

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

IN RE:

BUILDING MATERIALS HOLDING  
CORPORATION, *et al.*,<sup>1</sup>

Debtors.

) Chapter 11

) Case No. 09-12074 ( )

) Joint Administration Requested

DEBTORS' MOTION FOR INTERIM AND FINAL ORDERS PURSUANT TO  
SECTIONS 105(A), 363, AND 554 OF THE BANKRUPTCY CODE APPROVING  
(A) PROCEDURES FOR THE SALE OF CERTAIN *DE MINIMIS* ASSETS FREE  
AND CLEAR OF LIENS, CLAIMS, AND ENCUMBRANCES WITHOUT FURTHER  
COURT APPROVAL, (B) PAYMENT OF MARKET RATE BROKERS' AND  
AUCTIONEERS' COMMISSIONS IN CONNECTION WITH THE SALES, AND  
(C) ABANDONMENT OR DONATION OF CERTAIN PROPERTY

Building Materials Holding Corporation and certain of its affiliates, as debtors and debtors in possession (collectively, the "**Debtors**"), submit this motion (the "**Motion**") pursuant to sections 105(a), 363, and 554 of title 11 of the United States Code (the "**Bankruptcy Code**") for an interim order substantially in the form annexed hereto as **Exhibit A** and a final order substantially in the form annexed hereto as **Exhibit B** authorizing the Debtors to (a) sell certain property free and clear of all liens, claims, and encumbrances without further order of the Court and establishing the procedures therefor, (b) pay market rate broker or auctioneer commissions in connection with the sales of real and personal property, and (c) abandon or donate

---

<sup>1</sup> 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.

certain personal property that is either burdensome or of inconsequential value. In support thereof, the Debtors respectfully represent:<sup>2</sup>

### **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 seek authority pursuant to sections 105(a), 363, and 554 of the Bankruptcy Code, to (a) sell property that is of small or inconsequential value free and clear of liens, claims, and encumbrances (collectively, "***Liens***") consistent with their prepetition practices, without the need for obtaining further Court approval on a case-by-case basis, and subject to the proposed procedures set forth below, (b) pay market rate broker and auctioneer commissions in connection with the sales, and (c) abandon or donate certain personal property that is burdensome or of inconsequential value that is no longer needed by the Debtors.

### **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 these Chapter 11 Cases, and no committees have been appointed or designated.

---

<sup>2</sup> 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.

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.

### **BASIS FOR RELIEF REQUESTED**

11. Prior to the Petition Date, in the ordinary course of their businesses, the Debtors frequently donated or sold, either directly or at third party auctions on predetermined dates, assets no longer useful to the Debtors, including, without limitation, various types of vehicles and warehouse equipment, computers, excess, broken, decommissioned, and obsolete fixtures and equipment, and other personal property and interests in property.

12. To avoid the unnecessary costs and delays to the estates of seeking Court authorization for each proposed sale of property of *de minimis* value, the Debtors request authorization to continue to sell, from time to time, such property in accordance with prior practice and, upon the formation of any statutory committee of unsecured creditors appointed in the Chapter 11 Cases (the "***Creditors' Committee***"), in consultation with the Creditors' Committee without the need to obtain further Court approval. Accordingly, by this Motion, the Debtors seek authority pursuant to sections 105(a) and 363 of the Bankruptcy Code, to sell, donate, or abandon property that is of small or inconsequential value free and clear of all Liens consistent with their prepetition practices, without the need for obtaining further Court approval on a case-by-case basis, and subject to the proposed procedures set forth below. In addition, the Debtors seek authority to engage brokers and auctioneers and pay market rate brokers' and auctioneers' commissions to facilitate the sale of such real and personal property. The Debtors respectfully submit that the sales, donations, and abandonment contemplated by this Motion are ordinary course transactions that do not require Court approval and submit this Motion in an abundance of caution.

13. The Debtors propose the implementation of the following procedures for the sale of property or interests in property (collectively, the "***Sale Procedures***"):

