

**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>Case No. 09-12074 (KJC)</b>
<b>CORPORATION, <i>et al.</i>,<sup>1</sup></b>	)	
	)	<b>Jointly Administered</b>
<b>Debtors.</b>	)	
	)	<b>Ref. Docket No. 168</b>

**CERTIFICATION OF COUNSEL REGARDING DEBTORS' MOTION FOR AN  
ORDER AUTHORIZING ASSUMPTION OF THE PURCHASE  
AGREEMENT WITH DAVIS BROTHERS FRAMING, INC., *ET AL.***

On July 10, 2009, the above-captioned debtors and debtors-in-possession (collectively, the "Debtors") filed the Debtors' Motion for an Order Authorizing Assumption of the Purchase Agreement with Davis Brothers Framing, Inc., *et al.* [Docket No. 168] (the "Motion").<sup>2</sup> Pursuant to the Motion, the Debtors requested the Court to enter an order authorizing their assumption of the Purchase Agreement by and between Debtors SelectBuild and C Construction and Davis Brothers Framing, Rancho Leasing, Mr. Randolph Davis and Mr. George Davis (collectively, the "Counterparties"). Subsequent to the filing of the Motion, the Debtors entered into discussions with certain of the Counterparties (together with the Debtors, the "Parties") regarding the terms and conditions of the Purchase Agreement.<sup>3</sup>

<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 but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

<sup>3</sup> As clarified in the Revised Proposed Order (as defined below), for purposes of the Motion and the Revised Proposed Order, the Purchase Agreement includes the Employment, Confidentiality, Noncompetition, and Nonsolicitation Agreements (as amended, the "Employment Agreements") entered into on July 31, 2006 by and between certain of the Debtors and George Davis and Randolph Davis.

As a result of these discussions, the Parties have taken certain actions with respect to the Purchase Agreement and Employment Agreements to be assumed pursuant to the Motion. Specifically, pursuant to its terms, the Employment Agreement with Randolph Davis has been extended to July 31, 2010. Additionally, the amount of Contingent Consideration (as defined in the Purchase Agreement) due to Davis Brothers Framing and Rancho Leasing under the Purchase Agreement for the twelve-month period ending June 30, 2009 has been fixed at \$4,010,553, subject to a final true-up between the Parties to occur no later than November 30, 2009. As set forth more fully in the Motion, the amount of Contingent Consideration due and owing under the Purchase Agreement was unknown at the time the Motion was filed. However, the Debtors estimated in the Motion that this amount could be in excess of \$3,000,000.

Finally, the Parties have amended the Employment Agreement with Randolph Davis to provide for a performance incentive plan (the “Incentive Plan”) for Mr. Davis. However, pursuant to the Motion, the Debtors are not seeking relief from this Court with respect to the Incentive Plan; rather, with the consent of the Counterparties, the Debtors intend to seek authority from this Court to adopt and implement the Incentive Plan upon appropriate notice and hearing.

Attached hereto as Exhibit A is a revised proposed form of order (the “Revised Proposed Order”) approving the Debtors’ assumption of the Purchase Agreement which, as set forth in the Revised Proposed Order, includes the Employment Agreements.<sup>4</sup> The Debtors submit that the Revised Proposed Order is appropriate and consistent with the Debtors’ discussions with the Parties, and that entry of the order is in the best interests of the Debtors, their estates and creditors. The Debtors have consulted with the Official Committee of

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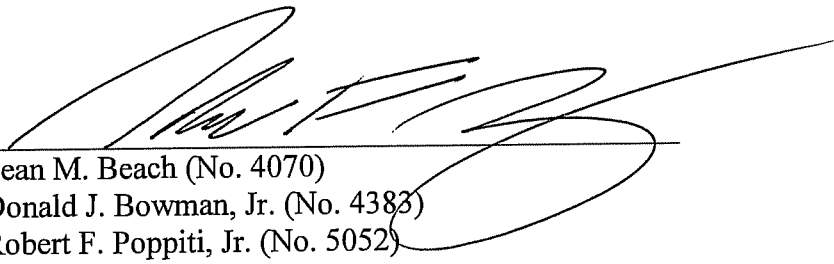
<sup>4</sup> For ease of reference, attached hereto as Exhibit B is a copy of the Revised Proposed Order marked against the proposed form of order filed with the Motion.

Unsecured Creditors and the Counterparties regarding this matter, and these parties have consented to the entry of the Revised Proposed Order.

