

**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
)	
)	Objection Deadline: September 30, 2009 at 4:00 p.m. (ET)
)	Hearing Date: October 7, 2009 at 11:00 a.m. (ET)

**DEBTORS' MOTION FOR AN ORDER PURSUANT TO SECTIONS 363(b) AND 365(a)
OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTORS TO ENTER INTO
THE REINSURANCE DISSOLUTION TRANSACTION AND TO ASSUME THE
ALTERNATIVE RE HOLDINGS LIMITED SHAREHOLDERS AGREEMENTS**

Building Materials Holding Corporation and its affiliates, as debtors and debtors in possession (collectively, the "***Debtors***"), submit this Motion (the "***Motion***"), pursuant to sections 363(b) and 365(a) 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*** authorizing the Debtors to enter into the Reinsurance Dissolution Transaction (as defined herein) and to assume the Alternative Re Holdings Limited Shareholder Agreements, as amended by the Amendment Agreement (all as defined herein). In support thereof, the Debtors respectfully represent:

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.

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 June 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 this restructuring, the Debtors have obtained \$80 million in debtor-in-possession financing, which the Court approved on a final basis on July 1, 2009.

INTRODUCTION

6. The purpose of this Motion is to obtain approval for a transaction that would result in the Debtors, and specifically Debtor Building Materials Holding Corporation ("**BMHC**"), receiving approximately \$750,000 in cash reserves that are currently trapped in a captive reinsurance cell. Essentially, BMHC wishes to enter into an agreement that would result in the liquidation of BMHC's shares in the captive reinsurance cell, and would terminate BMHC obligations with regard to the subject reinsurance. Accordingly, Debtors seek this Court's approval under Section 363(b)(1) of the Bankruptcy Code for the entire transaction, as well as under Section 365(a) of the Bankruptcy Code to allow BMHC to assume the Shareholder Agreements (as defined herein), as modified by an Amendment Agreement (as defined herein), that would result in the payment to BMHC of the above-described cash reserves.

THE CAPTIVE REINSURANCE CELLS

7. Prior to the Petition Date, Debtor C Construction Inc. purchased Campbell Concrete of Nevada, Inc. ("**Campbell**"), which owned two captive reinsurance cells. Campbell's ownership interest in the two captive reinsurance cells, and the transfer to BMHC of that ownership interest, occurred as follows:

- a. Campbell purchased Workers Compensation, Commercial Automobile Liability, and General Liability insurance coverage from Arch Insurance Company ("**Arch**") for the period from April 1, 2003 to April 1, 2006, and purchased Products and Completed Operations General Liability coverage from Arch for the period from January 1, 2003 to April 1, 2006.
- b. Arch then had those liabilities reinsured by Alternative Re Limited ("**Alt Re**") through Quota Share Reinsurance Agreements, one series of which reinsured the Workers Compensation, Commercial Automobile Liability, and General Liability insurance programs ("**Reinsurance Agreements 17H**"), and the other of which reinsured the Products and Completed Operations General Liability Insurance program ("**Reinsurance Agreements 17L**").
- c. At the same time that Campbell entered into these various insurance programs with Arch and Arch reinsured those liabilities through Alt Re, Campbell and Alt Re entered into two Alternative Re Holdings Limited Shareholder Agreements (individually, "**17H Shareholder Agreement**," and "**17L Shareholder Agreement**," and collectively the "**Shareholder Agreements**")² whereby Campbell purchased one hundred preferred shares of class 17H Alt Re shares at \$10 par value, and one hundred preferred shares of class 17L Alt Re shares at \$10 par value. The class 17H Alt Re shares were directly related to the reinsurance provided by Reinsurance Agreements 17H, and the class 17L Alt Re shares were directly related to the reinsurance provided by Reinsurance Agreements 17L. The purpose of the Shareholder Agreements was to allow Campbell to participate in the profits and losses realized by Alt Re on the Reinsurance Agreements 17H and 17L. The effect of the Shareholder Agreements was to make Campbell the sole shareholder of class 17H and 17L Alt Re shares.

² The Shareholder Agreements will be provided to parties in interest upon reasonable request to Debtors' counsel, subject to appropriate protections with respect to confidential and privileged information.

- d. Thereafter, a Novation, Release and Waiver Agreement ("**Novation**")³ dated October 20, 2008, was entered into by and between Alt Re, Campbell, and BMHC. The purpose and effect of the Novation was to transfer the rights and obligations under the Shareholder Agreements from Campbell to BMHC, making both reinsurance cells 17H and 17L captives of BMHC.