- a. If the net sales proceeds<sup>3</sup> of any one item is not more than \$300,000, the Debtors are authorized to sell the property in an arms length transaction, without further notice or further order of the Court. Any sale shall be free and clear of all Liens. Net sale proceeds will be utilized by the Debtors in accordance with the terms of any postpetition financing agreement provisions governing the use of such proceeds.
- b. If the net sales proceeds of any one item is between \$300,000 and \$1,000,000:
  1. The Debtors will give notice via e-mail, facsimile, and/or overnight delivery service of each such proposed sale to the attorneys for the Creditors' Committee (when formed), the Office of the United State Trustee for the District of Delaware (the "***U.S. Trustee***"), and the attorneys for the agent for the Debtors' postpetition lenders (the "***DIP Agent***") (collectively, the "***Notice Parties***"). The notice will specify the assets to be sold, the identity of the purchaser, and the sale price (the "***Sale Notice***").
  2. The Notice Parties will have 5 business days from the date on which the Sale Notice is served to object to, or request additional time to evaluate, the proposed transaction. Any such objection or request should be in writing and delivered to counsel to the Debtors, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166-0193 (Attn: Michael A. Rosenthal and Matthew K. Kelsey) and Young, Conaway, Stargatt & Taylor LLP, The Brandywine Building, 1000 West Street, 17th Floor, Wilmington, DE 19801 (Attn: Sean M. Beach and Robert F. Poppiti). If no written objection or written request for additional time is received by Debtors' counsel prior to the expiration of such 5 day period, the Debtors will be authorized to consummate the proposed sale transaction and to take such actions as are reasonable or necessary to close the transaction and obtain

---

<sup>3</sup> For purposes of these procedures, the net benefit estimated to be realized by the Debtors' estates shall constitute the sale price (e.g., the amount of cash consideration to be paid plus the amount of liabilities to be assumed by the purchaser (to the extent quantifiable or reasonably estimable), less offsets or other deductions (to the extent quantifiable or reasonably estimable)).

the sale proceeds. If any Notice Party timely provides a written request to Debtors' counsel for additional time to evaluate the proposed transaction, such Notice Party will have an additional 10 calendar days to object to the proposed transaction. The Debtors may consummate a proposed sale promptly upon obtaining approval of the Notice Parties.

3. If any Notice Party delivers an objection to the proposed transaction so that it is received by Debtors' counsel on or before the 5th business day after the Sale Notice is sent (or, if the Notice Party has timely requested additional time to evaluate the proposed transaction, prior to the expiration of the additional 10 calendar-day review period), the Debtors and the objecting Notice Party will use good faith efforts to resolve the objection. If the Debtors and the objecting Notice Party are unable to achieve a consensual resolution, the Debtors shall not proceed with the proposed transaction pursuant to these Sale Procedures, but may seek Court approval of the proposed transaction upon expedited notice and an opportunity for a hearing, subject to the Court's availability.
  4. Nothing in the foregoing Sale Procedures will prevent the Debtors, in their sole discretion, from seeking the Court's approval at any time of any proposed transaction upon notice and a hearing.
- c. If the net sales proceeds of any one item is greater than \$1,000,000, the Debtors will be required to file a motion with the Court requesting approval of the sale pursuant to section 363 of the Bankruptcy Code.

14. In order to implement the foregoing Sale Procedures, and in accordance with the Debtors' prepetition practices, the Debtors request authority to engage and pay real estate brokers and auctioneers. Such third parties are necessary for the Debtors to receive the best possible prices for their unneeded real and personal property. The brokers and auctioneers will receive market rate commissions for any sales consummated.

15. Personal property is primarily sold by Richie Brothers Association ("**RBA**"),<sup>4</sup> a worldwide recognized auctioneer that conducts preplanned auctions in several jurisdictions several times a month. RBA was chosen to auction the Debtors personal property items due the large volume of sales it conducts each month, which promotes efficiency in sales and ensures that the Debtors receive the highest price possible for the property they no longer need. Real property is sold by a number of different brokers who have been chosen based on their expertise in the relevant market and the type of property offered for sale.

16. In addition, the Debtors propose the implementation of the following procedures for the abandonment of property that is either burdensome or of inconsequential value (the "**Abandonment Procedures**"):

- a. The Debtors will give notice via e-mail, facsimile, and/or overnight delivery service of each such proposed abandonment or donation to each of the Notice Parties as well as any party known to the Debtors to have an interest in the property to be donated or abandoned (collectively, with the Notice Parties, the "**Abandonment Notice Parties**"). The notice will describe the property to be abandoned or donated, the parties known to the Debtors to have an interest in such property, and the entity to which the property will be donated or abandoned (the "**Abandonment Notice**").
- b. The Abandonment Notice Parties will have 5 business days from the date on which the Abandonment Notice is served to object to, or request additional time to evaluate, the proposed transaction. Any such objection or request should be in writing and delivered to counsel to the Debtors, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166-0193 (Attn: Michael A. Rosenthal and Matthew K. Kelsey) and Young, Conaway, Stargatt & Taylor LLP, The Brandywine Building, 1000 West Street, 17th Floor, Wilmington, DE 19801 (Attn: Sean M. Beach and Robert F. Poppiti). If no written objection or written request for additional time is received by Debtors' counsel prior to the expiration of such 5 day period, the Debtors will be authorized to consummate the proposed

