

IN RE:)	
)	Chapter 11
BUILDING MATERIALS HOLDING)	
CORPORATION, <i>et al.</i>,¹)	Case No. 09-12074 (KJC)
)	
Debtors.)	Jointly Administered
)	
)	Hearing Date: October 7, 2009 at 11:00 a.m. (ET)
)	Objection Deadline: September 30, 2009 at 4:00 p.m. (ET)

Building Materials Holding Corporation and its affiliates, as debtors and debtors in possession (collectively, the "***Debtors***"), submit this motion (the "***Motion***") pursuant to section 365(d)(4) of title 11 of the United States Code (the "***Bankruptcy Code***") for entry of an order, substantially in the form annexed hereto as ***Exhibit A***, granting a ninety (90) day extension of the statutory deadline for the Debtors to assume or reject each of the leases, subleases and other agreements under which any of the Debtors is a lessee that may be considered unexpired leases of nonresidential real property under applicable law (collectively, the "***Real Property Leases***").

In support of this Motion, the Debtors respectfully represent:

068301.1001

JURISDICTION AND VENUE

1. The Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. sections 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. section 157(b). Venue is proper pursuant to 28 U.S.C. sections 1408 and 1409.

BACKGROUND

2. On June 16, 2009 (the "*Petition Date*"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the "*Chapter 11 Cases*"). The Debtors continue to operate their businesses and manage their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in the Chapter 11 Cases. On July 26, 2009, the Office of the United States Trustee (the "*U.S. Trustee*") appointed the official committee of unsecured creditors (the "*Creditors' Committee*").

3. 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.

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

- ***BMC West.*** Under the BMC West brand, the Debtors market and sell building products, manufacture building components, and provide construction services to professional builders and contractors. Products include structural lumber and building materials purchased from manufacturers, as well as manufactured building components such as millwork, trusses, and wall panels.

Construction services include installation of various building products and framing. The Debtors currently offer these products and services in major metropolitan markets in Texas, Washington, Colorado, Idaho, Utah, Montana, North Carolina, California, and Oregon.

- **SelectBuild.** Under the SelectBuild brand, the Debtors offer integrated construction services to production homebuilders, as well as commercial and multi-family builders. Services include wood framing, concrete services, managing labor and construction schedules, and sourcing materials. The Debtors currently offer these services in major metropolitan markets in California, Arizona, Nevada and Illinois.

5. On the Petition Date, the Debtors filed their proposed chapter 11 plan (the "**Plan**") and accompanying disclosure statement (the "**Disclosure Statement**"). The Debtors filed amended versions of the Plan and Disclosure Statement on July 27, 2009. To implement their restructuring, the Debtors have obtained \$80 million in debtor-in-possession financing (the "**DIP Financing**"), which the Court approved on a final basis on July 1, 2009.

RELIEF REQUESTED

6. Pursuant to section 365(d)(4) of the Bankruptcy Code, the debtor has an initial 120 day period following the filing of a bankruptcy petition in which to elect to assume or reject unexpired leases of nonresidential real property. *See* 11 U.S.C. § 365(d)(4). Section 365(d)(4)(B) of the Bankruptcy Code provides that, upon on a motion by the debtor, the Court may extend the initial 120 day deadline by another 90 days "for cause." *See* 11 U.S.C. § 365(d)(4)(B). Any subsequent extensions of the deadline to assume or reject unexpired leases of nonresidential real property may only be granted with the prior written consent of the affected lessors. *See* 11 U.S.C. § 365(d)(4)(B)(ii). If the debtor fails to assume or voluntarily reject any unexpired lease of nonresidential real property prior to the applicable deadline, such lease will automatically be deemed to have been rejected. *See* 11 U.S.C. § 365(d)(4)(A).

7. Pursuant to section 365(d)(4), the Debtors have until October 14, 2009 to assume or reject the Real Property Leases (the “*Assumption/Rejection Period*”). On the Petition Date, the Debtors were parties to approximately 110 Real Property Leases. The Debtors to date have (i) rejected fifty-three Real Property Leases pursuant to two separate motions that this Court has already approved² and (ii) sought to reject an additional two Real Property Leases pursuant to another motion that is currently pending.³ This leaves approximately fifty-five Real Property Leases that must be assumed or rejected prior to expiration of the Assumption/Rejection Period. By this Motion, the Debtors seek entry of an order, in substantially the form attached hereto as *Exhibit A*, extending the Assumption/Rejection Period by ninety (90) days, through and including January 12, 2010, pursuant to section 365(d)(4) of the Bankruptcy Code. Such an extension would be subject to and without prejudice to the Debtors’ right to request a further extension of the Assumption/Rejection Period with the consent of the affected lessors.