8. Under Reinsurance Agreements 17H and 17L, Arch is obligated to pay premiums to Alt Re which are then used to pay liabilities (or to the extent there are surplus funds in each account, to be invested by Alt Re at its discretion). As security for its obligations under the Reinsurance Agreements, Alt Re is obligated to provide to Arch letters of credit in an amount equal to Alt Re's proportion of unearned premium reserves, loss reserves and allocated loss expenses related thereto, incurred but not reported loss and loss expense, and loss payments paid by Arch but yet not received from Alt Re, for each of the 17H and 17L programs. The letter of credit related to Reinsurance Agreement 17L is currently in the amount of \$3,049,519.

9. There are currently fifteen open claims that would be covered by Arch and the Workers Compensation reinsurance coverage provided by account 17H, and no open claims that would be covered by the Commercial Automobile Liability or General Liability coverages.

THE REINSURANCE DISSOLUTION TRANSACTION

10. Now that there are only fifteen total open claims that would be covered under the Workers Compensation, Commercial Automobile Liability, and General Liability insurance programs provided by Arch and reinsured by Reinsurance Agreements 17H, Arch, Alt Re, and BMHC have resolved to enter into agreements that would, in effect, dissolve the parties'

³ The Novation will be provided to parties in interest upon reasonable request to Debtors' counsel, subject to appropriate protections with respect to confidential and privileged information.

obligations under Reinsurance Agreements 17H and the portion of the 17H Shareholder Agreement related thereto (the "***Reinsurance Dissolution Transaction***" or "***Dissolution Transaction***").

11. The first such agreement, a Commutation and Release Agreement ("***Commutation Agreement***"), which shall be substantially in the form attached hereto as **Exhibit B**, is by and between Arch and Alt Re, but is expressly conditioned upon BMHC's assumption of its obligations under separate account 17L and Court approval of the Dissolution Transaction. Pursuant to the Commutation Agreement, Arch would assume all liability for the fifteen remaining open claims covered by the Workers Compensation coverage, and assume any liabilities arising from the re-opening of closed claims under the Workers Compensation, Commercial Automobile Liability, and General Liability insurance programs provided by it to Campbell. Reinsurance Agreements 17H would be fully and finally terminated, and in return Arch would receive payment of \$900,000 from the cash reserves currently held in separate account 17H. Alt Re would receive \$100,000 as consideration for completing the Commutation Agreement and terminating separate account 17H. In addition, while Reinsurance Agreements 17L would remain in effect, the letter of credit held in that separate account would be reduced by \$1,549,519 to \$1,500,000.

12. The second agreement, a Shareholders Agreement Amendment Agreement ("***Amendment Agreement***"), which shall be substantially in the form attached hereto as **Exhibit C**, is by and between Alt Re and BMHC. Following the termination of Alt Re's obligations under Reinsurance Agreements 17H as provided by the Commutation Agreement, the Amendment Agreement allows for the redemption of BMHC's one hundred class 17H Alt Re preferred shares. Essentially, the Amendment Agreement will result in the distribution to

BMHC of the remaining cash reserves held in separate account 17H, after the payments described in paragraph 11, above. Those remaining cash reserves are estimated at approximately \$750,000. Following that distribution, the Amendment Agreement will result in the final termination of separate account 17H.

BASIS FOR RELIEF REQUESTED

I. The Debtors' Entry Into the Dissolution Transaction Should Be Approved Pursuant to Section 363(b) of the Bankruptcy Code

13. Section 363(b)(1) of the Bankruptcy Code permits a debtor-in-possession to use property of the estate "other than in the ordinary course of business" after notice and a hearing. 11 U.S.C. § 363(b)(1). Uses of estate property outside the ordinary course of business may be authorized if the debtor demonstrates a "sound business purpose." *See In re Lionel Corp.*, 722 F. 2d 1063, 1071 (2d Cir. 1983) ("The rule we adopt requires that a judge determining a 363(b) application expressly find from the evidence presented before him...a good business reason to grant such an application."); *Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999) ("In determining whether to authorize the use, sale or lease of property of the estate under [section 363(b)], courts require the debtor to show that a sound business purpose justifies such actions.").