---

<sup>4</sup> In addition to the RBA auctions, certain vehicles that are no longer of use to the Debtors are sold to employees of the Debtors. The vehicles are sold to employees at fair market value plus \$250. The fair market value is determined by GE Fleet, which makes reference to the VIN number of the vehicle and the location of the vehicle. In the year to date, the Debtors have sold 83 vehicles in this way for gross proceeds of \$276,000.



abandonment or donation and to take such actions as are reasonable or necessary to close the transaction. If any Abandonment Notice Party timely provides a written request to Debtors' counsel for additional time to evaluate the proposed transaction, such Abandonment Notice Party will have an additional 10 calendar days to object to the proposed transaction. The Debtors may consummate a proposed donation or abandonment promptly upon obtaining approval of the Abandonment Notice Parties.

- c. If any Abandonment Notice Party delivers an objection to the proposed transaction so that it is received by Debtors' counsel on or before the 5th business day after the Abandonment Notice is sent (or, if the Abandonment Notice Party has timely requested additional time to evaluate the proposed transaction, prior to the expiration of the additional 10 calendar-day review period), the Debtors and the objecting Abandonment Notice Party will use good faith efforts to resolve the objection. If the Debtors and the objecting Abandonment Notice Party are unable to achieve a consensual resolution, the Debtors shall not proceed with the proposed transaction pursuant to these Abandonment Procedures, but may seek Court approval of the proposed transaction upon expedited notice and an opportunity for a hearing, subject to the Court's availability.
- d. Nothing in the foregoing Abandonment Procedures will prevent the Debtors, in their sole discretion, from seeking the Court's approval at any time of any proposed transaction upon notice and a hearing.

**A. Ample Authority Exists to Establish the Sale Procedures**

17. Section 363(b)(1) of the Bankruptcy Code provides that "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). In order to approve the sale of property outside the ordinary course of business, a bankruptcy judge must "find from the evidence presented before him at the hearing a good business reason to grant such an application." *Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983). While many of these sales are in the ordinary course of Debtors' businesses, out of an abundance of caution, the Debtors request Court authorization therefor.

18. Section 105 of the Bankruptcy Code provides in relevant part that "[t]he Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a).

19. The Debtors also seek approval to pay applicable market rate broker and/or auctioneer commissions for brokers and auctioneers utilized in the ordinary course of the Debtors' businesses in connection with the sale of property subject to the proposed Sale Procedures. The use of brokers and auctioneers will aid in timely disposition of these assets and the maximization of value and is consistent with prepetition practices.

20. The sale of property and payment of commissions upon the terms set forth herein is an exercise of sound business judgment and in the best interests of the estates and creditors. Sales of these assets in the manner proposed constitute the most efficient and cost-effective means of maximizing the value to be realized. Obtaining Court approval for each such sale transaction would result in unnecessary administrative costs attendant to drafting, serving, and filing pleadings, as well as time incurred by attorneys appearing at Court hearings, which could drastically reduce the ultimate net value of these assets. The proceeds generated by many of the aforementioned sales transactions do not warrant the incurrence of such expenses. The Debtors and their advisors have significant experience with sales such as these and are very well versed in obtaining the best sale price possible. In *In re Buffets Holdings, Inc.*, Case No. 08-10141 (MFW) (Bankr. D. Del. Feb. 7, 2008), the Bankruptcy Court for the District of Delaware approved a similar arrangement that allowed for the payment of commissions upon the sale by the estate of certain assets.

21. Moreover, the expedited procedures set forth herein will permit the Debtors to be responsive to the needs of interested purchasers, thereby guarding against lost sales due to delay, while still providing for a review of the proposed transaction by the Notice Parties.

22. Notably, while the Debtors request authorization to sell assets for a purchase price up to \$1,000,000, the Debtors believe that many individual transactions will, in fact, be for substantially less. The proposed sale price limitations are *de minimis* and appropriate in view of the circumstances and size of the Debtors' estates. The estates are further protected by the opportunity for the Creditors' Committee, the U.S. Trustee, and the DIP Agent to review and object to any proposed transaction.

