

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- <u>12074</u> ()
Debtors.)	Joint Administration Requested
)	
)	

DECLARATION OF PAUL S. STREET, SENIOR VICE PRESIDENT, CHIEF ADMINISTRATIVE OFFICER, GENERAL COUNSEL, AND CORPORATE SECRETARY OF BUILDING MATERIALS HOLDING CORPORATION, IN SUPPORT OF THE DEBTORS' CHAPTER 11 PETITIONS AND FIRST DAY MOTIONS

I, Paul S. Street, hereby declare under penalty of perjury:

1. I am Senior Vice President, Chief Administrative Officer, General Counsel, and Corporate Secretary of Building Materials Holding Corporation, a corporation organized under the laws of the State of Delaware and one of the above-captioned debtors and debtors in possession (collectively, the "**Debtors**"). In this capacity I am familiar with the Debtors' day-to-day operations, businesses, financial affairs, and books and records.

2. On the date hereof (the "**Petition Date**"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the "**Chapter 11 Cases**"). The Debtors continue to operate their businesses and manage their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in the Chapter 11 Cases, and no committees

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.

have been appointed or designated. Concurrently herewith, the Debtors filed a motion seeking joint administration of the Chapter 11 Cases pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**").

3. I submit this declaration (the "**First Day Declaration**") to provide an overview of the Debtors and the Chapter 11 Cases and to support the Debtors' chapter 11 petitions and "first day" motions and applications (each, a "**First Day Motion**," and collectively, the "**First Day Motions**"). Except as otherwise indicated herein, all facts set forth in this First Day Declaration are based upon my personal knowledge of the Debtors' operations and finances, information learned from my review of relevant documents, information supplied to me by other members of the Debtors' management team and the Debtors' advisors, or my opinion based upon my knowledge and experience or information I have reviewed concerning the Debtors' operations and financial condition. I am authorized to submit this First Day Declaration on behalf of the Debtors, and, if called upon to testify, I could and would testify competently to the facts set forth herein.

4. To familiarize the Court with the Debtors and the relief they will seek on the first day of these cases, this First Day Declaration is organized as follows: Part I describes the Debtors' businesses as well as their organizational and capital structure. Part II describes the events leading to the commencement of the Chapter 11 Cases and the Debtors' out-of-court restructuring efforts. Part III sets forth the relevant facts in support of each First Day Motion.

I.
THE DEBTORS' BUSINESS OPERATIONS,
ORGANIZATIONAL STRUCTURE, AND CAPITAL STRUCTURE

A. Business Operations

5. 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.

6. The Debtors operate under two brand names: BMC West® and SelectBuild®.



- 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.



- 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.

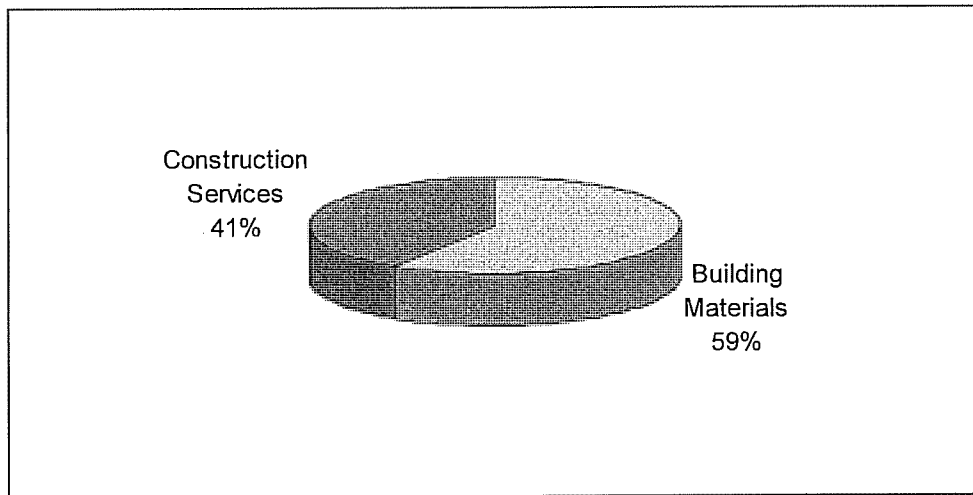
7. The Debtors operate in metropolitan areas that have historically outpaced U.S. averages for residential building permit activity (largely in the Southern and Western portions of the United States). Based on National Association of Home Builders building permit

activity, the Debtors provide building products and construction services in nine of the top 25 single-family construction markets.

8. In addition to their strategic geographic locations, the Debtors have many other competitive strengths that enable them to attract business. For example, the Debtors' full offering of building materials, manufactured products, and construction services allows the Debtors to help professional builders and contractors reduce costs and cycle time. Similarly, the Debtors' long-term relationships with their suppliers provide the Debtors with purchasing advantages—including volume rebate programs and preferred customer status when supplies or liquidity are limited—which are passed on to the Debtors' customers in the form of reduced costs and increased on-time reliability. The Debtors have also cultivated a reputation for providing superior quality building components and construction services by employing experienced, service-oriented individuals to procure, produce, and deliver these products and services.

9. The Debtors' principal executive offices are located in Boise, Idaho. As of the Petition Date, the Debtors employ approximately 5,500 people. Debtor Building Materials Holding Corporation is a public company that trades on the OTC Bulletin Board under the ticker symbol BLGM. For the twelve months ended March 31, 2009, the Debtors' 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.

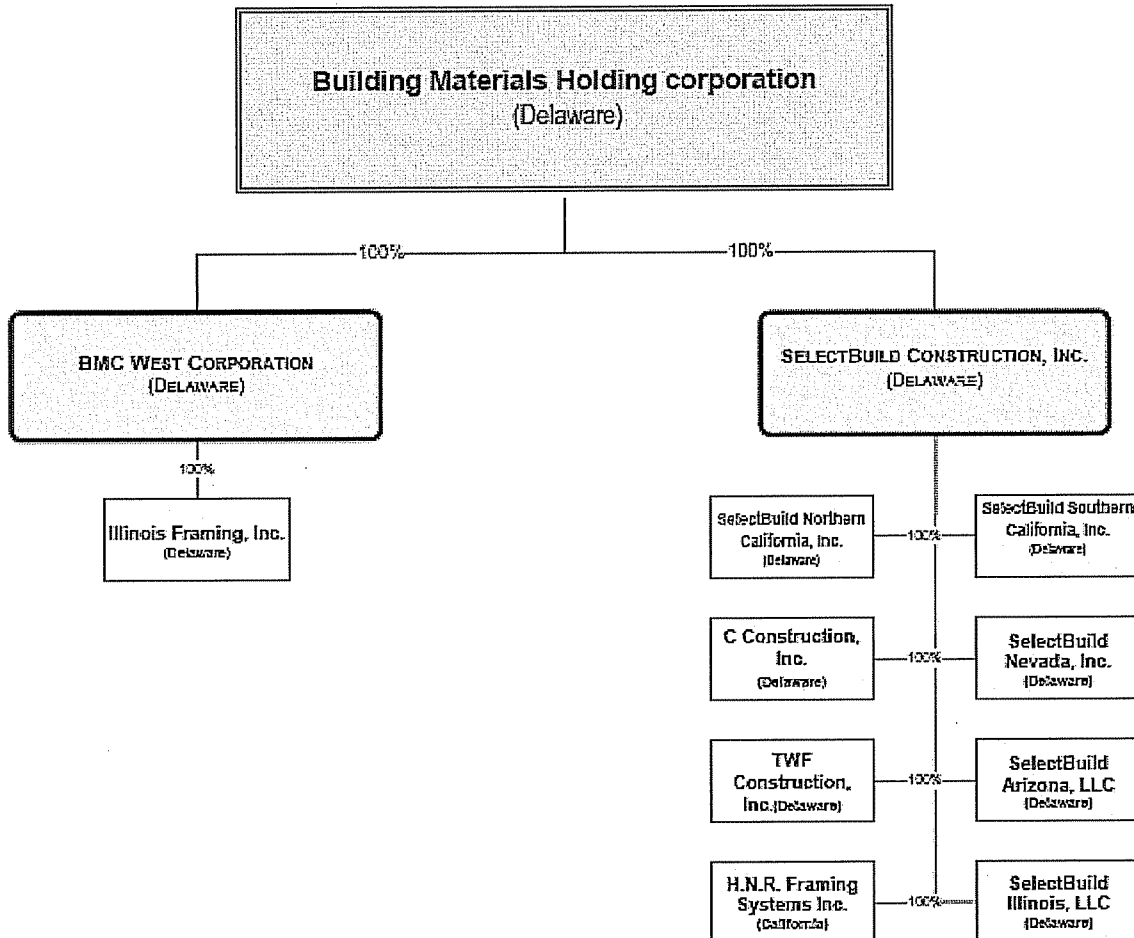
Figure 1 – Debtors' Sales Revenue by Product Type



B. Debtors' Prepetition Organizational Structure

10. The following chart generally depicts the Debtors' prepetition organizational structure:

Figure 2 – Debtors' Prepetition Organizational Structure



C. Debtors' Capital Structure

1. Debtors' Prepetition Credit Agreement

11. The Debtors' prepetition credit facility consists of a \$340 million term note maturing in November 2011 (the "**Term Note**"), a \$200 million revolving line of credit (the "**Revolver**"), and other borrowings. As of the Petition Date, there were approximately \$20

million in borrowings outstanding under the Revolver and approximately \$269 million in principal was outstanding under the Term Note. The Debtors have also entered into interest rate swap agreements (the "Swap Agreements") with various parties and owe prepetition payment-in-kind interest of approximately \$6 million under the Term Note. In addition, the Debtors caused to be issued approximately \$113 million in open, but undrawn, letters of credit (collectively, the "*Letters of Credit*"). All of these obligations are secured by a pari passu first priority, perfected security interest in substantially all of the assets of the Debtors.