14. Once the debtor articulates a business justification for a particular form of relief, courts review the debtor's request under the "business judgment rule." *See, e.g., Myers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996) (noting that under normal circumstances, courts defer to a trustee's judgment concerning use of property under Bankruptcy Code section 363(b) when there is a legitimate business justification). The business judgment rule "is a

presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company." *Official Comm. of Subordinated Bondholders v. Integrated Resources, Inc. (In re Integrated Resources, Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)); see also *In re Helm*, 335 B.R. 528, 539 (Bankr. S.D.N.Y. 2006) ("The business judgment rule requires the Court to determine whether a reasonable business person would make a similar decision under similar circumstances.") (quoting *In re Vencor, Inc.*, Case No. 99-3199, 2003 Bankr. LEXIS 659, 2003 WL 21026737 at *3 (Bankr. D. Del. Apr. 30, 2003)).

15. The Debtors' entry into the Dissolution Transaction is an exercise of sound business judgment. The net effect of the Commutation Agreement and Amendment Agreement, from the Debtors' point of view, will be an immediate infusion of approximately \$750,000 of cash reserves that are currently trapped in separate account 17H. Moreover, once the 17H Shareholder Agreement is terminated after redemption of BMHC's class 17H Alt Re shares, all of the Debtors' obligations and potential liabilities under that agreement will be extinguished. Because the Dissolution Transaction will result in such a large infusion of capital while eliminating the Debtors' potential liabilities under the 17H Shareholder Agreement, and because the Debtors will not suffer any harm from entering into the transaction, it is accordingly an exercise of sound business judgment.

II. The Debtors Should Be Authorized to Assume the Shareholder Agreements, As Amended By the Amendment Agreement

16. Section 365(a) of the Bankruptcy Code provides, in pertinent part, that a debtor-in-possession, "subject to the court's approval, may assume or reject any executory

contract or unexpired lease of the debtor." 11 U.S.C. §365(a). The purpose of section 365(a) is to allow a trustee to maximize the value of the debtor's estate by assuming executory contracts that benefit the estate and rejecting those that do not. *See, e.g., In re Fleming Companies, Inc.*, 499 F.3d 300, 304 (3d Cir. 2007) (noting that section 365(a) allows "the trustee to maximize the value of the debtor's estate by assuming executory contracts . . . that benefit the estate and rejecting those that do not.") (internal citations and quotations omitted); *Dye v. Sandman Assocs., L.L.C. (In re Sandman Assocs., L.L.C.)*, 251 B.R. 473, 481 (W.D. Va. 2000) ("The authority granted by section 365 allows the trustee or debtor in possession to pick and choose among contracts, assuming those that are favorable, and rejecting those that are not.").

17. A debtor's decision to assume or reject an unexpired lease or executory contract is subject to court review under the "business judgment" standard, which is satisfied when a debtor shows that assumption would be beneficial to its estate and reflects a reasonable exercise of business judgment. *See, e.g., NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 523 (1984) (describing the business judgment test as the "traditional" test); *Sharon Steel Corp. v. Nat'l Fuel Gas Dist. Corp.*, 872 F.2d 36, 40 (3d Cir. 1989) (same); *In re Helm*, 335 B.R. 528, 538 (Bankr. S.D.N.Y. 2006) ("The decision to assume or reject an executory contract is within the sound business judgment of the debtor-in-possession...."); *In re G Survivor Corp.*, 171 B.R. 755, 757 (Bankr. S.D.N.Y. 1994) ("In determining whether a debtor may be permitted to reject an executory contract, courts usually apply the business judgment test. Generally, absent a showing of bad faith, or an abuse of business discretion, the debtor's business judgment will not be altered.") (internal citations omitted); *In re III Enters., Inc. V*, 163 B.R. 453, 469 (Bankr. E.D. Pa. 1994) ("Generally, a court will give great deference to a debtor's decision to assume or reject an executory contract. A debtor need only show that its decision to assume or reject the contract

is an exercise of sound business judgment—a standard which [the courts] have concluded many times is not difficult to meet."). Accordingly, courts approve the assumption or rejection of an executory contract or unexpired lease unless evidence is presented that the debtor's decision to assume or reject "is so manifestly unreasonable that it could not be based on sound business judgment, but only on bad faith, or whim or caprice." *In re Richmond Metal Finishers, Inc.*, 756 F.2d 1043, 1047 (4th Cir. 1985).

