

**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: November 12, 2009 at 4:00 p.m. (ET)
	)	Hearing Date: November 19, 2009 at 11:00 a.m. (ET)

**DEBTORS' MOTION FOR AN ORDER AUTHORIZING THE DEBTORS TO ENTER
INTO THE NEW BOISE LEASE AND TO COMPROMISE RELATED CLAIMS**

Building Materials Holding Corporation and its affiliates, as debtors and debtors in possession (collectively, the "**Debtors**"), submit this Motion (the "**Motion**"), pursuant to section 363 of title 11 of the United States Code (the "**Bankruptcy Code**") and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") for entry of an order substantially in the form annexed hereto as **Exhibit A** authorizing the Debtors to enter into the New Boise Lease (as defined herein) and to compromise related claims. In support thereof, the Debtors respectfully represent:

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.

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.

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 a proposed chapter 11 plan (the "**Plan**") and accompanying disclosure statement (the "**Disclosure Statement**"). The Debtors filed several amended versions of the Plan and Disclosure Statement since that time. The Court approved the Disclosure Statement by order entered on October 22, 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.

THE BOISE LEASE

6. Prior to the Petition Date, the Debtors entered into a lease with MK Plaza Trust (the "**Landlord**", and together with the Debtors, the "**Parties**") for the use and occupancy of the premises located at 720 Park Boulevard, Suites 108, 115, 200, 230, 275, and 280, Boise, Idaho 83712 (the "**Old Boise Lease**"). The premises leased pursuant to the Old Boise Lease serve as one of the Debtors' corporate headquarters and the Debtors use the space to house administrative and technical support personnel and related equipment.

7. The Old Boise Lease encompasses approximately 50,438 square feet of office space and runs through December 1, 2010. The Debtors no longer need a substantial portion of this space, though they presently intend to maintain their Boise headquarters on a go-forward basis. Accordingly, the Debtors have renegotiated the Old Boise Lease to reduce the square footage encompassed thereby to approximately 27,413 square feet and to extend its term until February 28, 2013.

8. To facilitate this transaction, the Parties have agreed to terminate the Old Boise Lease and enter into a new lease for Suites 108 and 200 only (the "**New Boise Lease**") at a

market rate. Suites 115, 230, 275, and 280 will be returned to the Landlord immediately. Under the terms of the New Boise Lease, the Landlord will renovate Suite 200 between now and March 1, 2010 to remove certain walls and to reduce the size of certain offices so that all of the Debtors' personnel can operate out of Suite 200. Once these renovations are complete, the Debtors will vacate Suite 108 and, thereafter, will have no further obligations on account of that space. The net effect of these changes will be to immediately reduce the Debtors' monthly obligations by approximately \$19,130 and to reduce the Debtors' monthly rental obligations by a total of approximately \$31,656² beginning in March 2010—a savings of nearly 50%.³

9. In connection with this transaction, the Landlord has agreed to waive any claims it may have for damages arising out of the termination of the Old Boise Lease, including any lease rejection damages claims that it might have been able to assert in connection with the Debtors' forfeiture of the above-identified suites. In addition, the Landlord has agreed to give the Debtors a termination option whereby the Debtors can terminate the New Boise Lease for a termination fee of \$100,000 if the Debtors' corporate headquarters is relocated outside of the state of Idaho as a result of the Chapter 11 Cases, provided that notice of such termination is given by December 31, 2009.

² The Debtors have agreed to reimburse the Landlord for half of its expenses incurred in renovating Suite 200. This reimbursement will be paid to the Landlord through an increase in the Debtors' base rent by an amount which will amortize the amount due on account of the improvements at a rate of seven percent per annum over the remaining term of the New Boise Lease. However, this amount shall not exceed \$2.00 per square foot. The cited savings assume that the Debtors will be responsible for the full \$2.00 per square foot. The Debtors' actual savings may be greater.

³ The Debtors are currently obligated to pay approximately \$73,948 per month under the terms of the Old Boise Lease.