12. **The Term Note and Revolver.** Debtor Building Materials Holding Corporation, as the borrower, the other Debtors, as guarantors, Wells Fargo Bank, as administrative agent (the "*Administrative Agent*"), and the lenders party thereto (together with the Administrative Agent, the "*Lenders*") are parties to that certain Second Amended and Restated Credit Agreement, dated as of November 10, 2006 (the "*Prepetition Credit Agreement*"), as amended by that certain First Amendment to Second Amended and Restated Credit Agreement and Waiver, dated as of February 29, 2008 (the "*First Amendment*") and that certain Second Amendment to Second Amended and Restated Credit Agreement and Waiver, dated as of September 30, 2008 (the "*Second Amendment*"). The Prepetition Credit Agreement provides for the \$200 million Revolver and the \$340 million Term Loan, which is scheduled to mature on November 10, 2011. The Debtors' ability to draw on the \$200 million Revolver is subject to certain borrowing base limitations. The Prepetition Credit Agreement is secured pursuant to that certain Third Amended and Restated Security Agreement by and among the Debtors and the Administrative Agent, dated as of November 10, 2006, which grants the Lenders a security interest in substantially all of the Debtors' assets.

13. **The Letters of Credit.** The Debtors caused to be issued various Letters of Credit in favor of certain of the Debtors' creditors. The Letters of Credit were issued primarily in favor of the Debtors' insurers with respect to the deductible portion of automobile, general liability, and workers' compensation claims, with respect to performance bonds for projects undertaken by the Debtors, and with respect to obligations owed to certain of the Debtors' key suppliers. Wells Fargo Bank issued the Letters of Credit under the terms of the Credit Agreement, by which the outstanding Letters of Credit reduce the \$200 million amount available to the Debtors under the Revolver. These Letters of Credit renew automatically on their various anniversary dates or until released by their respective beneficiaries.

14. **Swap Agreements.** The Debtors are party to two ISDA Master Agreements, (a) an ISDA Agreement with BNP Paribas dated as of April 7, 2004 and (b) an ISDA Agreement with Suntrust Bank dated as of October 10, 2006 (together the "Prepetition Master Agreements"). The Prepetition Master Agreements govern multiple Transactions (as defined in the Prepetition Master Agreements) between the parties. Obligations arising from such Transactions, moreover, are secured by substantially all of the Debtors' assets, and the resulting security interests are pari passu with that created under the Prepetition Credit Agreement. Section 5(a)(vii) of each of the Prepetition Master Agreements gives BNP Paribas and Suntrust Bank the right to terminate such agreements on account of these Chapter 11 Cases. As of the Petition Date, the Debtors believe that the termination obligations under the Prepetition Master Agreements were approximately \$6 million.

2. The Debtors' Other Debt

15. **Other Secured Borrowings.** The Debtors have a limited amount of other long-term secured debt. Such other debt consists of (a) an obligation owed to various parties

from whom BMC West purchased real property in 2006, which obligation is secured by the real property that was purchased (the "***Mitchell Obligation***") and (b) an equipment capital lease. The outstanding liability with respect to Mitchell Obligation is approximately \$950,000 and the obligation under the equipment lease is approximately \$8,000. The interest rate on the Mitchell Obligation is 7%, payments are monthly and the maturity date is December 2010.

16. **Trade Credit.** The Debtors also receive unsecured credit from most vendors and suppliers, though the Debtors do have two trade suppliers whose rights to payment are secured by Letters of Credit. As of the Petition Date, the Debtors estimate that they owe approximately \$31 million to their unsecured trade creditors.

17. **SERP Claims.** In 1993, BMHC developed a Supplemental Employee Retirement Plan (the "SERP") to help meet retirement and retention objectives for key Company employees. There are currently two programs, the 1994 "Old Plan," which was frozen in order to preserve less restrictive Internal Revenue Service rules, and the 2005 "New Plan," which has more restrictive election and distribution procedures. Both plans are non-qualified deferred compensation plans. The cost of the program was offset by reductions in BMHC's cash profit-sharing program. The plan is funded with 5.5% of BMHC earnings after tax. The SERP was frozen by BMHC's compensation committee in November 2008 due to market conditions and the Company's financial performance.

18. Benefits under the SERP are paid out upon retirement as elected by the participant, either in a lump sum or monthly installment payments. The benefits are funded from life insurance policies held by BMHC in a "rabbi" trust. The rabbi trust holds various insurance assets that have a cash surrender value of approximately \$16 million. As of the Petition Date, BMHC owed \$21 million to SERP claimants.

19. **Liability under Leases.** Prior to the Petition Date, the Debtors were parties to numerous unexpired real and personal property leases which the Debtors utilized to operate their businesses. As of the Petition Date, the Debtors no longer needed certain of these leases due to the Debtor's restructuring efforts whereby the Debtors discontinued operations in many locations and closed several business units. As a result, the Debtors were maintaining leases for unoccupied parcels of real property as well as trucks, tractors and trailers, vans, heavy equipment, and office equipment that were not being used in the course of the Debtors' businesses. The Debtors expect to reject such leases.

20. **Employment Agreement Claims.** Prior to the Petition Date, the Debtors entered into a number of employment agreements with their employees and former employees. Certain of their employment agreements with former employees required the Debtors to make payments to these former employees in exchange for their agreement not to compete with the Debtors. In some cases, the Debtors have determined, in the sound exercise of their business judgment, that the value of the non-compete clause is not equal to the amount the Debtors are required to pay. Consequently, the Debtors expect to reject certain employment agreements.

21. **Ordinary Course Employee Liabilities.** The Debtors employ approximately 5,500 employees, of which 80 are part-time and approximately 300 are represented by unions. The Debtors paid all of their undisputed prepetition wage obligations to their employees. However, in the ordinary course of business, each month the debtors incur approximately \$18,343,000 in employee wage obligations. In addition the Debtors employ approximately 10 independent contractors to whom the Debtors pay an average of \$100,000 per month. The Debtors reimburse employees and directors for certain business-related expenses such as travel, meals, parking and similar expenses. On average, the Debtors reimburse

approximately \$250,000 in business related expenses per month. The Debtors provide company-leased vehicles or a base allowance plus adjustable fuel allowance for employees who travel in excess of 12,000 miles per year on account of business. The Debtors incur approximately \$355,000 per month on account of these automobile expenses.

22. The Debtors offer their employees a variety of benefits including: health insurance, dental insurance, vision care, vacation time, leaves of absence, 401(k) plans, retirement benefits for certain union employees, life and accidental death and dismemberment insurance, short and long term disability benefits, flexible benefit plans,, relocation program, tuition reimbursement, severance pay, and retiree medical benefits. On account of these benefits, the Debtors incur an average of approximately \$2,300,000 per month. The Debtors intend to pay these employee related expenses on a going-forward basis in the ordinary course of business. In addition, the Debtors intend to assume all of their collective bargaining agreements.

II.

EVENTS LEADING TO THE CHAPTER 11 CASES

23. Unfortunately, a series of unforeseen and unavoidable events placed significant strain on the Debtors' ability to continue servicing its indebtedness and ultimately led to the Debtors' filing of the Chapter 11 Cases. Those events include (A) the unprecedented downturn in the U.S. housing and construction market, (B) the resulting deterioration in the Debtors' financial performance, (C) the Debtors' default under the Credit Agreement, and (D) the Debtors' unsuccessful attempts to implement an out-of-court restructuring.