18. For the same reasons articulated herein that the Debtors' decision to enter into the Dissolution Transaction is a sound exercise of their business judgment, the Debtors' decision to assume the Shareholder Agreements, as amended by the Amendment Agreement, is a sound exercise of their business judgment. Assumption of the 17H Shareholder Agreement, as amended by the Amendment Agreement, will result in the immediate distribution of approximately \$750,000 to the Debtors, while terminating the Debtors' obligations under the 17H Shareholder Agreement. Assumption of the 17L Shareholder Agreement is a condition of the Commutation Agreement, and thus also necessary to obtaining the immediate infusion of capital. Moreover, the Debtors anticipate that assumption of the 17L Shareholder Agreement will ultimately result, at a later date, in a similar dissolution transaction relating to separate account 17L. Such a transaction would likely result in another significant distribution of cash reserves to the Debtors.

19. In light of the foregoing, the Debtors respectfully submit that entry into the Dissolution Transaction is an appropriate exercise of the Debtors' business judgment; is necessary and in the best interest of the Debtors, their creditors, and their estates; should be approved under section 363(b) of the Bankruptcy Code; and the Debtors should be authorized to

assume the Shareholder Agreements, as amended by the Amendment Agreement, under section 365 of the Bankruptcy Code.

NOTICE

20. No trustee or examiner has been appointed in these 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) Arch; (e) Alt Re; and (f) any persons who have filed a request for notice in the Chapter 11 Cases pursuant to Bankruptcy Rule 2002. Due to the nature of the relief requested the Debtors respectfully submit that no further notice of this Motion is required.

NO PRIOR REQUEST

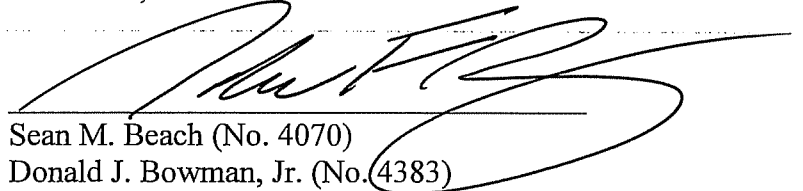
21. No prior request for the relief sought in this Motion has been made to this or any other court.

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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 18, 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; (E) Arch Insurance Company; and (F) Alternative Re Limited.

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 Sections 363(b) and 365(a) of the Bankruptcy Code Authorizing the Debtors to Enter Into the Reinsurance Dissolution Transaction and to Assume the Alternative Re Holdings Limited Shareholders Agreements** (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 18, 2009

YOUNG CONAWAY STARGATT & TAYLOR, LLP



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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 PURSUANT TO SECTIONS 363(b) AND 365(a) OF THE BANKRUPTCY
CODE AUTHORIZING THE DEBTORS TO ENTER INTO THE REINSURANCE
DISSOLUTION TRANSACTION AND TO ASSUME THE ALTERNATIVE RE
HOLDINGS LIMITED SHAREHOLDERS AGREEMENTS**

Upon consideration of the motion (the "***Motion***") of Building Materials Holding Corporation and its affiliates, as debtors and debtors in possession (collectively, the "***Debtors***") for entry of an order authorizing the Debtors to enter into the Reinsurance Dissolution Transaction² and to assume the Shareholder Agreements, as amended by the Amendment Agreement, all as set forth in the Motion; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. sections 1408 and 1409; and the Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and notice of the Motion and the opportunity for a hearing on the Motion was appropriate under the particular circumstances; and

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 ascribed to them in the Motion.

the Court having reviewed the Motion and having considered the statements in support of the relief requested therein at a hearing before the Court (the "**Hearing**"); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED:

1. The Motion is granted as set forth below.
2. Pursuant to section 363(b) of title 11 of the United States Code (the "**Bankruptcy Code**"), the Debtors are authorized to enter into the Dissolution Transaction and are authorized and empowered to take any and all steps and to perform such other and further actions as are necessary to carry out, effectuate, or otherwise enforce the terms, conditions, and provisions of the Commutation Agreement and Amendment Agreement.
3. Pursuant to section 365(a) of the Bankruptcy Code, the Debtors are authorized to assume the 17L Shareholder Agreement and the 17H Shareholder Agreement, as amended by the Amendment Agreement.
4. The Debtors' have no cure obligations in connection with the assumption of the 17L Shareholder Agreement and the 17H Shareholder Agreement, as Amended by the Amendment Agreement, and Alternative Re Limited is hereby barred, enjoined, and prohibited from asserting any additional amounts on account of the Debtors' cure obligations under section 365 of the Bankruptcy Code or otherwise from the Debtors or their estates with respect to the 17L Shareholder Agreement or the 17H Shareholder Agreement.
5. The Debtors are authorized to take any action necessary to effectuate the terms of this Order without further order of the Court.