BASIS FOR RELIEF

8. The Debtors submit that ample cause exists to extend the Assumption/Rejection Period as requested herein. The Debtors have not had sufficient time to determine whether each of the properties they are using pursuant to the Real Property Leases is essential to the Debtors’ business operations, and whether each of the approximately fifty-five remaining Real Property Leases under which one of the Debtors is a lessee should ultimately be assumed or

² See Debtors’ First Omnibus Motion for an Order Authorizing Rejection of Certain Unexpired Leases and Executory Contracts [Docket No. 33]; Debtors’ Motion for an Order Authorizing (a) Rejection of that Certain Lease with Union Pacific Railroad Company and (b) Abandonment of Certain Related Property [Docket No. 113].

³ See Debtors’ Motion for an Order Authorizing Rejection of that Certain Unexpired Lease with Four Embarcadero Center Venture and the Associated Sublease with PCAP Managers, LLC [Docket No. 164].

rejected. The Debtors submit that the requested extension of the Assumption/Rejection Period is consistent with the rehabilitative goals of the Bankruptcy Code and will not unduly prejudice any of the counterparties to the Real Property Leases. The Debtors believe that they are current on all of their post-petition obligations under the Real Property Leases.

9. The Third Circuit Court of Appeals has recognized that “nothing prevents a bankruptcy court from granting an extension because a particular debtor needs additional time to determine whether the assumption or rejection of particular leases is called for by the plan of reorganization that it is attempting to develop.” *In re Channel Home Ctrs., Inc.*, 989 F.2d, 682, 689 (3rd Cir. 1993). As the bankruptcy court in one frequently-cited decision observed, there are essentially three factors that are weighed by the courts in determining whether cause exists to extend the deadline to assume or reject unexpired leases of nonresidential real property:

- (i) whether the leases are an important asset of the estate such that the decision to assume or reject would be central to any plan of reorganization that may be proposed by the debtor;
- (ii) whether the case is complex and involves large numbers of leases;
and
- (iii) whether or not the debtor has had sufficient time to intelligently appraise the value of each lease for purposes of a plan of reorganization.

In re Wedtech Corp., 72 B.R. 464, 471-72 (Bankr. S.D.N.Y. 1987); *accord Channel Home Ctrs.*, 989 F.2d at 689 (noting that “it is permissible for a bankruptcy court to consider a particular debtor's need for more time in order to analyze leases in light of the plan it is formulating”).

10. The Debtors submit that the *Wedtech* factors are readily satisfied in these chapter 11 cases. First, the Real Property Leases are an important asset of the Debtors' bankruptcy estates and the decision to assume or reject the Real Property Leases will likely be of central importance to confirming and implementing a plan of reorganization. The Real Property

Leases include a variety of shop, office and warehouse leases. The Debtors must be allowed sufficient time to determine which of the Real Property Leases are, indeed, critical to their ongoing business needs and should therefore be assumed. Second, these chapter 11 cases are unquestionably large and complex. Among other things, these cases involve 12 separate Debtors, and the Real Property Leases relate to shop, office and warehouse properties located in 12 different states. Finally, evaluating each of the Real Property Leases and determining whether they should ultimately be assumed or rejected is a substantial and time-consuming task. Given the volume of other tasks required of the Debtors' personnel and professionals during the initial Assumption/Rejection Period, the Debtors have had insufficient time to carefully evaluate each of the Real Property Leases. As noted, the Debtors have begun that process, and to date have rejected fifty-five Real Property Leases pursuant to two separate motions that this Court has already approved. An extension of the Assumption/Rejection Period is necessary to allow the Debtors sufficient time to evaluate the remaining Real Property Leases.