A. The Downturn in the U.S. Housing and Construction Markets

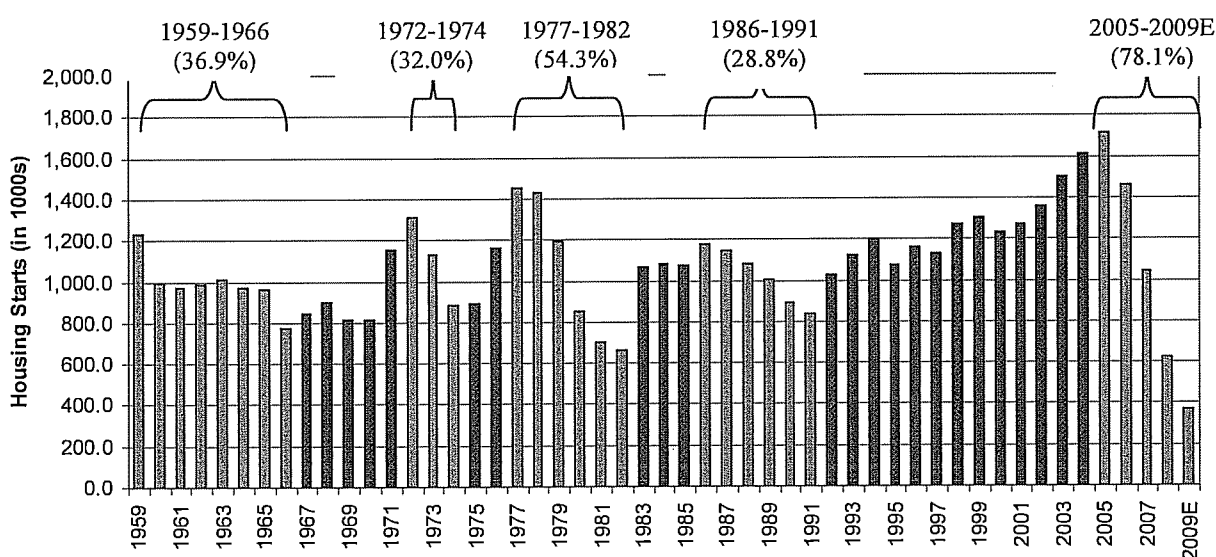
24. The residential building products and construction services industry is highly dependent upon demand for single-family homes. Various macroeconomic factors, including general economic conditions, interest rates, levels of unemployment, consumer

confidence, and the availability of credit influence the demand for single-family homes.

Historically, the new home construction sector has been cyclical. During 2006, however, a major housing downturn began in the United States. Indeed, single-family "housing starts" fell more than 14% from approximately 1.72 million in 2005 to approximately 1.47 million in 2006.²

25. The housing market downturn in the United States intensified during 2007, with single-family housing starts in 2007 falling almost 29% from the 2006 rate to approximately 1.05 million, and continued during 2008, with single-family housing starts falling over 40% from the 2007 rate to approximately 622,000. As of March 2009, single-family housing starts have fallen to an annualized rate of less than 400,000—the lowest level of single-family housing start activity since World War II.

Figure 3 – U.S. Single-Family Housing Start History 1959-2009



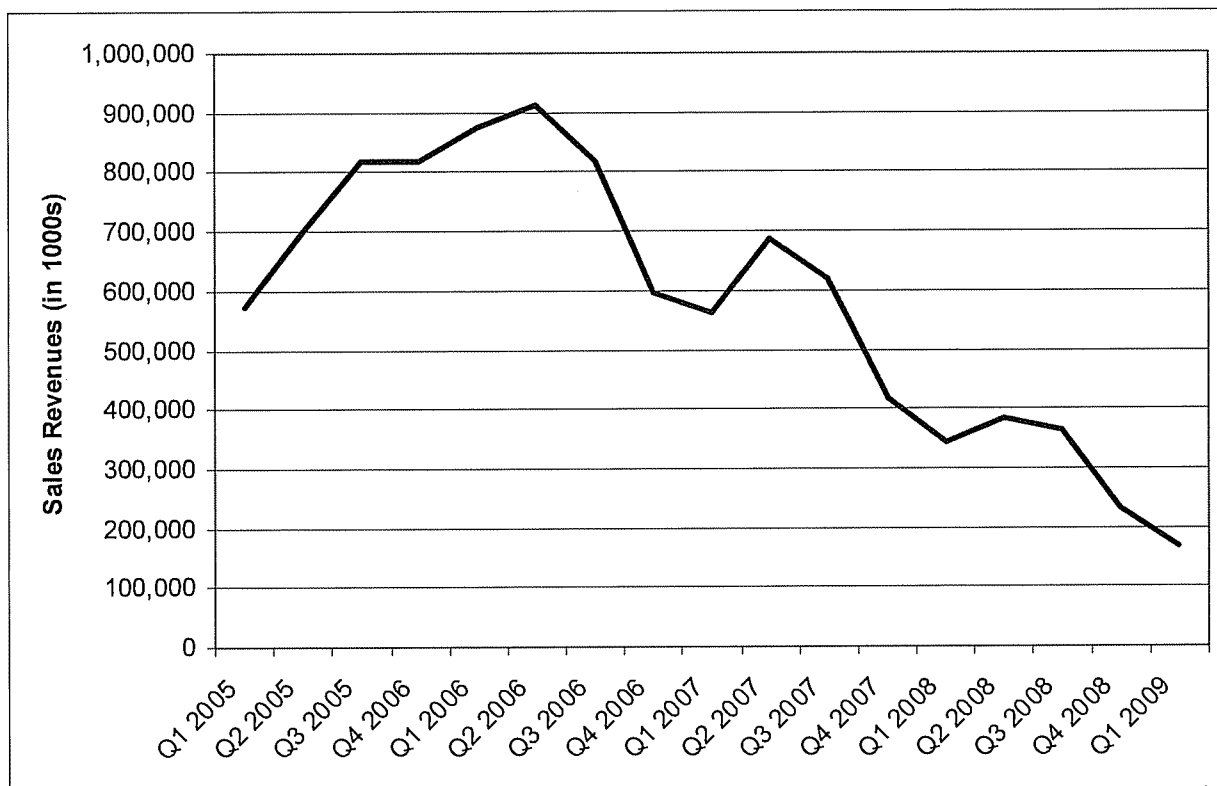
² "Housing starts" are considered a leading indicator in the United States housing market. The United States Census Bureau and the United States Department of Housing and Urban Development jointly publish a monthly report on housing starts which is available at <http://www.census.gov/const/www/newresconstindex.html>.

26. The negative effect of the housing market downturn is compounded by recent turmoil in the general economy, mortgage market, and overall credit markets, which has caused increasing levels of unemployment, a severe decline in home prices, a dramatic tightening of consumer credit, and decreased consumer confidence.

B. The Debtors' Financial Performance Deteriorates

27. The adverse market conditions described above negatively affected the Debtors' financial position. Sales revenues declined from approximately \$3.0 billion in 2006 to approximately \$1.3 billion in 2008.

Figure 4 – Debtors' Unaudited Quarterly Sales Revenue (2005-Q1 2009)



28. As a result of this unanticipated and precipitous decline in sales revenues, the Debtors began experiencing losses from operations on a continuous basis in the fourth

quarter of 2007. For the year ending December 31, 2008, the Debtors experienced a loss of approximately \$192,456,000 from continuing operations.

C. The Debtors Default Under the Credit Agreement

29. The Debtors' Credit Agreement requires monthly compliance with financial covenants, including minimum liquidity and adjusted earnings before interest, taxes, depreciation, and amortization ("*EBITDA*"). Ultimately, decreased demand and corresponding sales declines caused the Debtors to fall out of compliance with certain of these financial covenants as of December 31, 2007. As a result of these covenant defaults, the Lenders were entitled to seek immediate repayment of \$345,625,000 under the Credit Agreement. Accordingly, the Debtors engaged the Administrative Agent in discussions for a waiver of the financial covenant defaults and an amendment to the covenants in the Credit Agreement that would enable the Debtors to meet the covenants on a going-forward basis given the depressed state of the housing market.