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

Dated: Wilmington, Delaware
October ____, 2009

Kevin J. Carey
Chief United States Bankruptcy Judge

EXHIBIT B

Draft Commutation Agreement

COMMUTATION AND RELEASE AGREEMENT

BUILDING MATERIALS HOLDING CORPORATION

Effective as of the date of this agreement, (the Effective Date”), this Commutation and Release Agreement (this "Commutation Agreement") is made and entered into by and between Arch Insurance Company ("Company") and Alternative Re Limited ("Reinsurer").

WHEREAS, Company issued certain insurance policies in respect of the risks of CAMPBELL CONCRETE OF NEVADA, INC., (the "Insured") covering the policy period from April 1st, 2003 to April 1st, 2006 in respect of the Workers Compensation, Automobile Liability and General Liability program and January 1st 2003 to April 1st 2006 in respect of the Products and Completed Operations General Liability program (the "Policies"); and

WHEREAS, the Reinsurer reinsured the Company's obligations under the Policies pursuant to Quota Share Reinsurance Agreements, re ARCH COR 2003-17H-01, ARCH COR 2004-17H-01, ARCH COR 2005-17H-01 (collectively "Reinsurance Agreements 17H") and ARCHESCORPF 2003-17L-01, ARCHES COR 2004-17L-01, ARCH COR 2005-17L-01 (collectively "Reinsurance Agreements 17L") pursuant to which the Company ceded to the Reinsurer, and the Reinsurer assumed from the Company, certain liabilities arising out of the Policies written by the Company; and

WHEREAS, the Reinsurer has established Separate Accounts pursuant to the Alternative Re Limited Consolidation and Amendment Act 2004 (the "Private Act"), designated as Separate Account 17H in respect of the Workers Compensation, Automobile Liability and General Liability program and Separate Account 17L in respect of the Products and Completed Operation General Liability program; and

WHEREAS, the Insured, CAMPBELL CONCRETE OF NEVADA, INC., as Shareholder desired to participate in the profits and losses realized by the Reinsurer on the Policies issued by the Company and reinsured by the Reinsurer under the Reinsurance Agreements; and

WHEREAS, to facilitate such participation, CAMPBELL CONCRETE OF NEVADA, INC., pursuant to two (2) Shareholders Agreements purchased one hundred (100) preferred shares class 17H and one hundred (100) preferred shares class 17L, (the "Shares") of the authorized share capital of the Reinsurer's immediate parent company, Alternative Re Holdings Limited, issued in accordance with Section 8 of the Private Act and related to Separate Account 17H and Separate Account 17L respectively; and

WHEREAS, pursuant to a Novation, Release and Waiver Agreement made as of October 20, 2008 among Alternative Re Holdings Limited ("Holdings"), Campbell Concrete of Nevada, Inc. ("Transferor") and Building Materials Holding Corporation ("BMHC") (the

"Transferee"), the Transferor transferred the Shares to the Transferee, and Transferee agreed to undertake to perform and to be bound by the terms and conditions contained in the Shareholders Agreements; and

WHEREAS, BMHC has filed a petition for bankruptcy protection in US District Court for the District of Delaware, and in exchange for receipt of written confirmation of (i) the approval of this transaction by the Trustee in Bankruptcy for BMHC and (ii) and the assumption of the obligations of BMHC under Separate Account 17L by the post bankruptcy entity BMHC, the Company and Reinsurer agree to enter into this Commutation Agreement, and following completion of the Commutation Agreement Holdings and BMHC shall agree to terminate the Shareholders Agreement relating to Separate Account 17H in accordance with the Shareholder Agreement Amendment Agreement to be entered into between Holdings and BMHC, and have further agreed to a reduction in the amount of the collateral held in Separate Account 17L by means of the release of One Million Five Hundred and Forty Nine Thousand, Five Hundred and Nineteen U.S. Dollars (USD \$1,549,519) in the Letter of Credit held in Separate Account 17L, so that the Letter of Credit shall be in the amount of One Million Five Hundred Thousand U.S. Dollars (USD \$1,500,000); and

WHEREAS, Company and Reinsurer wish to terminate and extinguish the Reinsurance Agreements 17H and to fully and finally settle, resolve and commute, by means of the payment described herein, all their rights, privileges, duties, liabilities and obligations under the Reinsurance Agreements 17H; and

WHEREAS, Company and Reinsurer understand and acknowledge that Reinsurer's liabilities and obligations to Company under the Reinsurance Agreements 17H include paid and outstanding losses and loss adjustment expenses, as well as losses incurred but not reported, and therefore can be estimated but cannot presently be determined in an amount certain; and

WHEREAS, Company and Reinsurer agree that Reinsurer shall remit from Separate Account 17H payment to the Company of Nine Hundred Thousand U.S. Dollars (USD \$900,000) (the "Commutation Amount"), and the Reinsurer shall receive from Separate Account 17H an amount of One Hundred Thousand U.S. Dollars (USD \$100,000) (the "Fee Amount") as consideration for completing this Commutation Agreement and terminating Separate Account 17H.