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  
August 11, 2009

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ATTORNEYS FOR THE DEBTORS  
AND DEBTORS-IN-POSSESSION

**EXHIBIT A**

Revised Proposed Order

**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 (KJC)**

)  
) **Jointly Administered**

)  
) **Ref. Docket Nos. 168 and \_\_\_\_\_**

**ORDER AUTHORIZING ASSUMPTION OF THE ASSET PURCHASE AGREEMENT  
WITH DAVIS BROTHERS FRAMING, INC., ET AL.**

Upon consideration of the motion (the "**Motion**") of Building Materials Holding Corporation and its affiliates, as debtors and debtors in possession (collectively, the "**Debtors**"), for entry of an order authorizing assumption of the Purchase Agreement<sup>2</sup> with Davis Brothers Framing, et al., all as set forth in the Motion; 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

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

determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED:**

1. The Motion is granted as set forth below.
2. Pursuant to sections 363(b) and 365(a) of title 11 of the United States Code (the "*Bankruptcy Code*"), the Debtors are authorized to assume, and perform in accordance with, the Purchase Agreement, as amended by that certain First Amendment, effective as of August 1, 2009. For purposes of this Order, the term "Purchase Agreement" shall include those certain Employment, Confidentiality, Noncompetition, and Nonsolicitation Agreements (as amended, the "Employment Agreements"), entered into on July 31, 2006 by and between certain of the Debtors and George Davis and Randolph Davis; provided, however, that nothing in this Order is intended or shall otherwise be deemed to authorize the Debtors' assumption of that certain performance incentive plan (the "Incentive Plan") provided for in the Employment Agreement with Randolph Davis, with it being (i) the intent of the Court and all interested parties that the Debtors' assumption of, and performance in accordance with, the Incentive Plan shall remain subject to this Court's approval upon notice and a hearing, and (ii) expressly understood that the counterparties to the Purchase Agreement consent to the Debtors' assumption of the Purchase Agreement in the manner contemplated by this Order.

3. The Debtors' have no cure obligations in connection with the assumption of the Purchase Agreement and Davis Brothers Framing, Inc., Rancho Leasing, Inc., George Davis, and Randolph Davis are hereby barred, enjoined, and prohibited from asserting any additional amounts on account of the Debtors' cure obligations under section 365 of the Bankruptcy Code or otherwise from the Debtors or their estates with respect to the Purchase Agreement.

4. The Debtors have provided adequate assurance of future performance of the Purchase Agreement.

5. The Debtors are authorized to take any action necessary to effectuate the terms of this Order without further order of the Court.

6. This Court shall retain jurisdiction over any and all matters arising from or related to the implementation or interpretation of this Order.

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

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Kevin J. Carey  
Chief United States Bankruptcy Judge

**EXHIBIT B**

Blackline of 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</b>	)	
<b>CORPORATION, <i>et al.</i>,<sup>1</sup></b>	)	<b>Case No. 09-12074 (KJC)</b>
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<b>Debtors.</b>	)	<b>Jointly Administered</b>
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	)	<b>Ref. Docket No. <del>      </del> Nos. 168 and</b>

**ORDER AUTHORIZING ASSUMPTION OF THE ASSET PURCHASE AGREEMENT  
WITH DAVIS BROTHERS FRAMING, INC., ET AL.**

Upon consideration of the motion (the "*Motion*") of Building Materials Holding Corporation and its affiliates, as debtors and debtors in possession (collectively, the "*Debtors*")<sup>a</sup> for entry of an order authorizing assumption of the Purchase Agreement<sup>2</sup> with Davis Brothers Framing, et al., all as set forth in the Motion; 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

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

just cause for the relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED:**

1. The Motion is granted as set forth below.

2. The Pursuant to sections 363(b) and 365(a) of title 11 of the United States Code (the "*Bankruptcy Code*"), the Debtors are authorized to assume the Purchase Agreement pursuant to section 365(a) of title 11 of the United States Code (the "*Bankruptcy Code*"), and perform in accordance with the Purchase Agreement, as amended by that certain First Amendment, effective as of August 1, 2009. For purposes of this Order, the term "Purchase Agreement" shall include those certain Employment, Confidentiality, Noncompetition, and Nonsolicitation Agreements (as amended, the "Employment Agreements"), entered into on July 31, 2006 by and between certain of the Debtors and George Davis and Randolph Davis; provided, however, that nothing in this Order is intended or shall otherwise be deemed to authorize the Debtors' assumption of that certain performance incentive plan (the "Incentive Plan") provided for in the Employment Agreement with Randolph Davis, with it being (i) the intent of the Court and all interested parties that the Debtors' assumption of, and performance in accordance with, the Incentive Plan shall remain subject to this Court's approval upon notice and a hearing, and (ii) expressly understood that the counterparties to the Purchase Agreement consent to the Debtors' assumption of the Purchase Agreement in the manner contemplated by this Order.

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Randolph Davis are hereby barred, enjoined, and prohibited from asserting any additional amounts on account of the Debtors' cure obligations under section 365 of the Bankruptcy Code or otherwise from the Debtors or their estates with respect to the Purchase Agreement.

4. The Debtors have provided adequate assurance of future performance of the Purchase Agreement.

5. The Debtors are authorized to take any action necessary to effectuate the terms of this Order without further order of the Court.

6. This Court shall retain jurisdiction over any and all matters arising from or related to the implementation or interpretation of this Order.

Dated: Wilmington, Delaware  
~~July~~August \_\_, 2009

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Kevin J. Carey  
Chief United States Bankruptcy Judge