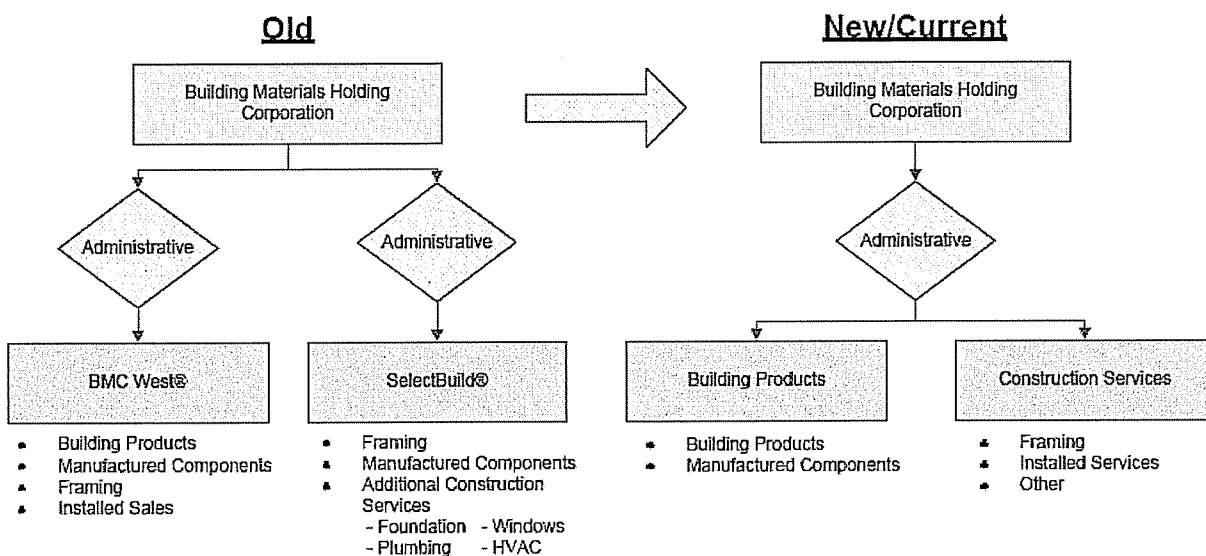
D. The Debtors' Out-of-Court Restructuring Initiatives

1. Operational Restructuring

30. In response to the above-described challenging economic and industry conditions, in May 2008 the Debtors initiated a comprehensive analysis of their business operations to rationalize their operations for the current conditions of the homebuilding industry and improve cash flow and profitability. To assist in this analysis, the Debtors engaged Alvarez & Marsal ("A&M"), one of the pre-eminent restructuring turnaround firms in the world. With the assistance of A&M, the Debtors formulated a restructuring plan to right-size their operations, consolidate their administrative services, reorganize their operations structure, and close or consolidate their underperforming business units.

31. To implement this restructuring plan, the Debtors have reduced overall headcount from a high of approximately 23,000 in June 2006 to approximately 5,500 as of the Petition Date. The Debtors have also created a shared services organization at their headquarters in Boise, Idaho to provide key administrative services such as information technology, human resources, accounting, marketing, and purchasing. Previously, some individual business locations had provided their own administrative services. In addition, the Debtors have engaged in a comprehensive reorganization of their operations structure in order to eliminate unnecessary overhead expenditures, reduce redundancy, and enhance corporate oversight and control over the business.

Figure 5 – Debtors' Business Operations Reorganization



32. Finally, the Debtors have taken significant actions to close or consolidate their underperforming business units. To date, the Debtors have sold, wound down, or consolidated 78 business units.

2. Financial Restructuring

33. Throughout February 2008, the Debtors continued negotiating with the Administrative Agent for a waiver of the financial covenant defaults and an amendment to the covenants in the Credit Agreement that would enable them to meet the covenants on a going-forward basis given the depressed state of the housing market. To provide the parties with additional time to continue negotiations and avert a possible chapter 11 filing, the parties agreed to a temporary waiver of the financial covenants under the Credit Agreement.

34. On February 29, 2008, the Debtors were able to enter successfully into the First Amendment to the Credit Agreement, which, among other provisions, modified the financial covenants to account for the downturn in the housing market by, among other things, lowering the Debtors' consolidated net worth requirement and the minimum EBITDA-to-interest expense ratio and setting new minimum EBITDA default-trigger thresholds. In accordance with the First Amendment, Debtor Building Materials Holding Corporation suspended its quarterly cash dividend to shareholders.

35. Nonetheless, as the housing market continued to decline, the Debtors fell out of compliance with these new financial covenants after the fiscal period ended June 30, 2008. As a result, the Debtors engaged in further discussions with the Administrative Agent and sought another waiver of their financial covenant and other related defaults and another amendment to the covenants in the Credit Agreement. The Debtors were able to obtain a waiver of the existing defaults and, on September 30, 2008, were successful in entering into the Second Amendment to the Credit Agreement which, among other things, reset the minimum EBITDA default-trigger thresholds and added minimum liquidity default-trigger thresholds.

36. Despite these extensive good-faith renegotiations of the Credit Agreement, the unprecedented decline in the housing industry and the concomitant decline in sales of the Debtors' products and services caused the Debtors to fall out of compliance with the minimum monthly adjusted EBITDA required by the Second Amendment for the fiscal period ended February 28, 2009. As part of their continued good-faith negotiations with the Lenders, the Debtors were able to obtain a temporary waiver of this and other anticipated defaults through the earlier of (i) April 15, 2009, which was extended through June 1, 2009 and again through June 29, 2009; and (ii) the occurrence of another default.

E. The Debtors Commence The Chapter 11 Cases

37. Prior to the Petition Date, the Debtors, with the assistance of their professionals and advisors, engaged in extensive efforts to maximize the value of the Debtors' assets. Specifically, the Debtors conducted a broad marketing effort to explore a possible sale of their business. This marketing effort, however, did not yield indications of interest that were consistent with the Debtors' view, in their business judgment, of the best way to maximize the value of their business.

38. Additionally, the Debtors explored ways in which to refinance some or all of its outstanding prepetition indebtedness. Notwithstanding this effort, due to liquidity restraints in the capital markets, coupled with the severe and well-reported downturn in the U.S. housing markets and, concomitantly, the construction services industry, the Debtors were unable to obtain interest in a refinancing that could be implemented under the current economic conditions outside of bankruptcy.

39. Accordingly, the Debtors engaged in good faith, arm's-length negotiations with their prepetition senior secured lenders, among many other potential funding sources, to

develop a proposed restructuring that would significantly de-lever the Debtors' balance sheet, while at the same time provide a meaningful recovery to the Debtors' unsecured creditors. After months of negotiations, the Debtors and certain of the prepetition senior secured lenders were able to agree to a restructuring proposal embodied in the chapter 11 plan (the "**Plan**"), which was filed contemporaneously herewith, and the accompanying disclosure statement (the "**Disclosure Statement**").

40. As set forth in greater detail in the Plan and Disclosure Statement, the Debtors' proposed Plan seeks to rationalize its balance sheet by reducing their outstanding long-term secured indebtedness by \$135 million (from its current \$285 million level), and distribute equity of the post-bankruptcy company to the holders of the Debtors' prepetition secured indebtedness. In addition, the Plan contemplates making a meaningful and immediate cash distribution to holders of unsecured claims, with an opportunity to receive full payment of their claims from the post-emergence Debtors, depending on business performance.

41. To implement the restructuring contemplated by the Plan, the Debtors were able to obtain a commitment from some of the Debtors' prepetition secured lenders (the "**DIP Lenders**") to provide \$80 million debtor in possession financing (the "**DIP Financing**") (subject to borrowing base limitations) on superior pricing terms to those available from four other funding proposals. The DIP Lenders offered a lower interest rate and fewer fees than their competitors. In addition, the Debtors' robust marketing process, at its conclusion, yielded significant improvements from the DIP Lenders' initial financing bid. Accordingly, the Debtors believe that the DIP Financing will provide them with ample liquidity to fund operations and administrative costs of the Chapter 11 Cases.

42. In connection with the Chapter 11 Cases the Debtors retained Kekst and Company Incorporated ("**Kekst**") to assist with public relations issues. Kekst is one of the world's leading financial and corporate communications firms. Kekst has assisted and will continue to assist the Debtors with, among other things, developing a communications plan and communications documents to be distributed to key constituencies, such as employees, customers, and suppliers. The Debtors do not believe that Kekst is required to be retained as a professional in these Chapter 11 Cases pursuant to section 327 of the Bankruptcy Code and the Debtors intend to pay Kekst for its post-petition services in the ordinary course of business after the Petition Date.

III.

EVIDENTIARY SUPPORT FOR FIRST DAY MOTIONS

43. As discussed above, the Debtors commenced the Chapter 11 Cases with the goal of stabilizing their operations and ensuring a smooth transition into chapter 11. To that end, concurrently with the filing of their chapter 11 petitions, the Debtors have filed a number of First Day Motions seeking relief that the Debtors believe is necessary to enable them to operate with minimal disruption and loss of productivity. The Debtors request that the relief requested in each of the First Day Motions be granted as critical elements in ensuring a smooth transition into, and stabilizing and facilitating the Debtors' operations during the pendency of the Chapter 11 Cases. I have reviewed each of the First Day Motions discussed below and the facts set forth in each First Day Motion are true and correct to the best of my knowledge and belief with appropriate reliance on corporate officers and advisors.³

³ All capitalized terms used but otherwise not defined herein shall have the meanings set forth in the relevant First Day Motion.

