

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 22, 2009 at 4:00 p.m. (ET)
	)	Hearing Date: July 29, 2009 at 10:00 a.m. (ET)
)	

**DEBTORS' MOTION FOR AN ORDER AUTHORIZING REJECTION OF THAT
CERTAIN UNEXPIRED LEASE WITH FOUR EMBARCADERO CENTER VENTURE
AND THE ASSOCIATED SUBLEASE WITH PCAP MANAGERS, LLC**

Building Materials Holding Corporation and its affiliates, as debtors and debtors in possession (collectively, the "***Debtors***"), submit this motion (the "***Motion***") for entry of an order, substantially in the form annexed hereto as ***Exhibit A***, authorizing the Debtors to reject that certain unexpired lease by and between Four Embarcadero Center Venture and Building Materials Holding Corporation, dated as of January 16, 2002, as amended by that certain First Amendment to Office Lease, dated as of September 11, 2003 and that certain Second Amendment to Office Lease, dated as of October 12, 2005 and that certain Third Amendment to Office Lease, dated as of December 23, 2005, for the use and occupancy of the premises commonly known as Four Embarcadero Center, Suite 3200 (the "***San Francisco Lease***") as well

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.

as the associated sublease by and between Building Materials Holding Corporation and PCAP Managers, LLC (the "***Sublease***"). In support thereof, the Debtors respectfully represent:

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 365(a), 1107(a), and 1108 of title 11 of the United States Code (the "***Bankruptcy Code***") and Federal Rule of Bankruptcy Procedure 6006, seek entry of an order authorizing them to reject the San Francisco Lease and the Sublease.

BACKGROUND

3. 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. On June 26, 2009, the Office of the United States Trustee (the "***U.S. Trustee***") appointed the official committee of unsecured creditors (the "***Creditors Committee***").

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. 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 \$80 million in debtor-in-possession financing, which the Court approved on a final basis on July 1, 2009.

THE SAN FRANCISCO LEASE AND THE SUBLEASE

7. Prior to the Petition Date, the Debtors entered into the San Francisco Lease for the use and occupancy of the office space located at Four Embarcadero Center, Suite 3200, where the Debtors maintained administrative offices. As part of their cost-cutting, restructuring and consolidation efforts, the Debtors have decided they will no longer need the San Francisco Lease on a going-forward basis.

8. The Debtors also entered into the Sublease for a portion of the premises leased pursuant to the San Francisco Lease. Because the Debtors intend to reject the San Francisco Lease, they are seeking to reject the Sublease.

BASIS FOR RELIEF REQUESTED

9. Pursuant to section 365(a) of the Bankruptcy Code, the Debtors seek authority to reject the San Francisco Lease and the Sublease. Section 365(a) of the Bankruptcy Code provides, in pertinent part, that a debtor in possession "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). "[T]he purpose behind allowing the assumption or rejection of executory contracts is to permit the trustee or debtor-in-possession to use valuable property of the estate and to 'renounce title to and abandon burdensome property.'" *Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.)*, 4 F.3d 1095, 1098 (2d Cir. 1993) (quoting 2 Collier On Bankruptcy ¶ 365.01[1] (15th ed. 1993)).

10. Courts defer to a debtor's business judgment in rejecting executory contracts or unexpired leases, and upon finding that a debtor has exercised its sound business judgment, approve such rejections under section 365(a) of the Bankruptcy Code. *NLRB v.*

Bildisco & Bildisco, 465 U.S. 513, 523 (1984) (recognizing the "business judgment" standard used to authorize rejection of executory contracts), *superseded by statute on other grounds*, 11 U.S.C. § 1113, *as recognized in Mason v. Official Comm. of Unsecured Creditors (In re FBI Distrib. Corp.)*, 330 F.3d 36, 44 (1st Cir. Mass. 2003); *Sharon Steel Corp. v. Nat'l Fuel Gas Distrib. Corp. (In re Sharon Steel Corp.)*, 872 F.2d 36, 39-40 (3d Cir. 1989) (recognizing the "business judgment" standard, which requires only that the rejection will benefit the estate); *In re Trans World Airlines, Inc.*, 261 B.R. 103, 120 (Bankr. D. Del. 2001) ("A debtor's determination to reject an executory contract is governed by the business judgment standard."). The business judgment standard is "not a difficult standard to satisfy and requires only a showing that rejection will benefit the estate." *In re Exide Techs.*, 340 B.R. 222, 239 (Bankr. D. Del. 2006); *see also In re III Enters., Inc. V*, 163 B.R. 453, 469 (Bankr. E.D. Pa. 1994) (observing that courts do not "disturb [a debtor's] decision to reject [a lease] unless the decision is so unreasonable that it could not be based on sound business judgment, but only on bad faith or whim") (internal citations and quotations omitted).

