

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

<b>IN RE:</b>	)	
	)	<b>Chapter 11</b>
<b>BUILDING MATERIALS HOLDING CORPORATION, <i>et al.</i>,<sup>1</sup></b>	)	<b>Case No. 09-12074 (KJC)</b>
	)	
<b>Debtors.</b>	)	<b>Jointly Administered</b>
	)	
	)	<b>Ref. Docket No. 17</b>
	)	

**CERTIFICATION OF COUNSEL REGARDING 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**

On June 16, 2009, the above-captioned debtors and debtors-in-possession (collectively, the "Debtors") filed their 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 [Docket No. 17] (the "Motion"). Pursuant to the Motion, the Debtors requested the Court to enter an order authorizing, among other things, the Debtors to (i) establish certain procedures for the sale and abandonment of miscellaneous assets and (ii) pay market rate broker or auctioneer commissions in connection with the sale of such assets. After the filing of the Motion, the Office of the

---

<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),

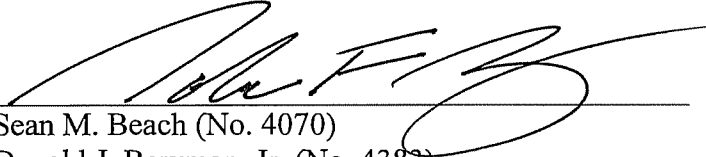
United States Trustee (the "U.S. Trustee") filed an objection [Docket No. 197] (the "Objection") to the Motion. On July 16, 2009, this Court held a hearing (the "Hearing") on the relief requested in the Motion,<sup>2</sup> and at the conclusion of the Hearing, sustained the Objection.

Subsequent to the Hearing, the Debtors have worked with the U.S. Trustee to resolve the Objection and have done so through revisions to the proposed form of final order for the Motion (the "Revised Proposed Order"), a copy of which is attached hereto as Exhibit 1.<sup>3</sup> The Debtors submit that the Revised Proposed Order is appropriate and consistent with the Debtors' discussions with the U.S. Trustee, and that entry of the Revised Proposed Order is in the best interests of the Debtors, their estates and creditors.

Accordingly, the Debtors respectfully request the Court to enter the Revised Proposed Order at its earliest convenience without further notice or hearing.

Dated: Wilmington, Delaware  
July 21, 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 Street, 17th Floor  
P.O. Box 391  
Wilmington, Delaware 19899-0391  
Telephone: (302) 571-6600  
Facsimile: (302) 571-1253

----and----

---

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.

<sup>2</sup> An initial hearing on the Motion was also held on June 17, 2009.

<sup>3</sup> For ease of reference, attached hereto as Exhibit 2 is a blackline of the Revised Proposed Order marked against the form of final order filed with the Motion.

GIBSON, DUNN & CRUTCHER LLP  
Michael A. Rosenthal (admitted *pro hac vice*)  
Matthew K. Kelsey (admitted *pro hac vice*)  
Sae M. Muzumdar (admitted *pro hac vice*)  
200 Park Avenue, 47th Floor  
New York, New York 10166-0193  
Telephone: (212) 351-4000  
Facsimile: (212) 351-4035

Aaron G. York (admitted *pro hac vice*)  
Jeremy L. Graves (admitted *pro hac vice*)  
2100 McKinney Avenue, Suite 1100  
Dallas, Texas 75201-6911  
Telephone: (214) 698-3100  
Facsimile: (214) 571-2900

ATTORNEYS FOR DEBTORS  
AND DEBTORS IN POSSESSION

**EXHIBIT 1**

Revised Proposed 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, <i>et al.</i>,<sup>1</sup></b>	)	<b>Case No. 09-12074 (KJC)</b>
	)	
<b>Debtors.</b>	)	<b>Jointly Administered</b>
	)	
	)	<b>Ref. Docket No. 17</b>
	)	

**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. Subject to the notice and objection procedures described below, the Debtors are hereby authorized to engage brokers ("**Brokers**") and auctioneers ("**Auctioneers**") and to pay and honor (a) market rate commissions due to Brokers and Auctioneers which are consistent with the Debtors' historical practices and which do not exceed (i) in the case of Brokers, 6% of the sales price of any property sold, or (ii) in the case of Auctioneers, 14% of the sales price of any property sold; and (b) reasonable expenses incurred by such Brokers and Auctioneers in connection with the sale of any property pursuant to this Order; *provided*, that prior to receiving any payments from the Debtors, the following procedures are followed:

- (a) Within forty-five (45) days of the date of (i) entry of this Order or (ii) the inception of the entity's employment, whichever occurs later, each Broker or Auctioneer shall file with the Court an affidavit substantially in the form attached hereto as **Exhibit A** (the "**Affidavit**"). Each Broker or Auctioneer shall serve the Affidavit on: (i) Building Materials Holding Corporation, 720 Park Boulevard, Suite 200, Boise, Idaho 83712, Attn.: Paul S. Street; (ii) Gibson, Dunn & Crutcher LLP, 200 Park Ave., New York, New York 10166, Attn.: Michael A. Rosenthal and Matthew K. Kelsey; (iii) Young Conaway Stargatt & Taylor, LLP, The Brandywine Building, 1000 West Street, 17th Floor, Wilmington, Delaware 19801, Attn: Sean M. Beach and Robert F. Poppiti; (iv) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn.: Joseph J. McMahon, Jr.; (v) Arent Fox, LLP, 1050 Connecticut Avenue, NW, Washington, DC

20036-5339, Attn: Christopher J. Giaimo and Katie A. Lane and Benesch, Friedlander, Coplan & Aronoff LLP, 222 Delaware Avenue, Suite 801, Wilmington, DE 19801, Attn: Bradford J. Sandler; and (vi) Paul, Hastings, Janofsky & Walker LLP, 55 Second Street, Twenty-Fourth Floor, San Francisco, California 94105, Attn: Kevin B. Fisher (collectively, the "**Notice Parties**").

- (b) The Notice Parties shall have 10 days after the date of filing of each Broker or Auctioneer's Affidavit (the "**Objection Deadline**") to object to the retention of such Broker or Auctioneer. The objecting party shall file any such objection and serve such objection upon the Notice Parties and the respective Broker or Auctioneer on or before the Objection Deadline. If any such objection cannot be resolved within 3 business days of its receipt, the matter shall be scheduled for hearing before the Court at the next regularly scheduled omnibus hearing date that is no less than 3 business days from that date or on a date otherwise agreeable to the parties. The Debtors shall not be authorized to retain and pay such Brokers or Auctioneers until all outstanding objections have been withdrawn, resolved, or overruled by order of the Court.
- (c) If no objection is received from any of the Notice Parties by the Objection Deadline with respect to any particular Broker or Auctioneer, then retention of the Broker or Auctioneer shall be deemed approved by the Court without hearing or further order and the Debtors shall be authorized to retain and pay such Broker or Auctioneer as of the date such Broker or Auctioneer commenced providing services to the Debtors and pay such Broker or Auctioneer as set forth above. Compensation payable/paid to Brokers and Auctioneers shall be subject to, *inter alia*, disallowance and disgorgement under applicable law after notice and a hearing.

11. The Debtors shall file a report of any property sold pursuant to this Order, which report shall include the information required by Federal Rule of Bankruptcy Procedure 6004(f) and any amounts paid to a Broker or Auctioneer.

12. 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.

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

14. 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  
July \_\_, 2009

---

KEVIN J. CAREY  
CHIEF UNITED STATES BANKRUPTCY JUDGE

# **EXHIBIT A**

**Form of Affidavit**

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

<b>IN RE:</b>	)	
	)	<b>Chapter 11</b>
<b>BUILDING MATERIALS HOLDING</b>	)	
<b>CORPORATION, et al.,<sup>1</sup></b>	)	<b>Case No. 09-12074 (KJC)</b>
	)	
<b>Debtors.</b>	)	<b>Jointly Administered</b>
	)	
	)	<b>Ref. Docket Nos. 17 and _____</b>

**VERIFIED STATEMENTS OF CONNECTIONS**

I, \_\_\_\_\_, declare under penalty of perjury:

1. I am a [position] of [insert name of sole proprietorship or company], located at [Street, City, State, Zip Code] (the "*Firm*").
2. Building Materials Holding Corporation and its affiliates, as debtors and debtors in possession (collectively, the "*Debtors*") have requested that the Firm provide [specific description of services] to the Debtors, and the Firm has consented to provide such services.
3. If the Firm is a law firm, I state that the Firm [did/did not] represent the Debtors prior to their bankruptcy filings.
4. The Firm may have performed services in the past, may currently perform services and may perform services in the future, in matters unrelated to these chapter 11 cases, for persons that are parties in interest in these chapter 11 cases. The Firm does not perform services for any such person in connection with these chapter 11 cases, or have any relationship

---

<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.

with any such person, their attorneys or accountants that would be adverse to the Debtors or their estates. Furthermore, if the Firm is either (i) not a law firm or (ii) a law firm that did not represent the Debtors prior to their bankruptcy filings, the Firm is a "disinterested person" under 11 U.S.C. § 101(14), such that the Firm:

- (a) is not a creditor, an equity security holder, or an insider of any of the Debtors;
- (b) is not and was not, within 2 years before the date of the filing of the petition, a director, officer, or employee of any of the Debtors; and
- (c) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the Debtors, or for any other reason.

5. As part of its customary practice, the Firm is retained in cases, proceedings, and transactions involving many different parties, some of whom may represent or be employed by the Debtors, claimants, and parties-in-interest in the Debtors' chapter 11 cases.

6. Neither I nor any principal, partner, director, officer, etc. of, or professional employed by, the Firm has agreed to share or will share any portion of the compensation to be received from the Debtors with any other person other than the principal and regular employees of the Firm.

7. In the ordinary course of its business, **[the Firm maintains a database for purposes of performing "conflicts checks."][the Firm confirms conflicts by reviewing its client base] [The Firm's database contains information regarding the Firm's present and past representations.]** Pursuant to Federal Rule of Bankruptcy Procedure 2014(a), I obtained a list of the entities identified in Rule 2014(a) from counsel to the Debtors for purposes of searching the aforementioned database and determining the connection(s) which the Firm has

with such entities. The Firm's [search of the database][review] identified the following connections:

8. [ADD ANY NECESSARY DISCLOSURES]

9. Neither I nor [any principal, partner, director, officer, etc.] of or professional employed by, the Firm, insofar as I have been able to ascertain, holds or represents any interest adverse to the Debtors or their estates with respect to the matter(s) upon which this Firm is to be employed. Furthermore, if the Firm is either (i) not a law firm or (ii) a law firm that did not represent the Debtors prior to their bankruptcy filings, I state that neither I nor [any principal, partner, director, officer, etc.] of or professional employed by, the Firm, insofar as I have been able to ascertain, holds or represents any interest adverse to the Debtors.

10. The Debtors owe the Firm \$[ ] for prepetition services, the payment of which is subject to limitations contained in the United States Bankruptcy Code, 11 U.S.C. §§ 101-1532. If the Firm is either (i) not a law firm or (ii) a law firm that did not represent the Debtors prior to their bankruptcy filings, my signature below acknowledges that the Firm understands that any and all pre-petition claims that it has against the Debtors will be deemed waived if the Firm's employment is authorized.

11. As of June 16, 2009, which was the date on which the Debtors commenced these chapter 11 cases, the Firm [was/was not] party to an engagement or services agreement with the Debtors. [A copy of such agreement is attached as *Exhibit A* to this Declaration].

12. As of June 16, 2009, the Firm [was/was not] party to an agreement for indemnification with certain of the Debtors. [A copy of such agreement is attached as *Exhibit B* to this Declaration].



13. If the Firm is not a law firm, the following is a list of all payments which the Firm received from the Debtors during the year prior to the Debtors' bankruptcy filings:

**[The Debtors recommend (and the U.S. Trustee requests) that the Firm organize payments in the following columns: invoice date, invoice amount, date(s) of service covered by invoice, payment date and payment amount. Retainers and draws on retainers should be specifically noted as such]**

14. The Firm is conducting further inquiries regarding its retention by any creditors of the Debtors, and upon conclusion of that inquiry, or at any time during the period of its employment, if the Firm should discover any facts bearing on the matters described herein, the Firm will supplement the information contained in this Declaration.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Date: \_\_\_\_\_, 2009

---

**[DECLARANT]**

**EXHIBIT 2**

Blackline of Revised 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> , <sup>1</sup>	)	
	)	Case No. 09_____12074 ( <u>KJC</u> )
	)	
Debtors.	)	Jointly Administered
	)	
	)	Ref. Docket No. _____17
	)	

**FINAL ORDER PURSUANT TO SECTIONS 105(A~~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 upon the Street Declaration<sup>2</sup> in support thereof; and the Court having found that

<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.