**A. Motion of Building Materials Holding Corporation, et al.,
for an Order Directing Joint Administration of their
Chapter 11 Cases (the "*Joint Administration Motion*")**

44. The Debtors request entry of an order directing joint administration of the Chapter 11 Cases for procedural purposes only. Specifically, the Debtors request that the Court maintain one file and one docket for all of the Chapter 11 Cases under the case of Building Materials Holding Corporation and also request that an entry be made on the docket of each of the Debtors' Chapter 11 Cases, other than Building Materials Holding Corporation, to reflect the joint administration of the Chapter 11 Cases.

45. Given the integrated nature of the Debtors' operations, joint administration of the Chapter 11 Cases will provide significant administrative convenience without harming the substantive rights of any party in interest. Many of the motions, hearings, and orders that will arise in the Chapter 11 Cases will jointly affect each and every Debtor. The entry of an order directing joint administration of the Chapter 11 Cases will reduce fees and costs by avoiding duplicative filings and objections and will allow the U.S. Trustee and all parties in interest to monitor the Chapter 11 Cases with greater ease and efficiency.

46. I believe that the relief requested in the Joint Administration Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest, and will enable the Debtors to continue to operate their businesses in chapter 11 without disruption. Accordingly, on behalf of the Debtors, I respectfully submit that the Joint Administration Motion should be approved.

B. Debtors' Motion for an Order (I) Authorizing Debtors to (A) Continue Existing Cash Management System, Bank Accounts and Business Forms, and (B) Continue Ordinary Course Intercompany Transactions; and (II) Granting Extension of Time to Comply with the Requirements of Section 345(b) of the Bankruptcy Code (the "*Cash Management Motion*")

47. The Debtors request entry of an order (I) authorizing the Debtors to:

- (a) continue using their cash management system, bank accounts and business forms, and
- (b) continue intercompany transactions in the ordinary course of business; and (II) granting extension of time to comply with the requirements of section 345(b) of the Bankruptcy Code.

48. In the ordinary course of business, the Debtors utilize an integrated, centralized Cash Management System to collect, transfer, and disburse funds generated by their operations and maintain current and accurate accounting records of all daily cash transactions. If the Debtors were required to comply with the U.S. Trustee Guidelines, the burden of opening new accounts, revising cash management procedures, and instructing customers to redirect payments would disrupt the Debtors' business at this critical time. The Debtors respectfully submit that parties in interest will not be harmed by their maintenance of the existing Cash Management System, including their Bank Accounts, because the Debtors have implemented appropriate mechanisms to ensure that unauthorized payments will not be made on account of obligations incurred prior to the Petition Date. Similarly, the Debtors submit that the burden and expense of immediately replacing their existing business forms to reflect their status as debtors in possession would be unduly burdensome at this critical juncture.

49. The Debtors also adhere to certain investment practices, which the Debtors believe will provide the protection contemplated by section 345(b) of the Bankruptcy Code, while providing additional interest income. Therefore, the Debtors seek a waiver of strict compliance with the requirements of section 345(b) of the Bankruptcy Code.

50. In addition, in the ordinary course of business, the Debtors maintain a large and complex system of Intercompany Transactions for, among other reasons, facilitating intercompany sales, centralizing accounting and purchasing departments, and moving cash between entities. If the Intercompany Transactions are discontinued, a number of services provided by and to the Debtors would be disrupted and could impact the Debtors' ability to pay wages and benefits to their employees and make timely payments to vendors.

51. The relief requested in the Cash Management Motion is vital to ensuring the Debtors' seamless transition into bankruptcy. Authorizing the Debtors to maintain their Cash Management System will avoid many of the possible disruptions and distractions that could divert their attention from more critical matters during the initial days of the Chapter 11 Cases.

52. I believe that the relief requested in the Cash Management Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest, and will enable the Debtors to continue to operate their businesses in chapter 11 without disruption. Accordingly, on behalf of the Debtors, I respectfully submit that the Cash Management Motion should be approved.

C. Debtors' Motion for an Order (A) Authorizing the Debtors to Pay, In the Ordinary Course of Business, Claims for Goods Ordered Prepetition and Delivered Postpetition; (B) Authorizing the Debtors to Pay Certain Prepetition Claims of Shippers, Warehousemen, Mechanic's/Materialman's Lien Claimants, and Joint Check Beneficiaries; and (C) Authorizing Financial Institutions to Honor and Process Related Checks and Transfers (the "Goods Shipped Prepetition Motion")

53. The Debtors request entry of an order (a) authorizing, but not requiring, the Debtors to pay, in the ordinary course of business, claims for goods ordered prepetition and delivered postpetition; (b) authorizing, but not requiring, the Debtors to pay, in the ordinary course of business, certain prepetition claims of shippers, warehousemen,

mechanic's/materialman's lien claimants, and joint check beneficiaries; and (c) authorizing banks and other financial institutions to receive, process, honor, and pay checks or electronic transfers used by the Debtors to pay the foregoing and to rely on the representations of such Debtors as to which checks are issued and authorized to be paid in accordance with the Goods Shipped Prepetition Motion.

54. Prior to the Petition Date, and in the ordinary course of business, the Debtors ordered goods pursuant to the Outstanding Orders, which will be delivered to the Debtors after the Petition Date. Suppliers may refuse to ship or transport these goods (or recall such shipments) unless the Debtors issue substitute purchase orders postpetition or obtain an order of the Court (i) granting all undisputed obligations of the Debtors arising from the acceptance of goods subject to Outstanding Orders administrative expense priority under section 503(b) of the Bankruptcy Code, and (ii) authorizing the Debtors to satisfy such obligations in the ordinary course of business.

55. I believe and am advised that the granting of the relief sought in the Goods Shipped Prepetition Motion with respect to the Outstanding Orders will not provide the suppliers with any greater priority than they otherwise would have if the relief herein were not granted, and will not prejudice any other party in interest. Absent such relief, the Debtors will suffer disruption to the continuous and timely flow of raw materials, which could result in substantial delays in their operations and lead to dissatisfied customers and an erosion of customer confidence in the Debtors.

56. In addition, the Debtors rely extensively on the services of Shippers to assure the timely shipping and delivery of raw materials to the Debtors and finished goods to customers in the ordinary course of the Debtors' business. Occasionally, the Debtors must use

Warehousemen for storage of raw materials until the Debtors use such materials in their manufacturing process. As of the Petition Date, the Debtors have approximately \$183,000 outstanding in amounts due on account of Shippers' Charges and Warehousing Charges. The Debtors also do business with a number of vendors and subcontractors who could potentially assert mechanics' liens and materialman's liens against the Debtors and their customers' property for amounts the Debtors owe to those vendors and subcontractors. In many cases, the Debtors are required to secure lien releases from subcontractors in order to receive payment from their customers. The Debtors estimate that, as of the Petition Date, the outstanding prepetition invoices of the Materialman's Lien Claimants are approximately \$950,000. Some of the Materialman's Lien Claimants and others are paid along with the Debtors on joint checks. Following the Joint Check Procedures allows the Debtors to receive payment for goods delivered and services rendered. Paying the prepetition obligations owed to the Shippers, Warehousemen, and Materialman's Lien Claimants and following the Joint Check Procedures will benefit the Debtors' estates and their creditors by allowing the Debtors' business operations to continue without interruption and by enabling the Debtors to collect receivables from their customers.

57. I believe that the relief requested in the Goods Shipped Prepetition Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest, and will enable the Debtors to continue to operate their businesses in chapter 11 without disruption. Accordingly, on behalf of the Debtors, I respectfully submit that the Goods Shipped Prepetition Motion should be approved.

**D. Debtors' Motion for Entry of Interim and Final Orders
(A) Authorizing the Debtors to Pay Certain Critical Provider Administrative Claims ; (B) Authorizing the Debtors to Pay Certain Additional Critical Provider Claims; and (C) Authorizing Financial Institutions to Honor And Process Related Checks and Transfers (the "*Critical Providers Motion*")**

58. The Debtors request entry of an order (a) authorizing, but not requiring, the Debtors to pay claims for the value of goods received by the Debtors from certain critical providers in the ordinary course of business during the 20-day period immediately preceding the Petition Date, (b) authorizing, but not requiring, the Debtors to pay certain critical providers for claims not entitled to administrative priority, and (c) authorizing banks and other financial institutions to receive, process, honor, and pay checks or electronic transfers used by the Debtors to pay the foregoing and to rely on the representations of such Debtors as to which checks are issued and authorized to be paid in accordance with the Critical Providers Motion.

59. Certain of the Debtors' Critical Providers sold goods to the Debtors in the ordinary course of business in the 20-day period immediately preceding the Petition Date. Section 503(b)(9) of the Bankruptcy Code provides that claims for the value of goods so delivered are administrative claims against the Debtors' estates. The Debtors must, therefore, pay these Critical Priority Claims in full in order to confirm a plan of reorganization. Instead of paying the Critical Priority Claims after confirmation of a chapter 11 plan (at which time such payments may be too late to benefit the estates), the Debtors seek to pay the Critical Priority Claims during the pendency of the Chapter 11 Cases. This will assist the Debtors in negotiating with the Critical Providers and will thereby increase the likelihood that such vendors will continue to supply the goods and services necessary to operate the Debtors' businesses.