11. Given their efforts to restructure, reduce costs and consolidate operations, the Debtors have determined, in the sound exercise of their business judgment, that they can no longer justify the expense associated with the San Francisco Lease, and that the administrative operations performed at the premises covered by the Lease can be conducted either at other locations already maintained by the Debtors or at other less costly facilities in or around the San Francisco area. Thus, the Debtors no longer need their administrative office space in San Francisco.

12. The rejection of the San Francisco Lease would, except to the extent that there is a separate agreement between the subtenant under the Sublease and the Landlord

under the San Francisco Lease, deprive the subtenant of the right to use and occupy the portion of the Debtors' San Francisco office that is covered by the Sublease. Furthermore, the rent payable under the Sublease is less than the amount that the Debtors pay the Landlord for the lease of such subleased premises. Thus, it is burdensome for the Debtors to continue either the San Francisco Lease or the Sublease.

13. For these reasons, the Debtors' decision to reject the San Francisco Lease and the Sublease is an exercise of sound business judgment that will benefit the Debtors' estates.

RESERVATION OF RIGHTS

14. The Debtors are currently in the process of locating alternative office space to replace the premises leased pursuant to the San Francisco Lease. In the event there is a delay in obtaining such space, including, without limitation, as a result of any discussions subsequent to the filing of this Motion between the Debtors and Four Embarcadero Center Venture regarding the San Francisco Lease, or the Debtors otherwise deem it necessary or desirable to do so, the Debtors reserve any and all rights to adjourn the hearing on the Motion from time to time without further notice to Four Embarcadero Center Venture or other parties in interest other than by an announcement of such an adjournment in open court at the July 29, 2009 hearing or any adjournment thereof or an appropriate filing with the Court.

REQUEST FOR WAIVER OF STAY

15. 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."

While the Debtors do not believe that Bankruptcy Rule 6004(h) applies to the relief requested in this motion, to the extent it does apply, ample cause exists to waive any stay of the effectiveness of this order because the Debtors' estates may be liable to pay any postpetition obligations arising under the San Francisco Lease or the Sublease as administrative expenses. Accordingly, the Debtors submit that ample cause exists to justify a waiver of the 10-day stay imposed by Bankruptcy Rule 6004(h), to the extent applicable.

NOTICE

16. No trustee or examiner has been appointed in these Chapter 11 Cases. The Debtors have provided notice of filing of the Motion to: (a) the U.S. Trustee; (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; (d) any persons who have filed a request for notice in the Chapter 11 Cases pursuant to Bankruptcy Rule 2002; (e) Four Embarcadero Center Venture, as provided in the San Francisco Lease; and (f) PCAP Managers, LLC. Due to the nature of the relief requested, the Debtors respectfully submit that no further notice of this Motion is required.

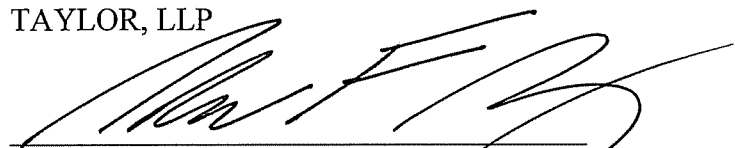
NO PRIOR REQUEST

17. 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 10, 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:)	Chapter 11
)	
BUILDING MATERIALS HOLDING CORPORATION, et al.,¹	)	Case No. 09-12074 (KJC)
)	
Debtors.	)	Jointly Administered
)	
	)	Objection Deadline: July 22, 2009 at 4:00 p.m. (ET)
	)	Hearing Date: July 29, 2009 at 10:00 a.m. (ET)

NOTICE OF 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 PREPETITION CREDIT FACILITY AND THE DIP FACILITY (AS DEFINED IN THE PLAN); (C) COUNSEL TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS; (D) ALL PARTIES THAT HAVE REQUESTED NOTICE PURSUANT TO RULE 2002 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE; (E) FOUR EMBARCADERO CENTER VENTURE, AS PROVIDED IN THE SAN FRANCISCO LEASE; AND (F) PCAP MANAGERS, LLC.