**B. The Property Should be Sold Free of  
Liens, Claims, and Encumbrances**

23. Pursuant to section 363(f) of the Bankruptcy Code, a debtor may sell property free and clear of liens, claims, and encumbrances if one of the following conditions is satisfied:

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f). *See Citicorp Homeowners Servs. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (E.D. Pa. 1988) (court may approve sale "free and clear" provided at least one of the subsections is met); *In re Healthco Int'l, Inc.*, 174 B.R. 174, 176 (Bankr. D. Mass. 1994) (section 363(f)(5)

has been interpreted to mean "a payment constituting less than full payment of the underlying debt"). *See also Cheslock Bakker & Assocs., Inc. v. Kremer (In re Downtown Athletic Club)*, No. M-47 (JSM), 2000 WL 744126, at \*3 (Bankr. S.D.N.Y. June 9, 2000) (free and clear sale under the debtor's plan of reorganization was binding on the debtor's creditors who received notice of the confirmation hearings).

24. The Debtors are unaware of any liens against the property proposed to be sold pursuant to this motion, other than those held by the DIP Agent, on behalf of the syndicate of banks who have provided postpetition financing, and the Debtors' prepetition senior secured lenders. In order to facilitate the proposed sale transactions, the Debtors further request that the Court authorize that the sales of property pursuant to this motion be free and clear of any and all such Liens, with any such Liens to be, at the Debtors' discretion, either (a) satisfied from the proceeds of the sale, or (b) transferred and attached to the net sale proceeds such that the net sale proceeds are disposed of in accordance with the terms of the *Interim Order (I) Authorizing the Debtors to (a) Obtain Postpetition Secured Financing and (b) Utilize Cash Collateral, (II) Granting Adequate Protection to Prepetition Lenders, (III) Modifying the Automatic Stay and (IV) Scheduling a Final Hearing*.

25. In approving the sales free and clear of Liens, the Debtors request that the Court find and hold that all purchasers of the property, in accordance with the Sale Procedures set forth herein, are entitled to the protections afforded by section 363(m) of the Bankruptcy Code. Such relief is appropriate in light of the opportunity for review and objection by the Notice Parties. *See Esposito v. Title Ins. Co. of PA*, 73 B.R. 616, 620 (Bankr. E.D. Pa. 1987) (good faith purchasers are protected under section 363(m) where notice is provided to lienholders). *See also*

*In re Edwards*, 962 F.2d 641, 645 (7th Cir. 1992) ("a bona fide purchaser at a bankruptcy sale gets good title," even where lienholders have not received notice).

26. The proposed Sale Procedures represent the exercise of sound business judgment, are fair and appropriate, and balance the need for an expeditious realization of value and/or reduction of burdensome costs to the Debtors' estates and the provision of advance notice to significant stakeholders of proposed property dispositions.

**C. Ample Authority Exists to Establish the Abandonment Procedures**

27. Section 554 of the Bankruptcy Code provides that a debtor in possession, "after notice and a hearing...may abandon any property that is burdensome to the estate or that is of inconsequential value and benefit to the estate." Courts typically permit a debtor in possession to abandon property when it is in the best interests of the estate. *See S. Chicago Disposal, Inc. v. LTV Steel Co., Inc. (In re Chateaugay Corp.)*, 130 B.R. 160, 162 (stating in dicta that the debtor "may abandon burdensome property...to further the best interests of the estate.") (quotation omitted).

28. In this case, the Debtors request authorization to abandon certain property that is either burdensome or of small or inconsequential value in the ordinary course of their business and consistent with their prepetition practice. Alternatively, consistent with prepetition practice and in the ordinary course of business, the Debtors request authorization to donate to charitable organizations assets and equipment that have no value to the Debtors or their estates.

29. The Debtors will take all reasonable steps to sell personal property that is not needed in their ongoing businesses and reorganization efforts. However, certain of the Debtors' property is either burdensome or of inconsequential value to the estates and the costs associated with the sale of that property may exceed the value of the property or the Debtors may

be unable to locate buyers for assets that are damaged or that are on premises and the Debtors no longer use. The costs associated with the maintenance and storage of this surplus and obsolete equipment and these unused assets are a burden to the estate.

### **NOTICE**

30. No trustee, examiner, or creditors' committee has been appointed in the 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 U.S. Trustee; (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.

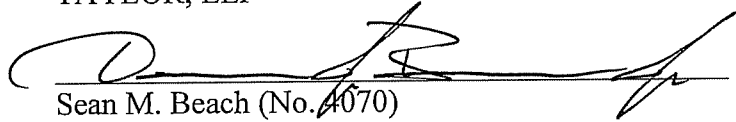
### **NO PRIOR REQUEST**

31. 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 ----

Michael A. Rosenthal (*pro hac vice* pending)  
Matthew K. Kelsey (*pro hac vice* pending)  
Saeed M. Muzumdar (*pro hac vice* pending)  
GIBSON, DUNN & CRUTCHER LLP  
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 Interim Order**



