenue totaled approximately \$1.1 billion. As of March 31, 2009 the book value of the Debtors' assets totaled approximately \$480 million and its liabilities totaled approximately \$481 million.

FOREIGN VENDORS

11. As described in the Street Declaration, the Debtors rely, in the ordinary course of business, on numerous vendors located outside of the United States, primarily in South America but also in Canada (collectively, the "*Foreign Vendors*").³ These Foreign Vendors supply goods, materials, and services, without which the Debtors' businesses either could not operate or would operate at significantly reduced profitability.

12. The Foreign Vendors provide the diverse services and products that are necessary at all stages of the Debtors' production of manufactured building components and timely provision of building supplies and construction services.⁴ In some instances, the Debtors require an extremely high volume of certain raw materials and products to manufacture their products. A single Foreign Vendor often cannot meet such volume requirements, thus the Debtors rely on two or more Foreign Vendors to supply the particular input. If any one of these Foreign Vendors suddenly refused to ship its product to the Debtors, the Debtors' manufacturing process would be shut down and they would be unable to satisfy their customers' orders. The process of switching to a different vendor, if even possible, could take several weeks, resulting in massive manufacturing delays.

13. Furthermore, there are significant shipments of raw materials and supplies that are currently in route to the Debtors from the Foreign Vendors. Timely delivery of these

³ The term "Foreign Vendors" shall not include foreign vendors, service providers, or other non-governmental entities with claims against the Debtors if such foreign entities are known to have assets within the United States that would be subject to the jurisdiction of the Court and that would otherwise be available to satisfy a judgment entered by the Court if such foreign entities were to violate the automatic stay provisions of section 362 of the Bankruptcy Code or take any actions contrary to an order of the Court.

⁴ Claims of Foreign Vendors also include any foreign tax, import/export fees, customs fees, or duties related to such claims. If the Debtors did not pay these ancillary costs, they would be unable to obtain the underlying goods being purchased.

shipments is crucial to preserve the Debtors' operations. The Debtors have little existing inventory on which to rely in the event the Foreign Vendors refuse to make deliveries, as the Debtors utilize a minimal "buffer/safety" stock of raw materials and other inputs. For many key raw materials and inputs, the Debtors maintain no more than two to three months of inventory. This inventory system requires highly choreographed product development, purchasing, shipping, and manufacturing operations. Due to the minimal inventory retained by the Debtors, any breakdowns in the supply chain, even if minor, can halt production of a customer's order.

14. As of the Petition Date, the Debtors estimate they owe approximately \$1,250,000 to Foreign Vendors (the "*Foreign Vendor Obligations*").

BASIS FOR RELIEF REQUESTED

A. Payment of the Foreign Vendor Obligations is Appropriate Under the Bankruptcy Code

(1) The Court May Authorize Payment of the Foreign Vendor Obligations Pursuant to Section 363 of the Bankruptcy Code

15. The Court may authorize the Debtors to pay the Foreign Vendor Obligations in the ordinary course of business 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). In addition, section 363(c) allows a debtor-in-possession to enter into transactions involving property of the estate in the

ordinary course of business without an order of the court. *See, e.g., In re James A. Phillips*, 29 B.R. at 395 n.2 ("Insofar as transactions are actually in the ordinary course, they are authorized automatically by § 363(c)(1) and § 1107(a), and do not require Bankruptcy Court approval.").

16. Continuity of the supply of raw materials and certain other goods and services provided by the Foreign Vendors is critical to the continued, uninterrupted operation of the Debtors' businesses and in the best interests of all of the Debtors' creditors. Due to the Debtors' size and market share, the Debtors regularly transact business with vendors located outside of the United States and its territories including, among other places, Canada, Brazil, Germany, and Argentina. Foreign Vendors often have confused and guarded reactions to United States bankruptcy laws and processes. A debtor seeking to explain the chapter 11 process to a foreign vendor and convince that foreign vendor to continue shipments after the petition date is often met with a high degree of skepticism. Indeed, there is a significant risk that the nonpayment of even a single invoice could cause a Foreign Vendor to sever its business relationship with the Debtors altogether. But even short of that, nonpayment of prepetition claims may cause Foreign Vendors to adopt a wait-and-see attitude in transacting business with the Debtors, resulting in costly delays in the shipment of additional goods.