11. The extension requested herein should be granted so the Debtors may retain maximum flexibility in restructuring their business operations. Given the inherent fluidity in the operations of a large, complex enterprise such as that of the Debtors, circumstances may arise during the pendency of these chapter 11 cases that would cause the Debtors to re-evaluate the need to continue leasing a particular property. In the absence of an extension of the current Assumption/Rejection Period, the Debtors could be forced to prematurely assume Real Property Leases that may later prove to be burdensome, which could give rise to large administrative expense claims against the Debtors' estates and thereby hamper the Debtors' ability to successfully reorganize. Alternatively, the Debtors could be forced to prematurely reject certain

Real Property Leases that ultimately could have benefited the Debtors' estates. The extension requested herein will decrease the risk of such negative outcomes for the Debtors' estates.

12. There should be no prejudice to the lessors under the Real Property Leases (the "*Lessors*") as a result of the requested extension of the Assumption/Rejection Period.

Pending their election to assume or reject the Real Property Leases, the Debtors will perform all of their obligations arising from and after the Petition Date in a timely fashion, including by making post-petition rent payments on time, in accordance with the requirements of section 365(d)(3) of the Bankruptcy Code. As a result, the requested extension will afford the Debtors maximum flexibility in seeking to successfully reorganize and implement their long-term business plan without prejudicing the rights of the Lessors. For these and other reasons set forth herein, the requested extension of the Assumption/Rejection Period should be approved.

13. The Debtors have filed this Motion with the intent of it being heard at the October 7, 2009 omnibus hearing, which is scheduled to take place prior to the expiration of the current Assumption/Rejection Period. Nevertheless, in the event that consideration of the relief requested herein should be delayed beyond the existing Assumption/Rejection Period, the Debtors intend for Rule 9006-2 of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware (the "*Local Rules*") to apply to extend the Assumption/Rejection Period until the Court has had an opportunity to consider the relief requested in this Motion.⁴

⁴ Local Rule 9006-2 provides, in pertinent part, that "[i]f a motion to extend the time to take any action is filed before the expiration of the period prescribed by the Code, the Fed.R.Bankr.P., these Rules, the District Court Rules, or Court order, the time shall be automatically extended until the Court acts on the motion, without the necessity for the entry of a bridge order."

NOTICE

14. No trustee or examiner has been appointed in the Chapter 11 Cases. The Debtors have provided notice of filing of the Motion to: (a) the U.S. Trustee; (b) counsel to Wells Fargo Bank, as agent under the Debtors' Prepetition Credit Agreement and DIP Facility (as defined in the Plan); (c) counsel to the Creditors' Committee; (d) each of the Lessors and other counterparties to the Real Property Leases and their counsel, if known; and (e) any persons who have filed a request for notice in the Chapter 11 Cases pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure. Due to the nature of the relief requested, the Debtors respectfully submit that no further notice of this Motion is required.

NO PRIOR REQUEST

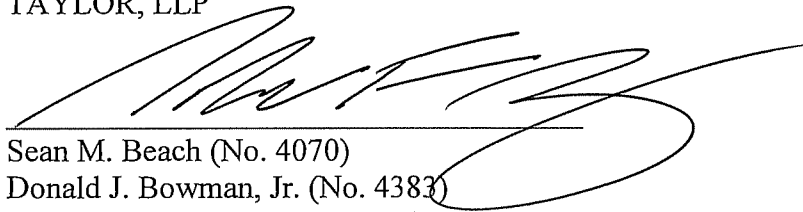
15. No prior request for the relief sought in this Motion has been made to this or any other court.

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WHEREFORE, the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as the Court may deem just and proper.

Dated: Wilmington, Delaware
September 8, 2009

YOUNG CONAWAY STARGATT &
TAYLOR, LLP



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ATTORNEYS FOR DEBTORS
AND DEBTORS IN POSSESSION

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

In re:

Chapter 11

**BUILDING MATERIALS HOLDING
CORPORATION, *et al.*,¹**

Case No. 09-12074 (KJC)

Debtors.

Jointly Administered

Objection Deadline: September 30, 2009 at 4:00 p.m. (ET)

Hearing Date: October 7, 2009 at 11:00 a.m. (ET)

NOTICE OF MOTION

TO: (A) The Office of the United States Trustee for the District of Delaware; (B) Counsel to Wells Fargo Bank, as Agent Under the Prepetition Credit Facility and the DIP Facility (as Defined in the Plan); (C) Counsel to the Official Committee of Unsecured Creditors; (D) All Parties That Have Requested Notice Pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure; and (E) Each of the Lessors and Other Counterparties to the Real Property Leases and Their Counsel, if Known.