WHEREAS, Company and Reinsurer intend by this Commutation Agreement to fully and forever release and discharge each other from their respective existing and future liabilities and obligations, including contingent and uncertain liabilities, under the Reinsurance Agreements 17H; and

WHEREAS, Company and Reinsurer agree that it is in each of their best interests to freely and voluntarily enter into this Commutation Agreement and to compromise, resolve and settle all amounts due, or which may become due, between each other.

NOW, THEREFORE, and in consideration of the premises and mutual covenants and conditions set forth herein and the payment to be made hereunder, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, Company and Reinsurer agree as follows:

A. Reinsurer shall pay to Company from Separate Account 17H the sum of Nine Hundred Thousand U.S. Dollars (USD \$900,000) being the Commutation Amount. Reinsurer shall remit payment of the Commutation Amount via direct wire transfer, in immediately available funds, to the account designated by Company within five (5) business days of the Effective Date of this Commutation Agreement. The Reinsurer shall deduct from Separate Account 17H the sum of One Hundred Thousand U.S. Dollars (USD \$100,000) being the Fee Amount. The Fee Amount shall be deducted from Separate Account 17H, in immediately available funds, and remitted to the account designated by the Reinsurer within five (5) business days of the Effective Date of this Commutation Agreement.

B. As of the Effective Date, the Reinsurance Agreements 17H shall be commuted in full and the parties further agree as follows:

i. In consideration for Reinsurer's payment of the Commutation Amount, Company, on behalf of itself, its affiliates, and its predecessors, successors and assigns, hereby fully and unconditionally releases and forever discharges Reinsurer and its affiliates, its predecessors, successors and assigns from any and all liabilities and obligations arising out of, in respect of, or relating to the Reinsurance Agreement, including, but not limited to, any and all premiums, losses, claims, liabilities, damages, judgments, debts, duties, sums of money, covenants, errors, omissions, counter-claims, suits, accounts, contributions, indemnifications, promises, interest credit, ultimate net loss amounts, return premium amounts, funds withheld account balance amounts (whether such balance amounts are positive or negative as of the Effective Date), experience refund amounts, expenses, costs, offsets, attorney's fees, and all other causes of action and demands whatsoever, whether in law, in equity, or otherwise, whether known or unknown, vested or contingent, liquidated or unliquidated, matured or unmatured, reported or unreported, disputed or undisputed, quantified or not quantified and whether currently existing or arising in the future. Company acknowledges that its receipt of the Commutation Amount effects a complete discharge, release, accord, satisfaction, settlement and commutation of all of the past, present and future liabilities and obligations of Reinsurer arising out of, in respect of, or relating to the Reinsurance Agreement.

ii. Effective simultaneously with Company's release of Reinsurer as provided herein, Reinsurer on behalf of itself, its affiliates, and its predecessors, successors and assigns, hereby fully and unconditionally releases and forever discharges Company and its affiliates, its predecessors, successors and assigns from any and all liabilities and obligations arising out of, in respect of, or relating to the Reinsurance Agreement, including, but not limited to, any and all premiums, losses, claims, liabilities, damages, judgments, debts, duties, sums of money, covenants, errors, omissions, counter-claims,

suits, accounts, contributions, indemnifications, promises, interest credit, ultimate net loss amounts, return premium amounts, funds withheld account balance amounts (whether such balance amounts are positive or negative as of the Effective Date), experience refund amounts, expenses, costs, offsets, attorney's fees, and all other causes of action and demands whatsoever, whether in law, in equity, or otherwise, whether known or unknown, vested or contingent, liquidated or unliquidated, matured or unmatured, reported or unreported, disputed or undisputed, quantified or not quantified and whether currently existing or arising in the future, it being the intention of the parties that this Commutation Agreement operates as a full and final settlement of any and all of the parties' respective obligations and liabilities related to the Reinsurance Agreement.