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

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

**INTERIM ORDER PURSUANT TO SECTIONS 105(A), 363, AND 554 OF  
THE BANKRUPTCY CODE APPROVING (A) PROCEDURES FOR THE  
SALE OF CERTAIN *DE MINIMIS* ASSETS FREE AND CLEAR OF LIENS,  
CLAIMS, AND ENCUMBRANCES WITHOUT FURTHER COURT  
APPROVAL, (B) PAYMENT OF MARKET RATE BROKERS' AND  
AUCTIONEERS' COMMISSIONS IN CONNECTION WITH THE SALES, AND  
(C) ABANDONMENT OR DONATION OF CERTAIN PROPERTY**

Upon consideration of the motion (the "***Motion***") of Building Materials Holding Corporation and certain of its affiliates, as debtors and debtors in possession (collectively, the "***Debtors***"), pursuant to sections 105(a) and 363 of the Bankruptcy Code for an order authorizing the Debtors to (a) sell certain property free and clear of all liens, claims, and encumbrances without further order of the Court and establishing the procedures therefor, (b) pay market rate broker or auctioneer commissions in connection with the sales of real and personal property, and (c) abandon or donate certain personal property, all as set forth in the Motion; and

---

<sup>1</sup> 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.

upon the Street Declaration<sup>2</sup> 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, 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 on an interim basis.
2. Pursuant to sections 105(a), 363(b), and 554 of the Bankruptcy Code, the Debtors are hereby authorized to sell, in accordance with the procedures set forth in the following decretal paragraph, property without further order of the Court.
3. The following procedures for the sale by the Debtors of property are hereby authorized and established in the Chapter 11 Cases:
  - a. If the net sales proceeds of any one item is not more than \$300,000, the Debtors are authorized to sell the property in an arms length transaction, without further notice or further order of the Court. Any sale shall be free and clear of all Liens. Net sale proceeds will be utilized by the Debtors in accordance with the terms of any postpetition financing agreement provisions governing the use of such proceeds.

---

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

- b. If the net sales proceeds of any one item is between \$300,000 and \$1,000,000:
1. The Debtors will give notice via e-mail, facsimile, and/or overnight delivery service of each such proposed sale to the attorneys for Creditors' Committee (when formed), the Office of the United State Trustee for the District of Delaware (the "*U.S. Trustee*"), and the attorneys for the agent for the Debtors' postpetition lenders (the "*DIP Agent*") (collectively, the "*Notice Parties*"). The notice will specify the assets to be sold, the identity of the purchaser, and the sale price (the "*Sale Notice*").
  2. The Notice Parties will have 5 business days from the date on which the Sale Notice is served to object to, or request additional time to evaluate, the proposed transaction. Any such objection or request should be in writing and delivered to counsel to the Debtors, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166-0193 (Attn: Michael A. Rosenthal and Matthew K. Kelsey) and Young, Conaway, Stargatt & Taylor LLP, The Brandywine Building, 1000 West Street, 17th Floor, Wilmington, DE 19801 (Attn: Sean M. Beach and Robert F. Poppiti). If no written objection or written request for additional time is received by Debtors' counsel prior to the expiration of such 5 day period, the Debtors will be authorized to consummate the proposed sale transaction and to take such actions as are reasonable or necessary to close the transaction and obtain the sale proceeds. If any Notice Party timely provides a written request to Debtors' counsel for additional time to evaluate the proposed transaction, such Notice Party will have an additional 10 calendar days to object to the proposed transaction. The Debtors may consummate a proposed sale promptly upon obtaining approval of the Notice Parties.
  3. If any Notice Party delivers an objection to the proposed transaction so that it is received by Debtors' counsel on or before the 5th business day after the Sale Notice is sent (or, if the Notice Party has timely requested additional time to evaluate the proposed transaction, prior to the expiration of the additional 10 calendar-day review period), the Debtors and the objecting Notice Party will use good faith efforts to resolve the objection. If the Debtors and the objecting Notice Party are unable to achieve a consensual resolution, the Debtors shall not proceed with the proposed transaction pursuant to these Sale Procedures, but may seek Court approval of the proposed transaction upon expedited notice and an opportunity for a hearing, subject to the Court's availability.

4. Nothing in the foregoing Sale Procedures will prevent the Debtors, in their sole discretion, from seeking the Court's approval at any time of any proposed transaction upon notice and a hearing.

c. If the net sales proceeds of any one item is greater than \$1,000,000, the Debtors will be required to file a motion with the Court requesting approval of the sale pursuant to section 363 of the Bankruptcy Code.