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

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.
  - 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~~ Subject to the notice and objection procedures described below, the Debtors are hereby authorized to engage brokers ("Brokers") and auctioneers ("Auctioneers") and to pay and honor (a) market rate commissions due to such brokers and auctioneers. Brokers and Auctioneers which are consistent with the Debtors' historical practices and which do not exceed (i) in the case of Brokers, 6% of the sales price of any property sold, or (ii) in the case of Auctioneers, 14% of the sales price of any property sold; and (b) reasonable expenses incurred by such Brokers and Auctioneers in connection with the sale of any property pursuant to the proposed Sale Procedures ~~this Order; provided, that prior to receiving any payments from the Debtors, the following procedures are followed:~~

- (a) Within forty-five (45) days of the date of (i) entry of this Order or (ii) the inception of the entity's employment, whichever occurs later, each Broker or Auctioneer shall file with the Court an affidavit substantially in the form attached hereto as *Exhibit A* (the "*Affidavit*"). Each Broker or Auctioneer shall serve the Affidavit on: (i) Building Materials Holding Corporation, 720 Park Boulevard, Suite 200, Boise, Idaho 83712, Attn.: Paul S. Street; (ii) Gibson, Dunn & Crutcher LLP, 200 Park Ave., New York, New York 10166, Attn.: Michael A. Rosenthal and Matthew K. Kelsey; (iii) Young Conaway Stargatt & Taylor, LLP, The Brandywine Building, 1000 West Street, 17th Floor, Wilmington, Delaware 19801, Attn: Sean M. Beach and Robert F. Poppiti; (iv) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn.: Joseph J. McMahon, Jr.; (v) Arent Fox, LLP, 1050 Connecticut Avenue, NW, Washington, DC 20036-5339, Attn: Christopher J. Giaimo and Katie A. Lane and Benesch, Friedlander, Coplan & Aronoff LLP, 222 Delaware Avenue, Suite 801,

Wilmington, DE 19801, Attn: Bradford J. Sandler; and (vi) Paul, Hastings, Janofsky & Walker LLP, 55 Second Street, Twenty-Fourth Floor, San Francisco, California 94105, Attn: Kevin B. Fisher (collectively, the "Notice Parties").

- (b) The Notice Parties shall have 10 days after the date of filing of each Broker or Auctioneer's Affidavit (the "**Objection Deadline**") to object to the retention of such Broker or Auctioneer. The objecting party shall file any such objection and serve such objection upon the Notice Parties and the respective Broker or Auctioneer on or before the Objection Deadline. If any such objection cannot be resolved within 3 business days of its receipt, the matter shall be scheduled for hearing before the Court at the next regularly scheduled omnibus hearing date that is no less than 3 business days from that date or on a date otherwise agreeable to the parties. The Debtors shall not be authorized to retain and pay such Brokers or Auctioneers until all outstanding objections have been withdrawn, resolved, or overruled by order of the Court.
- (c) If no objection is received from any of the Notice Parties by the Objection Deadline with respect to any particular Broker or Auctioneer, then retention of the Broker or Auctioneer shall be deemed approved by the Court without hearing or further order and the Debtors shall be authorized to retain and pay such Broker or Auctioneer as of the date such Broker or Auctioneer commenced providing services to the Debtors and pay such Broker or Auctioneer as set forth above. Compensation payable/paid to Brokers and Auctioneers shall be subject to, *inter alia*, disallowance and disgorgement under applicable law after notice and a hearing.

11. The Debtors shall file a report of any property sold pursuant to this Order, which report shall include the information required by Federal Rule of Bankruptcy Procedure 6004(f) and any amounts paid to a Broker or Auctioneer.

12. ~~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.