60. In addition, authorizing the Debtors to pay Critical Priority Claims should eliminate the burden on this Court and the Debtors arising from numerous individual vendor

motions requesting payment on account of their 503(b)(9) claims. The Debtors estimate that the amount of Critical Priority Claims, in the aggregate, does not exceed \$12,500,000.

61. The Debtors also request authority to pay up to \$4,600,000⁴ to Critical Providers on account of their prepetition claims. The Debtors rely in the ordinary course of business on numerous vendors to provide the diverse products and services that are necessary at all stages of the Debtors' production of manufactured building components and timely provision of building supplies and construction services. There is, however, a class of certain vendors that is "critical" to the Debtors' business operations and that may choose not to continue providing goods and services to the Debtors during the Chapter 11 Cases.

62. The Debtors have carefully reviewed all of their suppliers to determine, among other things: (i) which suppliers are sole-source or limited-source suppliers of goods or services of the quality and quantity required by the Debtors in a particular market, without whom the Debtors could not continue to operate without disruption; (ii) which suppliers would be prohibitively expensive or time-consuming to replace, such as where the Debtors' existing inventory, equipment, or manufacturing processes are specifically tailored to that supplier's products or services; and (iii) which suppliers the Debtors' customers require them to use. After compiling this information, the Debtors estimated the amount they believe they would be required to pay to ensure the continued supply of critical goods and services. The Provider Claims Cap represents this estimated amount.

63. The refusal (or inability based on their own financial circumstances) of the Critical Providers to work with the Debtors during the Chapter 11 Cases has the potential to

⁴ In addition to any amount paid to such vendors on account of their Critical Priority Claims.

impede the Debtors' successful reorganization. Indeed, a refusal by any one of the Critical Providers to provide goods or services could interrupt or shut down the Debtors' carefully choreographed supply and distribution system and could jeopardize the Debtors' ability to fulfill commitments to their customers at a time when the loyalty and support of those customers is most important. The Debtors intend to pay Critical Providers only to the extent such payments are necessary to preserve their businesses and the value of their estates. The Debtors have determined, in the exercise of their sound business judgment, that payment of Critical Provider Claims is essential to the Debtors' day-to-day operations and to ensure that the value of the businesses as a going concern is preserved through the pendency of the Chapter 11 Cases.

64. I believe that the relief requested in the Critical Providers Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest, and will enable the Debtors to continue to operate their businesses in chapter 11 without disruption. Accordingly, on behalf of the Debtors, I respectfully submit that the Critical Providers Motion should be approved.

E. Debtors' Motion for an Order (A) Authorizing the Payment of Certain Prepetition Claims of Foreign Vendors; and (B) Authorizing Financial Institutions To Honor And Process Related Checks And Transfers (the "*Foreign Vendors Motion*")

65. The Debtors request entry of an order (a) authorizing, but not directing, the Debtors to pay the prepetition claims of Foreign Vendors; and (b) authorizing banks and other financial institutions to receive, process, honor and pay checks or electronic transfers used by the Debtors to pay the foregoing and to rely on the representations of such Debtors as to which checks are issued and authorized to be paid in accordance with the Foreign Vendors Motion.

66. Specifically, the Debtors request authority to pay the prepetition claims owing to Foreign Vendors, including claims on account of direct and indirect materials and services provided to the Debtors, as well as import or tax obligations. The Foreign Vendors supply goods and materials without which the Debtors' businesses either could not operate or would operate at significantly reduced profitability. The Foreign Vendors provide the diverse products that are necessary for the Debtors' production of manufactured building components and timely provision of building supplies and construction services. The Debtors estimate they owe approximately \$1,250,000 on account of prepetition Foreign Vendor Obligations.

67. Foreign Vendors often have confused and guarded reactions to United States bankruptcy laws and process. Indeed, there is a significant risk that the nonpayment of even a single invoice could cause a Foreign Vendor to sever its business relationship with the Debtors altogether. But even short of that, nonpayment of prepetition claims may cause Foreign Vendors to adopt a wait-and-see attitude in transacting business with the Debtors, resulting in costly delays in the shipment of additional goods. If any of the Foreign Vendors refused to ship its product to the Debtors, the Debtors' carefully choreographed supply and distribution process would be disrupted and they would be unable to timely satisfy their customers' orders. Payment of the Foreign Vendors is essential to the continued, uninterrupted operation of the Debtors' businesses.

68. I believe that the relief requested in the Foreign Vendors Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest, and will enable the Debtors to continue to operate their businesses in chapter 11 without disruption. Accordingly, on behalf of the Debtors, I respectfully submit that the Foreign Vendors Motion should be approved.

F. Debtors' Motion for Entry an Order (I) Authorizing the Debtors to Pay (A) Prepetition Wages, Salaries, and Other Compensation, (B) Reimbursable Employee Expenses, and (C) Employee Medical and Similar Benefits; and (II) Authorizing Financial Institutions to Honor and Process Related Checks and Transfers (the "*Employee Wage Motion*")

69. The Debtors request entry of an order (I) authorizing the Debtors to pay prepetition (a) wages, salaries, and other compensation, (b) reimbursable employee expenses, and (c) employee medical and similar benefits; and (II) authorizing banks and other financial institutions to receive, process, honor, and pay checks or electronic transfers used by the Debtors to pay the foregoing and to rely on the representations of such Debtors as to which checks are issued and authorized to be paid in accordance with the Employee Wage Motion. The Debtors also request the authority to honor and pay, in the ordinary course of business and in accordance with the Debtors' prepetition policies and prepetition practices, postpetition employee wages and benefits.

70. As of the Petition Date, the Debtors employ approximately 5,500 employees, of which approximately 80 are part-time Employees (i.e., working less than 40 hours per week). Although the Debtors have paid their wage, salary, and other obligations in accordance with their ordinary compensation schedule prior to the Petition Date, as of the date hereof, certain prepetition Employees' Wage and Benefit Obligations may nevertheless be due and owing.

71. The Debtors compensate Employees in the form of wages and sales commission programs. In addition, the Debtors routinely reimburse Employees for certain travel expenses and automobile expenses. In the aggregate, the Debtors estimate there is \$4,185,000 outstanding on account of prepetition compensation and reimbursable expenses. The Debtors maintain various employee benefit plans and policies, including, without limitation, health care, prescription drug benefits, dental and vision plans, vacation time and other paid leaves of

absence, retirement savings plans, flexible benefit plans, life insurance, accidental death and dismemberment insurance, relocation programs, tuition reimbursement programs, severance programs, short-term and long-term disability insurance, and retiree medical benefits. The Debtors estimate there is \$7,800,000 outstanding on account of the Employee Benefits.

72. The majority of the Debtors' Employees rely exclusively on their compensation, benefits, and reimbursement of expenses to satisfy their daily living expenses. Consequently, these Employees will be exposed to significant financial difficulties if the Debtors are not permitted to honor obligations for unpaid compensation, benefits, and reimbursable expenses. Moreover, if the Debtors are unable to satisfy such obligations, Employee morale and loyalty will be jeopardized at a time when Employee support is critical. In the absence of such payments, the Debtors believe their Employees may seek alternative employment opportunities, perhaps with the Debtors' competitors, thereby hindering the Debtors' ability to meet their customer obligations, and likely diminish creditors' confidence in the Debtors. Moreover, the loss of valuable Employees and the recruiting efforts that would be required to replace such Employees would be a massive and costly distraction at a time when the Debtors should be focusing on stabilizing their operations.

73. I believe that the relief requested in the Employee Wage Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest, and will enable the Debtors to continue to operate their businesses in chapter 11 without disruption. Accordingly, on behalf of the Debtors, I respectfully submit that the Employee Wage Motion should be approved.

G. Debtors' Motion for an Order (A) Authorizing the Debtors to Maintain and Administer Customer Programs and Honor Prepetition Obligations Related Thereto; and (B) Authorizing Financial Institutions to Honor and Process Related Checks and Transfers (the "*Customer Programs Motion*")

74. The Debtors request entry of an order (a) authorizing the Debtors to maintain and administer customer programs and honor prepetition obligations to customers related thereto in the ordinary course of business and in a manner consistent with past practice; and (b) authorizing banks and other financial institutions to receive, process, honor, and pay checks or electronic transfers used by the Debtors to pay the foregoing and to rely on the representations of such Debtors as to which checks are issued and authorized to be paid in accordance with the Customer Programs Motion.