PLEASE TAKE NOTICE that the above-captioned debtors and debtors in possession (collectively, the “Debtors”) have filed the attached **Debtors’ Motion for an Order Pursuant to Section 365(d)(4) of the Bankruptcy Code Extending the Deadline for the Debtors to Assume or Reject Unexpired Leases of Nonresidential Real Property** (the “Motion”).

PLEASE TAKE FURTHER NOTICE that any objections to the Motion must be filed on or before **September 30, 2009 at 4:00 p.m. (ET)** (the “Objection Deadline”) with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801. At the same time, you must serve a copy of the objection upon the undersigned counsel to the Debtors so as to be received on or before the Objection Deadline.

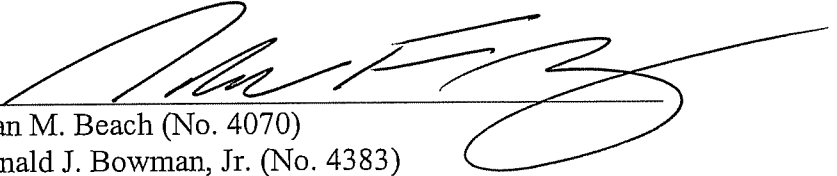
PLEASE TAKE FURTHER NOTICE THAT A HEARING TO CONSIDER THE MOTION WILL BE HELD ON OCTOBER 7, 2009 AT 11:00 A.M. (ET) BEFORE THE HONORABLE KEVIN J. CAREY AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 MARKET STREET, 5TH FLOOR, COURTROOM NO. 5, WILMINGTON, DELAWARE 19801.

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.

PLEASE TAKE FURTHER NOTICE that if you fail to respond in accordance with this notice, the Court may grant the relief requested in the Motion without further notice or hearing.

Dated: Wilmington, Delaware
September 8, 2009

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ATTORNEYS FOR THE DEBTORS
AND DEBTORS-IN-POSSESSION

EXHIBIT A

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 No. _____

**ORDER EXTENDING THE DEADLINE FOR THE DEBTORS TO ASSUME OR
REJECT UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY**

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 pursuant to section 365(d)(4) of the Bankruptcy Code extending the Assumption/Rejection Period² by ninety (90) days, through and including January 12, 2010; and upon consideration of the Motion and all pleadings related thereto; and the Court finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) this matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and (c) notice of the Motion was due and proper under the circumstances; and it appearing that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors and other parties in interest; and after due deliberation, and good and sufficient cause appearing therefor, it is hereby:

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 but not defined herein shall have the meanings assigned to such terms in the Motion.

ORDERED, that the Motion is granted; and it is further

ORDERED, that pursuant to section 365(d)(4) of the Bankruptcy Code, the Assumption/Rejection Period is hereby extended by ninety (90) days, through and including January 12, 2010; and it is further

ORDERED, that this Order shall be subject to and without prejudice to the rights of the Debtors to seek a further extension of the Assumption/Rejection Period with the consent of the affected Lessors; and it is further

ORDERED, that this Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: Wilmington, Delaware
October __, 2009

Kevin J. Carey
Chief United States Bankruptcy Judge

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

In re:

BUILDING MATERIALS HOLDING
CORPORATION, *et al.*,¹

Debtors.

Chapter 11

Case No. 09-12074 (KJC)

Jointly Administered

AFFIDAVIT OF SERVICE

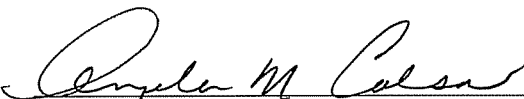
STATE OF DELAWARE)
) SS
NEW CASTLE COUNTY)

Casey S. Cathcart, an employee of the law firm of Young Conaway Stargatt & Taylor, LLP, co-counsel to the above-captioned debtors, being duly sworn according to law, deposes and says that on September 8, 2009, she caused a copy of the **Debtors' Motion for an Order Pursuant to Section 365(d)(4) of the Bankruptcy Code Extending the Deadline for the Debtors to Assume or Reject Unexpired Leases of Nonresidential Real Property** to be served as indicated upon the parties identified on the attached service list.



Casey S. Cathcart

SWORN TO AND SUBSCRIBED before me this 8th day of September, 2009.



Notary Public
My Commission Expires:

**ANGELA M. COLSON
NOTARY PUBLIC
STATE OF DELAWARE
My commission expires Aug. 31, 2011**

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.

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9/8/2009

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