

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

In re:)	Chapter 11
)	
BUILDING MATERIALS HOLDING CORPORATION, <i>et al.</i>,¹)	Case No. 09-12074 (KJC)
)	
Debtors.)	Jointly Administered
)	
)	Ref. Docket No. 104

**CERTIFICATION OF COUNSEL REGARDING DEBTORS' APPLICATION
PURSUANT TO SECTIONS 327(a) AND 328(a) OF THE BANKRUPTCY CODE FOR
AN ORDER AUTHORIZING THE DEBTORS TO RETAIN AND EMPLOY KPMG LLP
AS AUDITORS AND TAX CONSULTANTS *NUNC PRO TUNC* TO THE PETITION
DATE, AND WAIVING CERTAIN REQUIREMENTS OF LOCAL RULE 2016-2**

On June 26, 2009, the above-captioned debtors and debtors-in-possession (collectively, the "Debtors") filed the Debtors' Application Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code for an Order Authorizing the Debtors to Retain and Employ KPMG LLP as Auditors and Tax Consultants *Nunc Pro Tunc* to the Petition Date, and Waiving Certain Requirements of Local Rule 2016-2 (the "Application"). Subsequent to the filing of the Application, the Debtors received comments from the Office of the United States Trustee (the "U.S. Trustee") regarding the Application. The Debtors have worked with the U.S. Trustee to address its concerns and have resolved its issues through changes to the proposed form of order filed with the Application (the "Proposed Order").

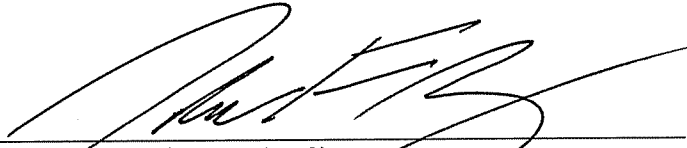
Attached hereto as Exhibit A is a revised Proposed Order (the "Revised Proposed Order").² The Debtors submit that the Revised Proposed Order is appropriate and consistent

¹ The Debtors, along with the last four digits of each Debtor's tax identification number, are as follows: Building Materials Holding Corporation (4269), BMC West Corporation (0454), SelectBuild Construction, Inc. (1340), SelectBuild Northern California, Inc. (7579), Illinois Framing, Inc. (4451), C Construction, Inc. (8206), TWF Construction, Inc. (3334), H.N.R. Framing Systems, Inc. (4329), SelectBuild Southern California, Inc. (9378), SelectBuild Nevada, Inc. (8912), SelectBuild Arizona, LLC (0036), and SelectBuild Illinois, LLC (0792). The mailing address for the Debtors is 720 Park Boulevard, Suite 200, Boise, Idaho 83712.

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 28, 2009

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ATTORNEYS FOR DEBTORS
AND DEBTORS IN POSSESSION

² For ease of reference, attached hereto as Exhibit B is a copy of the Revised Proposed Order marked against the Proposed Order.

EXHIBIT A

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>,¹)	Case No. 09-12074 (KJC)
)	
Debtors.)	Jointly Administered
)	
)	Ref. Docket Nos. 104 and _____

ORDER PURSUANT TO SECTIONS 327(a) AND 328(a) OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTORS TO RETAIN AND EMPLOY KPMG LLP AS AUDITORS AND TAX ADVISOR *NUNC PRO TUNC* TO THE PETITION DATE AND WAIVING CERTAIN REQUIREMENTS OF LOCAL RULE 2016-2

Upon consideration of the application (the "*Application*") of Building Materials Holding Corporation and its affiliates, as debtors and debtors in possession (collectively, the "*Debtors*") for entry of an order pursuant to sections 327(a) and 328(a) of title 11 of the United States Code (the "*Bankruptcy Code*"), Rule 2014 of the Federal Rules of Bankruptcy Procedure (the "*Bankruptcy Rules*"), and Rule 2014-1 of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware (the "*Local Rules*") for authorization to employ and retain KPMG LLP ("*KPMG*") as auditors and tax consultants to the Debtors, all as set forth in the Application; and upon the declaration of Glenn M. Farrell in support of the Application;² and the Court having found that venue of this

¹ The Debtors, along with the last four digits of each Debtor's tax identification number, are as follows: Building Materials Holding Corporation (4269), BMC West Corporation (0454), SelectBuild Construction, Inc. (1340), SelectBuild Northern California, Inc. (7579), Illinois Framing, Inc. (4451), C Construction, Inc. (8206), TWF Construction, Inc. (3334), H.N.R. Framing Systems, Inc. (4329), SelectBuild Southern California, Inc. (9378), SelectBuild Nevada, Inc. (8912), SelectBuild Arizona, LLC (0036), and SelectBuild Illinois, LLC (0792). The mailing address for the Debtors is 720 Park Boulevard, Suite 200, Boise, Idaho 83712.