BASIS FOR RELIEF REQUESTED

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

10. 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.").

11. 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)).

12. The Debtors' entry into the New Boise Lease is an exercise of sound business judgment. The New Boise Lease is at a market rate and provides the Debtors with office space that is sufficient to meet their needs for the foreseeable future without incurring any of the relocation costs that would be associated with moving to a different location. The net effect of the termination of the Old Boise Lease and the execution of the New Boise Lease, from the Debtors' point of view, will be an immediate reduction in the Debtors' monthly obligations by \$19,130 and a \$31,656 reduction in the Debtors' monthly obligations beginning in March 2010.

13. In addition, the termination option contained in the New Boise Lease provides the Debtors with maximum flexibility in these Chapter 11 Cases. Furthermore, because the Debtors have been able to reach a consensual agreement with the Landlord, the proposed transaction allows the Debtors to rationalize their monthly lease obligations without burdening their estates with rejection damages claims. Because entering into the New Boise Lease will benefit the Debtors' estates by reducing the Debtors' monthly lease payment obligations by nearly 50% while providing the Debtors with ample office space, 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 Compromise Claims Related to the Old Boise Lease Pursuant to Bankruptcy Rule 9019

14. Bankruptcy Rule 9019(a) provides that "on motion by the trustee and after a hearing, the court may approve a compromise or settlement." Fed. R. Bankr. P. 9019(a). The settlement of time-consuming and burdensome litigation, especially in the bankruptcy context, is encouraged and "generally favored." *In re World Health Alternatives, Inc.*, 344 B.R. 291, 296 (Bankr. D. Del. 2006); *see also In re Penn Cent. Transp. Co.*, 596 F.2d 1102 (3d Cir. 1979) ("[I]n administering reorganization proceedings in an economical and practical manner it will often be wise to arrange the settlement of claims . . .") (quoting *Protective Comm. for Indep. Stockholders of TMT Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968)).

15. In determining the fairness and equity of a compromise in bankruptcy, the United States Court of Appeals for the Third Circuit has stated that it is important that the bankruptcy court "apprise[] itself of all facts necessary to form an intelligent and objective opinion of the probabilities of ultimate success should the claims be litigated, and estimated the complexity, expense and likely duration of such litigation, and other factors relevant to a full and fair assessment of the [claims]." *In re Penn Cent. Transp. Co.*, 596 F.2d 1127, 1146 (3d Cir. 1979); *see also In re Marvel Entm't Group, Inc.*, 222 B.R. 243, 249 (D. Del. 1998) (describing "the ultimate inquiry to be whether 'the compromise is fair, reasonable, and in the interest of the estate'" (quoting *In re Louise's Inc.*, 211 B.R. 798, 801 (D. Del. 1997)).

16. The Third Circuit Court of Appeals has enumerated four factors that should be considered in determining whether a compromise should be approved. The four enumerated factors are: "(1) the probability of success in litigation; (2) the likely difficulties in collection; (3) the complexity of the litigation involved and the expense, inconvenience and

delay necessarily attending it; and (4) the paramount interest of the creditors." *Meyers v. Martin* (*In re Martin*), 91 F.3d 389, 393 (3d Cir. 1996); accord *Will v. Northwestern Univ.* (*In re Nutraquest, Inc.*), 434 F.3d 639, 644 (3d Cir. 2006).

17. Furthermore, the decision to approve a compromise "is within the sound discretion of the bankruptcy court." *In re World Health Alternatives, Inc.*, 344 B.R. at 296; see also *In re Neshaminy Office Bldg. Assocs.*, 62 B.R. 798, 803 (E.D. Pa. 1986), cited with approval in *In re Martin*, 91 F.3d at 393. In making its decisions, the bankruptcy court should not substitute its judgment for that of the debtor. See *In re Neshaminy Office Bldg. Assocs.*, 62 B.R. at 803. The court is not to decide the numerous questions of law or fact raised by litigation, but rather should canvass the issues to see whether the settlement falls below the lowest point in the range of reasonableness. See *In re W.T. Grant and Co.*, 699 F.2d 599, 608 (2d Cir. 1983) ("[T]he court does not have to be convinced that the settlement is the best possible compromise. Rather, the court must conclude that the settlement is within the reasonable range of litigation possibilities.") (internal citations and quotations omitted); see also *In re World Health Alternatives, Inc.*, 344 B.R. at 296.