4. Pursuant to section 363(f) of the Bankruptcy Code, all sales of property pursuant to this Order shall be free and clear of all Liens, if any, with any and all such valid and perfected Liens to attach to net proceeds of the sales with the same validity, priority, force, and effect such Liens had on the property immediately prior to the sale, and subject to the rights, claims, defenses, and objections, if any, of the Debtors and all interested parties with respect to any such asserted Liens.

5. The Debtors are hereby authorized, but not directed, to satisfy any such valid Liens from the proceeds of sale.

6. Purchasers of property sold by the Debtors pursuant to this Order shall be entitled to the protections afforded by section 363(m) of the Bankruptcy Code in the event of a reversal or modification on appeal of this Order.

7. The sale transactions consummated pursuant to this Order shall be binding upon and shall govern the acts of all entities including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the property sold pursuant to this Order; and each and every federal, state, and local governmental agency or department is hereby directed to accept this Order as sole and sufficient evidence of the transfer of

title to any particular purchaser, and such agency or department shall rely upon this Order in consummating the transactions contemplated hereby.

8. The Debtors are hereby authorized to engage brokers and auctioneers and pay and honor market rate commissions due to such brokers and auctioneers, in connection with the sale of any property pursuant to the proposed Sale Procedures.

9. The following procedures for the abandonment by the Debtors of property that is burdensome or of inconsequential value are hereby authorized and established in the Chapter 11 Cases:

- a. The Debtors will give notice via e-mail, facsimile, and/or overnight delivery service of each such proposed abandonment or donation to each of the Notice Parties as well as any party known to the Debtors to have an interest in the property to be donated or abandoned (collectively, with the Notice Parties, the "***Abandonment Notice Parties***"). The notice will describe the property to be abandoned or donated, the parties known to the Debtors to have an interest in such property, and the entity to which the property will be donated or abandoned (the "***Abandonment Notice***").
- b. The Abandonment Notice Parties will have 5 business days from the date on which the Abandonment Notice is served to object to, or request additional time to evaluate, the proposed transaction. Any such objection or request should be in writing and delivered to counsel to the Debtors, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166-0193 (Attn: Michael A. Rosenthal and Matthew K. Kelsey) and Young, Conaway, Stargatt & Taylor LLP, The Brandywine Building, 1000 West Street, 17th Floor, Wilmington, DE 19801 (Attn: Sean M. Beach and Robert F. Poppiti). If no written objection or written request for additional time is received by Debtors' counsel prior to the expiration of such 5 day period, the Debtors will be authorized to consummate the proposed abandonment or donation and to take such actions as are reasonable or necessary to close the transaction. If any Abandonment Notice Party timely provides a written request to Debtors' counsel for additional time to evaluate the proposed transaction, such Abandonment Notice Party will have an additional 10 calendar days to object to the proposed transaction. The Debtors may consummate a proposed donation or abandonment promptly upon obtaining approval of the Abandonment Notice Parties.
- c. If any Abandonment Notice Party delivers an objection to the proposed transaction so that it is received by Debtors' counsel on or before the 5th business day after the Abandonment Notice is sent (or, if the Abandonment

Notice Party has timely requested additional time to evaluate the proposed transaction, prior to the expiration of the additional 10 calendar-day review period), the Debtors and the objecting Abandonment Notice Party will use good faith efforts to resolve the objection. If the Debtors and the objecting Abandonment Notice Party are unable to achieve a consensual resolution, the Debtors shall not proceed with the proposed transaction pursuant to these Abandonment Procedures, but may seek Court approval of the proposed transaction upon expedited notice and an opportunity for a hearing, subject to the Court's availability.

- d. Nothing in the foregoing Abandonment Procedures will prevent the Debtors, in their sole discretion, from seeking the Court's approval at any time of any proposed transaction upon notice and a hearing.

10. Nothing in this Order shall be construed to prevent the Debtors, in their sole discretion, from seeking the Court's approval at any time of any proposed sale, abandonment, or donation transaction after notice and an opportunity for a hearing.

11. The Debtors are authorized to execute and deliver all instruments and documents, and take such other action as may be necessary or appropriate to implement and effectuate the transactions contemplated by this Order.

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

13. The Court shall retain jurisdiction with respect to all matters arising under or relating to the implementation and enforcement of this Order.

14. Any objections or responses (each a "***Procedures Objection***") to the Motion shall be filed and served upon the Abandonment Notice Parties and on those parties as required by Local Rule 9006-1(c)(ii), so that it is actually received by the date that is earlier of (i) 15 days after the date this Interim Order is docketed; or (ii) five business days before the Final Hearing.

15. A Final Hearing, if necessary, to resolve any timely filed Procedures Objection shall be scheduled for \_\_\_\_\_, 2009 at \_\_:\_\_\_\_.m. (prevailing Eastern Time).