75. The Debtors' Customer Programs provide for customer rebates, special pricing arrangements, incentive and promotional programs, and warranties that the Debtors' products are free from defects. The Debtors estimate that there are approximately \$5,450,000 of Customer Program Obligations accrued and outstanding as of the Petition Date.

76. To maintain the loyalty and goodwill of their customers, in the ordinary course of business the Debtors implemented the Customer Programs to encourage new purchases, enhance customer satisfaction, and ensure that the Debtors remain competitive. The Debtors' ability to honor their Customer Program Obligations in the ordinary course of business is necessary to retain their customer base and reputation for quality. The Debtors believe that the relief requested herein will pay dividends with respect to the long-term reorganization of their business, both in terms of profitability and the engendering of goodwill, especially at this critical time following the filing of the Chapter 11 Cases.

77. I believe that the relief requested in the Customer Programs Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest, and will

enable the Debtors to continue to operate their businesses in chapter 11 without disruption.

Accordingly, on behalf of the Debtors, I respectfully submit that the Customer Programs Motion should be approved.

H. Debtors' Motion for Interim and Final Orders (A) Authorizing the Debtors to Continue Insurance Coverage Entered Into Prepetition and to Pay Obligations Relating Thereto; (B) Authorizing the Debtors to Maintain Postpetition Financing of Insurance Premiums; and (C) Authorizing Financial Institutions to Honor and Process Related Checks and Transfers (the "*Insurance Motion*")

78. The Debtors request entry of interim and final orders (a) authorizing the Debtors to continue prepetition insurance policies and programs and to pay obligations relating thereto; (b) authorizing the Debtors to maintain premium financing agreements for insurance coverage entered into prepetition; and (c) authorizing banks and other financial institutions to receive, process, honor, and pay checks or electronic transfers used by the Debtors to pay the foregoing and to rely on the representations of such Debtors as to which checks are issued and authorized to be paid in accordance with the Insurance Motion. In addition, the Debtors seek a waiver of the automatic stay under section 362 of the Bankruptcy Code as it applies to workers' compensation claims.

79. In the ordinary course of business, the Debtors maintain a number of insurance Policies, some of which are financed through Premium Financing Agreements, that benefit, among others, the Debtors. The Policies are essential to the preservation of the value of the Debtors' businesses, properties, and assets. In many cases, insurance coverage such as that provided by the Policies is required by the diverse regulations, laws, and contracts that govern the Debtors' commercial activities.

80. Under the laws of the various states in which they operate, the Debtors are required to maintain workers' compensation Policies and programs to provide their employees

with workers' compensation coverage for claims arising from or related to their employment with the Debtors. The Debtors maintain coverage for workers' compensation claims through current and prior year Policies that meet the Debtors' statutory requirements to provide workers' compensation insurance.⁵ The Debtors seek authorization, under section 362(d) of the Bankruptcy Code, to permit the Employees to proceed with their workers' compensation claims in the appropriate judicial or administrative forum. The Debtors believe that cause exists to modify the automatic stay because staying the workers' compensation claims could have a detrimental effect on the financial well-being and morale of the Employees and lead to the departure of certain Employees who are critical at this juncture.

81. The Debtors maintain other insurance coverage for both prior years and the current policy year through certain Self-Paid Policies that are administered by third-party administrators. The Debtors are responsible for premium payments as they come due and are obligated to pay any associated Deductibles. In addition, in the ordinary course of the Debtors' businesses, the Debtors finance the premiums on certain policies pursuant to premium financing agreements with third-party lenders. Financed Policies benefit the Debtors by spreading out the cost of the Financed Policies over the applicable coverage period. If the Debtors are unable to continue making payments on the Financing Agreements, under the terms of the Financing Agreements, the premium financier may be permitted to terminate the applicable insurance policies. If the Debtors were required to obtain replacement insurance and to pay a lump sum premium for such insurance policy in advance, this payment likely would be greater than what the Debtors currently pay.

⁵ In the State of Washington, the Debtors are qualified self-insurers.

82. The Debtors pay Insurance Obligations in the ordinary course of business and only pay those Obligations when they become due and owing. While the Debtors cannot predict with certainty what their Insurance Obligations will be during the interim period before entry of a final order, the Debtors will only pay Insurance Obligations when they become due and owing.

83. I believe that the relief requested in the Insurance Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest, and will enable the Debtors to continue to operate their businesses in chapter 11 without disruption. Accordingly, on behalf of the Debtors, I respectfully submit that the Insurance Motion should be approved.

I. Debtors' Motion for an Order Authorizing (A) the Payment of Prepetition Sales, Use And Similar Taxes; and (B) Financial Institutions to Honor and Process Related Checks and Transfers (the "*Taxes and Fees Motion*")

84. The Debtors request entry of an order (a) authorizing the Debtors, in their discretion, to remit and pay sales, use, and franchise taxes, and business license and other similar fees; and (b) authorizing banks and other financial institutions to receive, process, honor, and pay checks or electronic transfers used by the Debtors to pay the foregoing and to rely on the representations of such Debtors as to which checks are issued and authorized to be paid in accordance with the Taxes and Fees Motion.

85. In the ordinary course of business, the Debtors incur and/or collect certain Taxes and Fees and remit such Taxes and Fees to various Authorities. The Debtors collect and remit to the Authorities approximately \$3,000,000 per month in sales and use Taxes. The Debtors estimate that approximately \$4,500,000 of sales and use Taxes accrued during the

prepetition period. In addition, the Debtors believe that there are any franchise Taxes, business Taxes, and business license Fees accrued and outstanding as of the Petition Date.

86. The Debtors must continue to pay the Taxes and Fees to continue operating in certain jurisdictions and to avoid costly distractions during the Chapter 11 Cases. Specifically, it is my understanding that the Debtors' failure to pay the Taxes and Fees could affect adversely the Debtors' business operations because the Authorities could suspend the Debtors' operations, file liens, or seek to lift the automatic stay. In addition, certain Authorities may take precipitous action against the Debtors' directors and officers for unpaid Taxes, which undoubtedly would distract those key employees from their duties related to the Debtors' restructuring. The Debtors are current on their tax obligations and the Debtors only intend to pay current tax obligations in the ordinary course of business as and when those obligations are due and owing.

87. I believe that the relief requested in the Taxes and Fees Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest, and will enable the Debtors to continue to operate their businesses in chapter 11 without disruption. Accordingly, on behalf of the Debtors, I respectfully submit that the Taxes and Fees Motion should be approved.

J. Debtors' Motion for Interim and Final Orders (A) Prohibiting Utility Providers from Altering, Refusing or Discontinuing Service; (B) Approving the Debtors' Proposed Adequate Assurance; and (C) Establishing Procedures for Resolving Requests for Additional Adequate Assurance (the "*Utilities Motion*")

88. The Debtors request entry of interim and final orders (a) prohibiting the Utility Providers (defined below) from altering, refusing or discontinuing service; (b) approving

the Debtors' proposed adequate assurance; and (c) approving the Debtors' proposed procedures for resolving additional requests for adequate assurance.

89. In the ordinary course of business, the Debtors incur expenses for gas, water, sewer, electric, telecommunications, and other similar utility services provided by approximately 125 utility providers. In the past 12 months, the Debtors paid an average of approximately \$557,000 per month on account of all Utility Services. Uninterrupted Utility Services are essential to the Debtors' ongoing operations and, therefore, to the success of their reorganization. Indeed, any interruption of Utility Services, even for a brief period of time, would negatively affect the Debtors' operations, customer relationships, revenues, and profits, seriously jeopardizing the Debtors' reorganization efforts and, ultimately, value and creditor recoveries. It is, therefore, critical that Utility Services continue uninterrupted during the Chapter 11 Cases. In order to maintain uninterrupted Utility Services, the Debtors propose to deposit into a segregated account an amount equal to \$263,000, for the benefit of Utility Providers. This amount represents two weeks of Utility Services, calculated as an historical average of the 12 months between January 1, 2008 and December 31, 2008.

90. I believe and am advised that the proposed procedures are necessary in the Chapter 11 Cases, because if such procedures are not approved, the Debtors could be forced to address numerous requests by the Utility Providers in a disorganized manner during the critical first weeks of the Chapter 11 Cases. Moreover, a Utility Provider could blindside the Debtors by unilaterally deciding – on or after the 30th day following the Petition Date – that it is not adequately protected and discontinuing service or making an exorbitant demand for payment to continue service. Discontinuation of utility service could essentially shut down operations, and any significant disruption of operations could put the Chapter 11 Cases in jeopardy.

91. I believe that the relief requested in the Utilities Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest, and will enable the Debtors to continue to operate their businesses in chapter 11 without disruption.

Accordingly, on behalf of the Debtors, I respectfully submit that the Utilities Motion should be approved.