18. As part of its bargain with the Debtors, the Landlord has agreed to waive any claims it may have for damages arising out of the termination of the Old Boise Lease, including any lease rejection damages claims that it might have been able to assert in connection with the Debtors' forfeiture of the above-identified suites. Because this concession does not come at any cost to the Debtors' estates and because it benefits the Debtors' estates by eliminating a possible claim, this compromise should be approved.

19. In light of the foregoing, the Debtors respectfully submit that entry into the New Boise Lease 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 that the Debtors should be authorized to compromise any claims related to their termination of the Old Boise Lease pursuant to Bankruptcy Rule 9019.

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 Amended Plan); (c) counsel to the Creditors' Committee; (d) MK Plaza Trust; and (e) 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

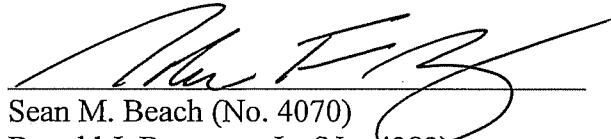
21. No prior request for the relief sought in this Motion has been made to this or any other court.

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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
October 26, 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: November 12, 2009 at 4:00 p.m. (ET)
	)	Hearing Date: November 19, 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) MK Plaza Trust; and (E) All Parties That Have Requested Notice Pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure.

PLEASE TAKE NOTICE that the above-captioned debtors and debtors in possession (collectively, the “Debtors”) have filed the attached **Debtors’ Motion for an Order Authorizing the Debtors to Enter Into the New Boise Lease and to Compromise Related Claims** (the “Motion”).

PLEASE TAKE FURTHER NOTICE that any objections to the Motion must be filed on or before **November 12, 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.

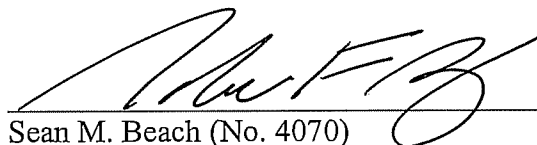
PLEASE TAKE FURTHER NOTICE THAT A HEARING TO CONSIDER THE MOTION WILL BE HELD ON NOVEMBER 19, 2009 AT 11:00 A.M. (ET) BEFORE THE HONORABLE KEVIN J. CAREY AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 MARKET STREET, 5TH FLOOR, COURTROOM NO. 5, WILMINGTON, DELAWARE 19801.

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 a hearing.

Dated: Wilmington, Delaware
October 26, 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 AUTHORIZING THE DEBTORS TO ENTER INTO THE NEW BOISE LEASE
AND TO COMPROMISE RELATED CLAIMS**

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 New Boise Lease² and to compromise related claims, all as set forth in the Motion; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. sections 1408 and 1409; and the Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and notice of the Motion and the opportunity for a hearing on the Motion was appropriate under the particular circumstances; and the Court having reviewed the Motion and having considered the statements in support of the relief requested therein at a hearing before the Court (the "***Hearing***"); and the

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.

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 terminate the Old Boise Lease and to enter into the New Boise Lease 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 New Boise Lease.
3. Pursuant to section 105(a) of the Bankruptcy Code and Rule 9019 of the Federal Rules of Bankruptcy Procedure, the Debtors are authorized to compromise any claims related to the termination of the Old Boise Lease as set forth in the Motion.
4. The Debtors are authorized to take any action necessary to effectuate the terms of this Order without further order of the Court.
5. 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
November ____, 2009

Kevin J. Carey
Chief United States Bankruptcy Judge