16. If no Procedures Objections are timely filed, served, and received in accordance with this Interim Order, the Court may enter a Final Order without further notice or hearing.

Dated: Wilmington, Delaware  
June \_\_\_\_, 2009

---

UNITED STATES BANKRUPTCY JUDGE

# **EXHIBIT B**

**Proposed Final Order**



IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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

**FINAL ORDER PURSUANT TO SECTIONS 105(A), 363, AND 554 OF  
THE BANKRUPTCY CODE APPROVING (A) PROCEDURES FOR THE  
SALE OF CERTAIN *DE MINIMIS* ASSETS FREE AND CLEAR OF LIENS,  
CLAIMS, AND ENCUMBRANCES WITHOUT FURTHER COURT  
APPROVAL, (B) PAYMENT OF MARKET RATE BROKERS' AND  
AUCTIONEERS' COMMISSIONS IN CONNECTION WITH THE SALES, AND  
(C) ABANDONMENT OR DONATION OF CERTAIN PROPERTY**

Upon consideration of the motion (the "**Motion**") of Building Materials Holding Corporation and certain of its affiliates, as debtors and debtors in possession (collectively, the "**Debtors**"), pursuant to sections 105(a), 363, and 554 of the Bankruptcy Code for an order authorizing the Debtors to (a) sell certain property free and clear of all liens, claims, and encumbrances without further order of the Court and establishing the procedures therefor, (b) pay market rate brokers' or auctioneers' commissions in connection with the sales of real and personal property, and (c) abandon or donate certain personal property, all as set forth in the Motion; and

---

<sup>1</sup> 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.

upon the Street Declaration<sup>2</sup> 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, 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 on a final basis.
2. Pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, the Debtors are hereby authorized to sell, in accordance with the procedures set forth in the following decretal paragraph, property without further order of the Court.
3. The following procedures for the sale by the Debtors of property are hereby authorized and established in the Chapter 11 Cases:
  - a. If the net sales proceeds of any one item is not more than \$300,000, the Debtors are authorized to sell the property in an arms length transaction, without further notice or further order of the Court. Any sale shall be free and clear of all Liens. Net sale proceeds will be utilized by the Debtors in accordance with the terms of any postpetition financing agreement provisions governing the use of such proceeds.

---

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

- b. If the net sales proceeds of any one item is between \$300,000 and \$1,000,000:
1. The Debtors will give notice via e-mail, facsimile, and/or overnight delivery service of each such proposed sale to the attorneys for Creditors' Committee, the Office of the United State Trustee for the District of Delaware (the "*U.S. Trustee*"), and the attorneys for the agent for the Debtors' postpetition lenders (the "*DIP Agent*") (collectively, the "*Notice Parties*"). The notice will specify the assets to be sold, the identity of the purchaser, and the sale price (the "*Sale Notice*").
  2. The Notice Parties will have 5 business days from the date on which the Sale Notice is served to object to, or request additional time to evaluate, the proposed transaction. Any such objection or request should be in writing and delivered to counsel to the Debtors, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166-0193 (Attn: Michael A. Rosenthal and Matthew K. Kelsey) and Young, Conaway, Stargatt & Taylor LLP, The Brandywine Building, 1000 West Street, 17th Floor, Wilmington, DE 19801 (Attn: Sean M. Beach and Robert F. Poppiti). If no written objection or written request for additional time is received by Debtors' counsel prior to the expiration of such 5 day period, the Debtors will be authorized to consummate the proposed sale transaction and to take such actions as are reasonable or necessary to close the transaction and obtain the sale proceeds. If any Notice Party timely provides a written request to Debtors' counsel for additional time to evaluate the proposed transaction, such Notice Party will have an additional 10 calendar days to object to the proposed transaction. The Debtors may consummate a proposed sale promptly upon obtaining approval of the Notice Parties.
  3. If any Notice Party delivers an objection to the proposed transaction so that it is received by Debtors' counsel on or before the 5th business day after the Sale Notice is sent (or, if the Notice Party has timely requested additional time to evaluate the proposed transaction, prior to the expiration of the additional 10 calendar-day review period), the Debtors and the objecting Notice Party will use good faith efforts to resolve the objection. If the Debtors and the objecting Notice Party are unable to achieve a consensual resolution, the Debtors shall not proceed with the proposed transaction pursuant to these Sale Procedures, but may seek Court approval of the proposed transaction upon expedited notice and an opportunity for a hearing, subject to the Court's availability.