K. Debtors' Application for (A) Authorization to Employ and Retain The Garden City Group, Inc. as Claims and Noticing Agent for the Debtors; and (B) Appointment of The Garden City Group, Inc. as Agent of the Bankruptcy Court (the "GCG Retention Motion")

92. The Debtors request entry of an order (a) authorizing the Debtors to employ and retain The Garden City Group ("**GCG**") as claims and noticing agent for the Debtors; and (b) appointing GCG as agent of the Bankruptcy Court.

93. The Debtors estimate that there are approximately 7,000 creditors in the Chapter 11 Cases, as demonstrated by the Debtors' list of creditors filed concurrently with this Application and the other first day pleadings. The Debtors expect many of the creditors to file proofs of claims. It is likely that the noticing, receiving, docketing, and maintaining of proofs of claims in this volume would be unduly time consuming and burdensome for the Clerk's Office. The appointment of GCG as the Court's outside agent will relieve the Court and the Clerk's Office of heavy administrative and other burdens. In addition, the retention of GCG as the claims and noticing agent will promote the effective administration of the Debtors' estates. Moreover, I am advised that Rule 2002-1(f) of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware (the "**Local Rules**") requires in all cases with over 200 creditors, that the debtor file a motion to retain a noticing agent within 10 days after the commencement of the debtor's case.

94. I believe that the relief requested in the GCG Retention Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest, and will enable the Debtors to continue to operate their businesses in chapter 11 without disruption. Accordingly, on behalf of the Debtors, I respectfully submit that the GCG Retention Motion should be approved.

L. Debtors' Motion For Entry of Interim and Final Orders Pursuant to 11 U.S.C. Sections 105, 361, 362, 363(C), 364(C)(1), 364(C)(2), 364(C)(3), 364(D)(1), 364(E), and 507 and Fed. R. Bankr. P. 2002, 4001, and 9014 (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 (The "*Dip Motion*")

95. The Debtors have requested that the Court enter interim and final orders authorizing them to enter into a \$80 million superpriority priming senior secured debtor in possession revolving credit facility (the "*DIP Facility*") and to use cash collateral (the "*DIP Motion*"). The Debtors have an urgent need to obtain access to the DIP Facility and to use cash collateral to, among other things, continue the operation of their businesses in an orderly manner, maintain business relationships, pay employees, and satisfy other working capital and operational needs—all of which are vital to preserving and maintaining the Debtors' going-concern value. The Debtors are unable under any scenario to operate solely in reliance on their cash on hand and the use of cash collateral.

96. Prior to agreeing to any proposal with respect to debtor in possession financing, the Debtors and their professionals engaged in an extensive search process. The initial stage of this search was the retention of Peter J. Solomon Company as the Debtors' financial advisor. Prior to the Petition Date, the Debtors and Peter J. Solomon Company approached approximately 34 banks and other financial institutions to provide financing, with a logical focus

on the Debtors' largest Prepetition Credit Agreement lenders. In particular, Peter J. Solomon solicited these parties' interest in providing funding on either a priming or junior basis to the Prepetition Credit Agreement. Each prospective lender, moreover, was informed (a) of the Debtors' need for an expedited negotiation and closing process as a result of the Debtors' immediate financing needs and (b) that they could receive additional information upon signing a customary confidentiality agreement. Five outside parties indicated an interest in providing financing to the Debtors and were willing to sign confidentiality agreements to receive additional information. Those five parties were given access to and, in fact, took advantage of an electronic information data room established by the Debtors to facilitate potential lenders' due diligence. As a result of these efforts, the Debtors received three offers for postpetition financing in addition to a proposal by the Prepetition Credit Agreement Lenders. As outlined in greater detail in the DIP Motion, the proposed lenders under the DIP Facility offered a lower interest rate and fewer fees than their competitors.

97. Subject to court approval, the proceeds of the DIP Facility will be used to, among other things, (a) pay fees, interest and expenses associated with the DIP Facility, (b) provide ongoing working capital and satisfy capital expenditure needs of the Debtors during the Chapter 11 Cases, (c) provide for other general corporate purposes of the Debtors during the pendency of the Chapter 11 Cases, and (d) repay approximately \$4.0 million owing under the Revolver which primarily relates to expenses incurred in connection with the filing of the Chapter 11 Cases.

98. For the reasons set forth in the DIP Motion, filed contemporaneously herewith, I believe the DIP Facility is the best financing option available to the Debtors under the present circumstances. Moreover, I believe that entering into the DIP Facility is a sound exercise

of the Debtors' business judgment and is in the best interest of the Debtors' estates because the financing will preserve the value of the Debtors' assets and operations for the benefit of their creditors, employees, and other parties in interest. Accordingly, on behalf of the Debtors, I respectfully submit that the Real Property Lease Rejection Motion should be approved.

M. Debtors' First Omnibus Motion for an Order Authorizing Rejection of Certain Unexpired Leases and Executory Contracts (the "*Real Property Lease Rejection Motion*")⁶

99. The Debtors request entry of an order authorizing them to reject certain unexpired Leases of nonresidential real property.

100. As part of their extensive prepetition restructuring efforts, the Debtors discontinued operations at many of the sites associated with these Leases and, accordingly, no longer need certain of the Leases. As part of their continuing restructuring efforts, the Debtors intend to discontinue operations at other of the sites associated with these Leases and accordingly will no longer need the corresponding Leases on a going-forward basis. In addition, many of the Leases are above-market or contain other unfavorable terms, and for this reason the Debtors seek to reject these Leases so that they may obtain more favorable lease terms at alternative locations.

101. The Debtors have explored the possibility of assuming the Leases and, where applicable, subleasing the properties related thereto. In this regard, the Debtors have marketed many of the properties in an effort to sublease them but have been unsuccessful in their attempts. Thus, the Debtors have determined that, generally speaking, the rents due under these Leases are above-market and that accordingly, this alternative is not in their best interests. The Debtors believe that the costs associated with marketing these Leases, coupled with the payment

⁶ While the remaining motions described herein were filed contemporaneously herewith, the Debtors are not seeking to have these motions heard at the first day hearing.

of postpetition obligations as may be required by section 365(d)(3) of the Bankruptcy Code, would be significantly greater than any potential value that might be realized by a sublease of the Leases. With respect to the properties that the Debtors have been able to successfully sublease, the subleases are either unprofitable or are marginally profitable. Because the Debtors are not in the business of leasing real property, the Debtors seek to reject these Leases as well.

102. I believe that the relief requested in the Real Property Lease Rejection Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest, and will enable the Debtors to continue to operate their businesses in chapter 11 without disruption. Accordingly, on behalf of the Debtors, I respectfully submit that the Real Property Lease Rejection Motion should be approved.

N. Debtors' Second Omnibus Motion Authorizing Rejection of Certain Unexpired Leases and Executory Contracts (the "*Personal Property Lease Rejection Motion*")

103. The Debtors request entry of an order authorizing them to reject certain unexpired Leases of personal property.

104. Prior to the Petition Date, the Debtors entered into a number of Personal Property Leases for the use of various pieces of personal property such as trucks, vans, tractors and trailers, heavy equipment, and office equipment. As part of their extensive prepetition restructuring efforts, the Debtors discontinued or reduced certain operations and accordingly no longer need certain of the Personal Property Leases. As part of their continuing restructuring efforts and as a result of the severe decline in the market for the Debtors' services, the Debtors intend to discontinue or reduce other operations and accordingly will no longer need certain other Personal Property Leases on a going forward basis.

105. I believe that the relief requested in the Personal Property Lease Rejection Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in

interest, and will enable the Debtors to continue to operate their businesses in chapter 11 without disruption. Accordingly, on behalf of the Debtors, I respectfully submit that the Personal Property Lease Rejection Motion should be approved.

O. Debtors' Third Omnibus Motion Authorizing Rejection of Certain Unexpired Leases and Executory Contracts (the "*Severance Agreement Rejection Motion*")

106. The Debtors request entry of an order authorizing them to reject certain Severance Agreements.

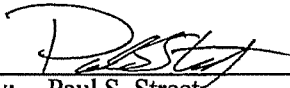
107. Prior to the Petition Date, the Debtors entered into a number of Severance Agreements with former employees which contained a requirement that the former employee refrain from competing with the Debtors. In certain instances, the Debtors have determined in the sound exercise of their business judgment that the value of the non-compete clause is less than the amount the Debtors are required to pay to these former employees. Accordingly, the Debtors seek to reject these Severance Agreements.

108. I believe that the relief requested in the Severance Agreement Rejection Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest, and will enable the Debtors to continue to operate their businesses in chapter 11 without disruption. Accordingly, on behalf of the Debtors, I respectfully submit that the Severance Agreement Rejection Motion should be approved.

Pursuant to 28 U.S.C. section 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated: June 16, 2009

RESPECTFULLY SUBMITTED,


By: Paul S. Street
Title: Senior Vice President,
General Counsel, Chief Administrative
Officer, and Corporate Secretary