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

14. ~~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  
           July       , 2009

KEVIN J. CAREY  
CHIEF UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT A**  
**Form of Affidavit**



with any such person, their attorneys or accountants that would be adverse to the Debtors or their estates. Furthermore, if the Firm is either (i) not a law firm or (ii) a law firm that did not represent the Debtors prior to their bankruptcy filings, the Firm is a "disinterested person" under 11 U.S.C. § 101(14), such that the Firm:

(a) is not a creditor, an equity security holder, or an insider of any of the Debtors;

(b) is not and was not, within 2 years before the date of the filing of the petition, a director, officer, or employee of any of the Debtors; and

(c) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the Debtors, or for any other reason.

5. As part of its customary practice, the Firm is retained in cases, proceedings, and transactions involving many different parties, some of whom may represent or be employed by the Debtors, claimants, and parties-in-interest in the Debtors' chapter 11 cases.

6. Neither I nor any principal, partner, director, officer, etc. of, or professional employed by, the Firm has agreed to share or will share any portion of the compensation to be received from the Debtors with any other person other than the principal and regular employees of the Firm.

7. In the ordinary course of its business, [the Firm maintains a database for purposes of performing "conflicts checks."][the Firm confirms conflicts by reviewing its client base] [The Firm's database contains information regarding the Firm's present and past representations.] Pursuant to Federal Rule of Bankruptcy Procedure 2014(a), I obtained a list of the entities identified in Rule 2014(a) from counsel to the Debtors for purposes of searching the aforementioned database and determining the connection(s) which the Firm has

with such entities. The Firm's [search of the database][review] identified the following connections:

8. [ADD ANY NECESSARY DISCLOSURES]

9. Neither I nor [any principal, partner, director, officer, etc.] of or professional employed by, the Firm, insofar as I have been able to ascertain, holds or represents any interest adverse to the Debtors or their estates with respect to the matter(s) upon which this Firm is to be employed. Furthermore, if the Firm is either (i) not a law firm or (ii) a law firm that did not represent the Debtors prior to their bankruptcy filings, I state that neither I nor [any principal, partner, director, officer, etc.] of or professional employed by, the Firm, insofar as I have been able to ascertain, holds or represents any interest adverse to the Debtors.

10. The Debtors owe the Firm \$[ ] for prepetition services, the payment of which is subject to limitations contained in the United States Bankruptcy Code, 11 U.S.C. §§ 101-1532. If the Firm is either (i) not a law firm or (ii) a law firm that did not represent the Debtors prior to their bankruptcy filings, my signature below acknowledges that the Firm understands that any and all pre-petition claims that it has against the Debtors will be deemed waived if the Firm's employment is authorized.

11. As of June 16, 2009, which was the date on which the Debtors commenced these chapter 11 cases, the Firm [was/was not] party to an engagement or services agreement with the Debtors. [A copy of such agreement is attached as *Exhibit A* to this Declaration].

12. As of June 16, 2009, the Firm [was/was not] party to an agreement for indemnification with certain of the Debtors. [A copy of such agreement is attached as *Exhibit B* to this Declaration].

13. If the Firm is not a law firm, the following is a list of all payments which the Firm received from the Debtors during the year prior to the Debtors' bankruptcy filings:

[The Debtors recommend (and the U.S. Trustee requests) that the Firm organize payments in the following columns: invoice date, invoice amount, date(s) of service covered by invoice, payment date and payment amount. Retainers and draws on retainers should be specifically noted as such]

14. The Firm is conducting further inquiries regarding its retention by any creditors of the Debtors, and upon conclusion of that inquiry, or at any time during the period of its employment, if the Firm should discover any facts bearing on the matters described herein, the Firm will supplement the information contained in this Declaration.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Date: \_\_\_\_\_, 2009

\_\_\_\_\_  
[DECLARANT]

Document comparison done by Workshare DeltaView on Tuesday, July 21, 2009  
4:26:11 PM

Input:	
Document 1	interwovenSite://WSDMS/DB02/8306916/3
Document 2	interwovenSite://WSDMS/DB02/8306916/4
Rendering set	standard

Legend:	
<u>Insertion</u>	
<del>Deletion</del>	
<del>Moved from</del>	
<u>Moved to</u>	
Style change	
Format change	
<del>Moved deletion</del>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	79
Deletions	15
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	94