PLEASE TAKE NOTICE that the above-captioned debtors and debtors in possession (collectively, the “Debtors”) have filed the attached **Debtors’ Motion for an Order Authorizing Rejection of That Certain Unexpired Lease with Four Embarcadero Center Venture and the Associated Sublease with PCAP Managers, LLC** (the “Motion”).

PLEASE TAKE FURTHER NOTICE that any objections to the Motion must be filed on or before **July 22, 2009 at 4:00 p.m. (ET)** (the “Objection Deadline”) with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801. At the same time, you must serve a copy of the objection upon the undersigned counsel to the Debtors so as to be received on or before the Objection Deadline.

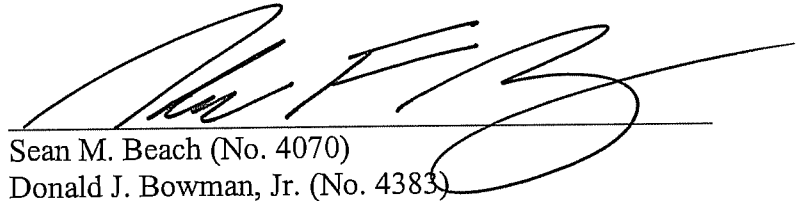
PLEASE TAKE FURTHER NOTICE THAT A HEARING TO CONSIDER THE MOTION WILL BE HELD ON JULY 29, 2009 AT 10:00 A.M. (ET) BEFORE THE HONORABLE KEVIN J. CAREY AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 MARKET STREET, 5TH FLOOR, COURTROOM NO. 5, WILMINGTON, DELAWARE 19801.

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

Dated: Wilmington, Delaware
July 10, 2009

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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)
)	
Debtors.	)	Jointly Administered
)	
	)	Ref. Docket No. _____

**ORDER AUTHORIZING REJECTION OF THAT CERTAIN UNEXPIRED LEASE
WITH FOUR EMBARCADERO CENTER VENTURE AND THE ASSOCIATED
SUBLEASE WITH PCAP MANAGERS, LLC**

Upon consideration of the motion (the "***Motion***") of Building Materials Holding Corporation and its affiliates, as debtors and debtors in possession (collectively, the "***Debtors***") for entry of an order authorizing the Debtors to reject that certain unexpired lease by and between Four Embarcadero Center Venture and Building Materials Holding Corporation, dated as of January 16, 2002, as amended by that certain First Amendment to Office Lease, dated as of September 11, 2003 and that certain Second Amendment to Office Lease, dated as of October 12, 2005 and that certain Third Amendment to Office Lease, dated as of December 23, 2005, for the use and occupancy of the premises commonly known as Four Embarcadero Center, Suite 3200 (the "***San Francisco Lease***") as well as the associated sublease by and between Building Materials Holding Corporation and PCAP Managers, LLC (the "***Sublease***"), as set forth in the Motion; and the Court having found that venue of this proceeding and the Motion in this district

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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. Pursuant to section 365(a) of the Bankruptcy Code, the Debtors are authorized to reject the San Francisco Lease and the Sublease, and the San Francisco Lease and the Sublease are deemed rejected, effective as of the date of this Order.
3. Four Embarcadero Center Venture and PCAP Managers, LLC shall have until the date fixed by this Court pursuant to Federal Rule of Bankruptcy Procedure 3003(c)(3) to file any claim for damages arising from rejection of the San Francisco Lease or the Sublease.
4. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.
5. The Debtors do not waive any claims they may have against the Four Embarcadero Center Venture or PCAP Managers, LLC, whether or not such claims arise under, are related to the rejection of, or are independent of the San Francisco Lease or the Sublease.

6. Nothing herein shall prejudice the rights of the Debtors to argue that any claim for damages arising from the rejection of the San Francisco Lease or the Sublease is limited to the remedies available under any applicable termination provision of such San Francisco Lease or Sublease, or that any such claim is an obligation of a third party, and not that of the Debtors or their estates.

7. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such motion and the requirements of Bankruptcy Rule 6006(c) and the Local Bankruptcy Rules are satisfied by such notice.

8. To the extent Bankruptcy Rule 6004(h) is applicable, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

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

Date: Wilmington, Delaware
July ____, 2009

Kevin J. Carey
Chief United States Bankruptcy Judge