iii. Nothing in this Commutation Agreement shall be construed as releasing any claims that Company or Reinsurer may have against any person that is not a person that is included within the scope of the general release language set forth above

C. This Commutation Agreement fully and finally resolves the rights, duties and obligations of Company and Reinsurer under the Reinsurance Agreements 17H, and neither party shall:

(i) have any remedy in respect of any representation, warranty or undertaking of the other relating to this Commutation Agreement or to the Reinsurance Agreements 17H that is not specifically set forth in this Commutation Agreement, whether or not relied upon by the other party, or

(ii) seek to reopen or set aside this Commutation Agreement or the Reinsurance Agreements 17H on any basis whatsoever, including, without limitation, that this Commutation Agreement or the Reinsurance Agreements 17H is void or voidable due to a mistake or change in law or mistake of fact in any way related to this Commutation Agreement or the Reinsurance Agreements 17H.

D. Each of Company and Reinsurer has entered voluntarily into this Commutation Agreement based upon its own independent assessment of the relevant facts and its rights and obligations under the Reinsurance Agreements 17H and not based upon any representations that were made by the other party, its affiliates, officers, directors, shareholders, employees, representatives, agents, attorneys or their respective heirs, administrators, predecessors, successors and assigns. Company and Reinsurer acknowledge that each has had a full and fair opportunity to consult with, and seek the advice and recommendations of, its counsel prior to its execution of this Commutation Agreement.

E. Each of Company and Reinsurer represents and warrants to the other that:

(i) it is authorized to enter into this Commutation Agreement;

(ii) the persons executing this Commutation Agreement on behalf of the party have the necessary and appropriate authority to do so and that this Commutation

Agreement has been duly and validly executed by such party;

(iii) this Commutation Agreement constitutes the valid and binding obligation of such party and is enforceable according to its terms;

(iv) there are no pending or existing agreements, transactions, or negotiations to which either party is a party that would render this Commutation Agreement, or any part thereof, void, voidable or unenforceable; and

(v) no claim or loss being released by this Commutation Agreement has been assigned, transferred or sold to any other person or entity.

F. This Commutation Agreement may not be modified except by written amendment executed by both Company and Reinsurer.

G. This Commutation Agreement, and the rights, duties and obligations set forth herein, shall inure to the benefit of, and be binding upon, Company's and Reinsurer's officers, directors, employees, affiliates, stockholders, predecessors, successors, assigns and, to the extent permitted by law, liquidators, rehabilitators, receivers and other statutory successors.

H. Company and Reinsurer each intend and agree that the existence of this Commutation Agreement, and the terms hereof, shall remain strictly confidential. Neither Company nor Reinsurer (including their respective attorneys, agents, representatives and/or Affiliates) shall disclose or disseminate in any way the facts or terms related to this Commutation Agreement except as may be necessary or appropriate to parent companies and/or affiliates, auditors, legal representatives, rating agencies, governmental or regulatory authorities, or as may be required by legal or regulatory process.

I. This Commutation Agreement may be executed and delivered in multiple counterparts, each of which, when so executed and delivered, shall constitute an original, and all of which taken together shall constitute one instrument. This Commutation Agreement may be executed and transmitted by facsimile provided that an original executed copy shall be exchanged promptly and be substituted for copies executed and transmitted by facsimile.

J. This Commutation Agreement shall be construed and governed by the laws of the State of New York without regard for the State of New York's conflicts of law provision, and any action brought to enforce the terms of this Commutation Agreement shall be brought solely in the State or Federal Courts for the State of New York. In any such action, the Parties consent to the jurisdiction of the State or Federal Courts for the State of New York and waive any right to argue that the State or Federal Courts for the State of New York are an inappropriate or inconvenient forum.

K. The failure of the parties to enforce any provision of this Commutation

Agreement shall not be construed as a waiver of such provision or any other provision of this Commutation Agreement. No waiver of any provision of this Commutation Agreement shall be deemed a waiver of any of its other terms, nor shall such waiver constitute a continuing waiver.

L. This Commutation Agreement constitutes the entire agreement between Company and Reinsurer and supersedes all prior and contemporaneous oral and/or written agreements and understandings between the parties relating to the subject matter addressed herein.

M. Company and Reinsurer absolutely and unconditionally covenant and agree with each other, and their respective successors and assigns, that subsequent to the Effective Date of this Commutation Agreement, neither party will hereafter for any reason whatsoever, demand, claim, file suit or initiate arbitration, mediation, litigation or other legal proceedings against the other in respect of any matters relating to the Reinsurance Agreements 17H, except for a legal proceeding to enforce rights and/or remedies that are provided for expressly pursuant to this Commutation Agreement.