17. Moreover, if the Foreign Vendors are not paid, they may take precipitous action against the Debtors based upon the view that the Foreign Vendors are not subject to the jurisdiction of the Court and, thus, not subject to the automatic stay provisions of section 362(a) of the Bankruptcy Code. Although the automatic stay expressly applies to protect the Debtors' assets wherever they are located, enforcing the automatic stay against the Foreign Vendors who do not have minimum contacts with the United States is often not feasible.

18. In light of these serious and irreparable consequences, the Debtors have determined, in their business judgment, that payment of the Foreign Vendors is essential to avoid costly disruptions to the Debtors' operations and ability to timely and adequately satisfy customer orders. The Debtors submit that the aggregate amount of the Foreign Vendor Obligations pales in comparison to the likely damages to the Debtors' business should the relief requested herein be denied.

19. The Debtors' payment of the Foreign Vendor Obligations is also arguably within the ordinary course of the Debtors' business. As such, the Debtors submit that Court approval of the Debtors' payments is not necessary because of the authority granted to them by section 363(c). Nonetheless, for the avoidance of doubt, the Debtors request that the Court grant the relief requested herein and enter an order authorizing, but not directing, them to pay the Foreign Vendor Obligations in the ordinary course of the Debtors' business.

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

20. The Court may also authorize the Debtors to continue to pay the Foreign Vendor Obligations in the ordinary course of business pursuant to section 105 of the Bankruptcy Code and the "doctrine of necessity." 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 Structurlite 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 noted previously, an uninterrupted supply of the goods provided by the Foreign Vendors is essential to the preservation of the value of the Debtors' businesses. Bankruptcy courts in this district have authorized chapter 11 debtors to pay claims owing to foreign entities against which the automatic stay cannot be readily enforced in the United States and as to which it would be unduly time-consuming and expensive to seek to enforce an order of

the bankruptcy court in the creditor's home country.⁵ See, e.g., *In re Arntrol Holdings, Inc.*, Case No. 06-11446 (KG) (Bankr. D. Del. Jan. 11, 2007); *In re Dura Auto. Sys., Inc.*, Case No. 06-11202 (KJC) (Bankr. D. Del. Nov. 20, 2006); *In re Rotec Indus., Inc.*, Case No. 06-10542 (KG) (Bankr. D. Del. June 28, 2006). The Debtors submit that similar relief is warranted in the Chapter 11 Cases.

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.

C. Immediate Relief is Justified

25. Pursuant to Bankruptcy Rule 6003, the Court may grant relief within twenty (20) days after the filing of the petition regarding a motion to "use, sell, lease, or otherwise incur an obligation regarding property of the estate" only if such relief is necessary to

⁵ The Debtors have not annexed copies of the unreported orders cited herein because of their size. Copies of these orders, however, are available upon request of the Debtors' counsel, including at the hearing to consider the Motion.

avoid immediate and irreparable harm. The failure to pay Foreign Vendors will result in immediate and irreparable harm to the Debtors' estates. As described above, the definition of "Foreign Vendors" encompasses only those suppliers who lack minimum contacts with the United States. The harm and economic disadvantage that would stem from the failure of any of the Foreign Vendors to timely ship goods is grossly disproportionate to the amount of the prepetition claims that will have to be paid in order to ensure the continued supply of critical goods to the Debtors. Finally, the Debtors have examined the different actions that a Foreign Vendor could take against the Debtors and have determined that payment of the Foreign Vendors is the only option to ensure that the Debtors' operations make a smooth transition into chapter 11.