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

proceeding and the Application 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 Application is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and notice of the Application and the opportunity for a hearing on the Application was appropriate under the particular circumstances; and the Court having reviewed the Application; and the Court having determined that the legal and factual bases set forth in the Application 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 Application is granted as set forth below.
2. In accordance with sections 327(a) and 328(a) of the Bankruptcy Code, Bankruptcy Rule 2014, and Local Rule 2014-1, the Debtors are authorized to employ and retain KPMG *nunc pro tunc* to the Petition Date as their auditors and tax consultants on the terms set forth in the Application as modified by this Order.
3. KPMG shall be compensated in accordance with the procedures set forth in section 330 of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules, and such procedures as may be fixed by order of this Court; *provided, however*, that KPMG shall be granted a limited waiver of the information requirements set forth in Local Rule 2016-2 to keep time records in half-hour increments.
4. The indemnification provisions of the January 22, 2009 Engagement Letter (the "January 2009 Engagement Letter") to provide tax consulting services are approved, subject to the following clarifications:
 - (a) Subject to the provisions of subparagraphs (c) and (d) below, the Debtors are authorized to indemnify, and shall indemnify, KPMG, in accordance with the January 2009 Engagement Letter and to the extent permitted by

applicable law, for any claim arising from, related to, or in connection with KPMG's performance of the services described in the January 2009 Engagement Letter;

- (b) KPMG shall not be entitled to indemnification, contribution, or reimbursement for services provided under the January 2009 Engagement Letter, unless such services and the indemnification, contribution, or reimbursement therefor are approved by the Court;
- (c) Notwithstanding anything to the contrary in the January 2009 Engagement Letter, the Debtors shall have no obligation to indemnify any person, or provide contribution or reimbursement to any person, for any claim or expense to the extent that it is (i) judicially determined (the determination having become final and no longer subject to appeal) to have arisen from that person's gross negligence or willful misconduct; (ii) for a contractual dispute in which the Debtors allege the breach of KPMG's contractual obligations unless the Court determines that indemnification, contribution, or reimbursement would be permissible pursuant to *In re United Artists Theatre Co.*, 315 F.3d 217 (3d Cir. 2003); or (iii) settled prior to a judicial determination as to the exclusions set forth in clauses (i) and (ii), but determined by this Court, after notice and a hearing, to be a claim or expense for which that person should not receive indemnity, contribution, or reimbursement under the terms of the January 2009 Engagement Letter as modified by this Order; and
- (d) If, before the earlier of (i) the entry of an order confirming a chapter 11 plan in these cases (that order having become a final order no longer subject to appeal) and (ii) the entry of an order closing the Chapter 11 Cases, KPMG believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution, or reimbursement obligations under the January 2009 Engagement Letter, including without limitation the advancement of defense costs, KPMG must file an application before this Court, and the Debtors may not pay any such amounts to KPMG before the entry of an order by this Court approving the payment. This subparagraph (d) is intended only to specify the period of time under which the Court shall have jurisdiction over any request for payment by KPMG for indemnification, contribution, or reimbursement, and not a provision limiting the duration of the Debtors' obligation to indemnify KPMG.

5. Notwithstanding any terms of the Engagement Letters to the contrary, paragraph 6 of the terms and conditions annexed to the January 2009 Engagement Letter shall be struck in its entirety.

6. Notwithstanding any terms of the Engagement Letters to the contrary, the Court shall have jurisdiction over any controversy arising from or related to the Application, the Engagement Letters, or KPMG's retention in the Chapter 11 Cases.

7. Notwithstanding paragraph 6 of the Farrell Declaration or any similar provision in the Engagement Letters, KPMG shall not provide such other consulting, advice, research, planning, and analysis regarding audit and tax and advisory services as may be necessary, desirable, or requested from time to time by the Debtors without prior authorization from the Court after notice and a hearing.

8. Notwithstanding paragraph 17 of the Farrell Declaration or any similar provision in the Engagement Letters, during the pendency of these chapter 11 cases and without prejudice to KPMG seeking different terms in other bankruptcy cases, KPMG shall not employ any independent contractors to provide professional services to the Debtors or otherwise with respect to these chapter 11 cases without prior authorization from the Court after notice and a hearing; *provided, however*, that the foregoing limitation shall not apply to services related to non-professional expenses.

9. Notwithstanding anything in the Application, the Engagement Letters or the attachments thereto to the contrary, reimbursement of expenses for legal advice is not being pre-approved as a term or condition of employment under section 328(a) of the Bankruptcy Code, and expense reimbursement requests for legal counsel shall remain subject to applicable law.