IN WITNESS WHEREOF, the parties have executed this Commutation Agreement by their respective duly authorized officers.

ARCH INSURANCE COMPANY

By: _____

Title: _____

Date: _____

ALTERNATIVE RE LIMITED

By: _____

Title: _____

Date: _____

EXHIBIT C

Draft Amendment Agreement

Alternative Re

Holdings Limited

ALTERNATIVE RE HOLDINGS LIMITED **SHAREHOLDERS AGREEMENT AMENDMENT AGREEMENT**

THIS SHAREHOLDERS AGREEMENT AMENDMENT AGREEMENT ("this
"Amendment") is effective as of the 1st day of September, 2009 by and between:

(1) ALTERNATIVE RE HOLDINGS LIMITED, a Bermuda holding company, Hamilton,
Bermuda (the "Company"); and

(2) Buildings Materials Holding Corporation (the "Shareholder" and collectively with the
Company the "Parties").

WITNESSETH:

WHEREAS, the Parties have previously entered into a Shareholders Agreement (the
"Shareholders Agreement") effective the 20th day of October, 2008 relating to the Separate Account 17H of
Alternative Re Limited (the "Reinsurer");

WHEREAS, the Insurer and Reinsurer have entered into or will enter into a Commutation and
Release Agreement (attached as Appendix I to this Amendment) effecting the termination and extinguishing of
the Reinsurance Agreement; and

WHEREAS the Parties wish to amend the Shareholders Agreement as set out in this
Amendment.

NOW THEREFORE, the Parties agree as follows:

1. Addendum No. 1 to the Shareholders Agreement, under the heading "Redemption", shall be amended to delete the Redemption Date of "October 20, 2016" and to substitute the Redemption Date of "September 1, 2009".
2. Addendum No. 1 to the Shareholder Agreement, under the heading "Profit and Loss Allocation" the section referencing the term "Expenses" is to be amended to include the following:

"In consideration for completing a Commutation Agreement related to the Reinsurance Agreement and for the termination of Separate Account 17H and Redemption of Shares, the Reinsurer shall receive a fee in the amount of One Hundred Thousand U.S. Dollars (USD \$100,000)."

3. The Company will as soon as practicable following the execution of the Commutation and Release Agreement, calculate the final Book Value of the Shares and remit to the Shareholder any balance amounts under the headings:
 - i. the Purchase Price
 - ii. the Balance of Profits and Losses

Alternative Re

Holdings Limited

- iii. any amounts paid by the Shareholder pursuant to Section 6. of the Shareholders Agreement
4. The Company will as soon as practicable following the completion of the calculation of the final Book Value of the Shares and remittance of any amounts due, complete the process of redeeming the Shares.
5. Upon completion of redemption of the Shares by the Company as per 3. above, the contractual relationship between the Parties under the Shareholders Agreement shall terminate.
6. Terms used herein and not otherwise defined herein shall have the meanings ascribed thereto in the Shareholders Agreement.

IN WITNESS WHEREOF, the Parties have set their hand, and executed this Amendment
On this ____ day of _____, 2009 at Hamilton, Bermuda.

ALTERNATIVE RE HOLDINGS LIMITED

By: _____
Gavin P. Collery
Vice President

And, on this ____ day of _____, 2009 at Hamilton, Bermuda.

Buildings Materials Holding Corporation

By: _____
Title: Attorney-in-Fact

Alternative Re
Holdings Limited

APPENDIX I

COMMUTATION AND RELEASE AGREEMENT

**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

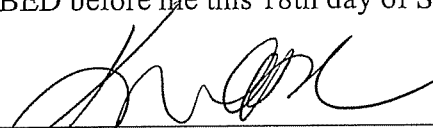
AFFIDAVIT OF SERVICE

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 18, 2009, she caused a copy of the **Debtors' Motion for an Order Pursuant to Sections 363(b) and 365(a) of the Bankruptcy Code Authorizing the Debtors to Enter Into the Reinsurance Dissolution Transaction and to Assume the Alternative Re Holdings Limited Shareholders Agreements** to be served as indicated upon the parties identified on the attached service lists.


Casey S. Cathcart

SWORN TO AND SUBSCRIBED before me this 18th day of September, 2009.


Notary Public
My Commission Expires:



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.

BUILDING MATERIALS HOLDING CORPORATION
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9/18/2009

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