26. Accordingly, the Debtors submit that they have satisfied the requirements of Bankruptcy Rule 6003 to support immediate payment of prepetition obligations related to the Foreign Vendors.

REQUEST FOR WAIVER OF STAY

27. 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), any "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, proposed payment to Foreign Vendors 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

28. 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 Foreign Vendors 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

29. No trustee, examiner, or creditors' committee has been appointed in these chapter 11 cases. The Debtors have provided notice of filing of the Motion either by electronic mail or facsimile and/or by overnight mail to: (a) the Office of the United States Trustee for the District of Delaware; (b) the 50 largest unsecured creditors of the Debtors on a consolidated basis as identified in the Debtors' chapter 11 petitions; and (c) counsel to Wells Fargo Bank, as agent for both of the Debtors' prepetition lenders and proposed postpetition lenders. As this Motion is seeking first-day relief, notice of this Motion and any order entered hereon will be served on all parties required by Local Rule 9013-1(m). Due to the nature of the relief requested, the Debtors respectfully submit that no further notice of this Motion is required.

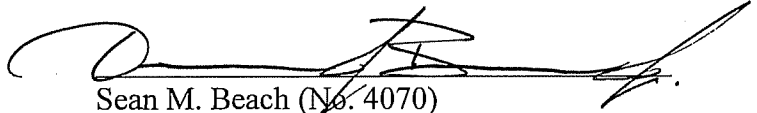
NO PRIOR REQUEST

30. 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
June 16, 2009

YOUNG CONAWAY STARGATT &
TAYLOR, LLP



Sean M. Beach (No. 4070)
Donald J. Bowman, Jr. (No. 4383)
Robert F. Poppiti, Jr. (No. 5052)
The Brandywine Building
1000 West St., 17th Floor
Wilmington, DE 19801
Telephone: 302.571.6600
Facsimile: 302.571.1253

---- and ----

GIBSON, DUNN & CRUTCHER LLP
Michael A. Rosenthal (*pro hac vice* pending)
Matthew K. Kelsey (*pro hac vice* pending)
Saeed M. Muzumdar (*pro hac vice* pending)
200 Park Ave, 47th Floor
New York, NY 10166-0193
Telephone: 212.351.4000
Facsimile: 212.351.4035

Aaron G. York (*pro hac vice* pending)
Jeremy L. Graves (*pro hac vice* pending)
2100 McKinney Ave, Suite 1100
Dallas, TX 75201-6911
Telephone: 214.698.3100
Facsimile: 214.571.2900

PROPOSED ATTORNEYS FOR DEBTORS AND
DEBTORS IN POSSESSION

EXHIBIT A

Proposed Order

IN RE:

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

Debtors.

Chapter 11

Case No. 09-12074 ()

Jointly Administered

Ref. Docket No. _____

**ORDER (A) AUTHORIZING THE PAYMENT OF CERTAIN PREPETITION CLAIMS
OF FOREIGN VENDORS; 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) authorizing the Debtors to pay prepetition obligations owed to Foreign Vendors;² 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 Declaration in support thereof; 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,

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 herein but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

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 Debtors are authorized, but not directed, in the reasonable exercise of their business judgment, to pay the prepetition claims of Foreign Vendors upon such terms and in the manner provided in this Order in an aggregate amount not to exceed \$1,250,000.
3. 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.
4. 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 to Foreign Vendors that are dishonored or rejected.

5. Nothing in the Motion or this Order, nor as a result of the Debtors' payment of any Foreign Vendor pursuant to this Order, shall be deemed or construed as an admission as to the validity or priority of any claim against the Debtors or an approval or assumption of any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code.

6. 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 Foreign Vendor under applicable law.

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

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

9. Rule 6003(b) of the Federal Rules of Bankruptcy Procedure (the "*Bankruptcy Rules*") has been satisfied.

10. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such motion and the requirements of Bankruptcy Rule 6004(a).

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

12. 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
June ____, 2009

UNITED STATES BANKRUPTCY JUDGE