10. Upon the resolution of the Internal Revenue Service audit referenced in the second and third full paragraphs on page 2 of the January 2009 Engagement Letter, the Debtors shall provide notice to the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee") of such resolution; *provided, however*, that the Debtors and the U.S. Trustee may

establish reasonable procedures which address the handling of any information provided by the Debtors to the U.S. Trustee in connection therewith; *provided further, however*, that the parties reserve the right to seek any and all appropriate relief from this Court with respect to the establishment or scope of such procedures and to defend, dispute, or otherwise oppose any requests for such relief on any and all grounds.

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

12. 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 B

Blackline of Revised Proposed Order

IN RE:)	
)	Chapter 11
)	
BUILDING MATERIALS HOLDING)	Case No. 09-12074 (KJC)
CORPORATION, <i>et al.</i>,¹)	
)	Jointly Administered
Debtors.)	
)	
)	Ref. Docket NoNos. <u> 104 and </u>

Upon consideration of the application (the "***Application***") of Building Materials Holding Corporation and its affiliates, as debtors and debtors in possession (collectively, the "***Debtors***") for entry of an order pursuant to sections 327(a) and 328(a) of title 11 of the United States Code (the "***Bankruptcy Code***"), Rule 2014 of the Federal Rules of Bankruptcy Procedure (the "***Bankruptcy Rules***"), and Rule 2014-1 of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware (the "***Local Rules***") for authorization to employ and retain KPMG LLP ("***KPMG***") as auditors and tax consultants to the Debtors, all as set forth in the Application; and upon the declaration of Glenn M. Farrell in support of the Application;² and the Court having found that venue of this proceeding and the Application in this district is proper pursuant to 28 U.S.C. sections 1408 and

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

1409; and the Court having found that the relief requested in the Application is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and notice of the Application and the opportunity for a hearing on the Application was appropriate under the particular circumstances; and the Court having reviewed the Application 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 Application 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 Application is granted as set forth below.

2. In accordance with sections 327(a) and 328(a) of the Bankruptcy Code, Bankruptcy Rule 2014, and Local Rule 2014-1, the Debtors are authorized to employ and retain KPMG *nunc pro tunc* to the Petition Date as their auditors and tax consultants on the terms set forth in the Application as modified by this Order.

3. KPMG shall be compensated in accordance with the procedures set forth in section 330 of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules, and such procedures as may be fixed by order of this Court; *provided, however*, that KPMG may ~~submit~~ shall be granted a limited waiver of the information requirements set forth in Local Rule 2016-2 to keep time records in half-hour increments.

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- (a) Subject to the provisions of subparagraphs (c) and (d) below, the Debtors are authorized to indemnify, and shall indemnify, KPMG, in accordance with the January 2009 Engagement Letter and to the extent permitted by applicable law, for any claim arising from, related to, or in connection with KPMG's performance of the services described in the January 2009 Engagement Letter;
- (b) KPMG shall not be entitled to indemnification, contribution, or reimbursement for services provided under the January 2009 Engagement Letter, unless such services and the indemnification, contribution, or reimbursement therefor are approved by the Court;
- (c) Notwithstanding anything to the contrary in the January 2009 Engagement Letter, the Debtors shall have no obligation to indemnify any person, or provide contribution or reimbursement to any person, for any claim or expense to the extent that it is (i) judicially determined (the determination having become final and no longer subject to appeal) to have arisen from that person's gross negligence or willful misconduct; (ii) for a contractual dispute in which the Debtors allege the breach of KPMG's contractual obligations unless the Court determines that indemnification, contribution, or reimbursement would be permissible pursuant to *In re United Artists Theatre Co.*, 315 F.3d 217 (3d Cir. 2003); or (iii) settled prior to a judicial determination as to the exclusions set forth in clauses (i) and (ii), but determined by this Court, after notice and a hearing, to be a claim or expense for which that person should not receive indemnity, contribution, or reimbursement under the terms of the January 2009 Engagement Letter as modified by this Order; and
- (d) If, before the earlier of (i) the entry of an order confirming a chapter 11 plan in these cases (that order having become a final order no longer subject to appeal) and (ii) the entry of an order closing the Chapter 11 Cases, KPMG believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution, or reimbursement obligations under the January 2009 Engagement Letter, including without limitation the advancement of defense costs, KPMG must file an application before this Court, and the Debtors may not pay any such amounts to KPMG before the entry of an order by this Court approving the payment. This subparagraph (d) is intended only to specify the period of time under which the Court shall have jurisdiction over any request for payment by KPMG for indemnification, contribution, or reimbursement, and not a provision limiting the duration of the Debtors' obligation to indemnify KPMG.

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11. 7-The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Application.

12. 8-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