4. Nothing in the foregoing Sale Procedures will prevent the Debtors, in their sole discretion, from seeking the Court's approval at any time of any proposed transaction upon notice and a hearing.

c. If the net sales proceeds of any one item is greater than \$1,000,000, the Debtors will be required to file a motion with the Court requesting approval of the sale pursuant to section 363 of the Bankruptcy Code.

4. Pursuant to section 363(f) of the Bankruptcy Code, all sales of property pursuant to this Order shall be free and clear of all Liens, if any, with any and all such valid and perfected Liens to attach to net proceeds of the sales with the same validity, priority, force, and effect such Liens had on the property immediately prior to the sale, and subject to the rights, claims, defenses, and objections, if any, of the Debtors and all interested parties with respect to any such asserted Liens.

5. The Debtors are hereby authorized, but not directed, to satisfy any such valid Liens from the proceeds of sale.

6. Purchasers of property sold by the Debtors pursuant to this Order shall be entitled to the protections afforded by section 363(m) of the Bankruptcy Code in the event of a reversal or modification on appeal of this Order.

7. The sale transactions consummated pursuant to this Order shall be binding upon and shall govern the acts of all entities including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the property sold pursuant to this Order; and each and every federal, state, and local governmental agency or department is hereby directed to accept this Order as sole and sufficient evidence of the transfer

of title to any particular purchaser, and such agency or department shall rely upon this Order in consummating the transactions contemplated hereby.

8. Nothing in this Order shall be construed to prevent the Debtors, in their sole discretion, from seeking Court's approval at any time of any proposed sale transaction after notice and an opportunity for a hearing.

9. The Debtors are authorized to execute and deliver all instruments and documents, and take such other action as may be necessary or appropriate to implement and effectuate the transactions contemplated by this Order.

10. The Debtors are hereby authorized to engage brokers and auctioneers and to pay and honor market rate commissions due to such brokers and auctioneers, in connection with the sale of any property pursuant to the proposed Sale Procedures.

11. The following procedures for the abandonment by the Debtors of property that is burdensome or of inconsequential value are hereby authorized and established in the Chapter 11 Cases:

- a. The Debtors will give notice via e-mail, facsimile, and/or overnight delivery service of each such proposed abandonment or donation to each of the Notice Parties as well as any party known to the Debtors to have an interest in the property to be donated or abandoned (collectively, with the Notice Parties, the "***Abandonment Notice Parties***"). The notice will describe the property to be abandoned or donated, the parties known to the Debtors to have an interest in such property, and the entity to which the property will be donated or abandoned (the "***Abandonment Notice***").
- b. The Abandonment Notice Parties will have 5 business days from the date on which the Abandonment Notice is served to object to, or request additional time to evaluate, the proposed transaction. Any such objection or request should be in writing and delivered to counsel to the Debtors, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166-0193 (Attn: Michael A. Rosenthal and Matthew K. Kelsey) and Young, Conaway, Stargatt & Taylor LLP, The Brandywine Building, 1000 West Street, 17th Floor, Wilmington, DE 19801 (Attn: Sean M. Beach and Robert F. Poppiti). If no written objection or written request for additional time is received by Debtors' counsel prior to the expiration of such 5 day

period, the Debtors will be authorized to consummate the proposed abandonment or donation and to take such actions as are reasonable or necessary to close the transaction. If any Abandonment Notice Party timely provides a written request to Debtors' counsel for additional time to evaluate the proposed transaction, such Abandonment Notice Party will have an additional 10 calendar days to object to the proposed transaction. The Debtors may consummate a proposed donation or abandonment promptly upon obtaining approval of the Abandonment Notice Parties.

- c. If any Abandonment Notice Party delivers an objection to the proposed transaction so that it is received by Debtors' counsel on or before the 5th business day after the Abandonment Notice is sent (or, if the Abandonment Notice Party has timely requested additional time to evaluate the proposed transaction, prior to the expiration of the additional 10 calendar-day review period), the Debtors and the objecting Abandonment Notice Party will use good faith efforts to resolve the objection. If the Debtors and the objecting Abandonment Notice Party are unable to achieve a consensual resolution, the Debtors shall not proceed with the proposed transaction pursuant to these Abandonment Procedures, but may seek Court approval of the proposed transaction upon expedited notice and an opportunity for a hearing, subject to the Court's availability.
- d. Nothing in the foregoing Abandonment Procedures will prevent the Debtors, in their sole discretion, from seeking the Court's approval at any time of any proposed transaction upon notice and a hearing.

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

13. The Court shall retain jurisdiction with respect to all matters arising under or relating to the implementation and enforcement of this Order.

Dated: Wilmington, Delaware  
\_\_\_\_\_, 2009

---

UNITED STATES BANKRUPTCY JUDGE