

**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: 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
INCENTIVE PAYMENTS TO RANDOLPH DAVIS**

Building Materials Holding Corporation and its affiliates, as debtors and debtors in possession (collectively, the "*Debtors*"), submit this motion (the "*Motion*") for entry of an order, substantially in the form annexed hereto as *Exhibit A*, pursuant to sections 363 and 503(c)(3) of title 11 of the United States Code (the "*Bankruptcy Code*"), authorizing incentive payments to Randolph Davis. In support of this Motion, 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 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 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 PURCHASE AGREEMENT AND THE PRIOR ORDER

6. On July 31, 2006, Debtors SelectBuild Construction, Inc. ("**SelectBuild**") and C Construction, Inc. ("**C Construction**") entered into that certain Asset Purchase Agreement (the "**Purchase Agreement**") with Davis Brothers Framing, Inc. ("**Davis Brothers Framing**"), Rancho Leasing, Inc. ("**Rancho Leasing**") (an affiliated entity), Mr. Randolph Davis, and Mr. George Davis (the sole shareholders of Davis Brothers Framing). Pursuant to the Purchase Agreement, C Construction (as SelectBuild's subsidiary) acquired Davis Brothers Framing's California-based carpentry and framing business, including contracts in existence at the time, fixed assets, certain intangible assets, and non-cash net working capital.² In addition, as described herein, the Debtors agreed to pay additional annual consideration based on the business unit's (the "**Davis Business Unit**") success and to employ Randolph and George Davis as the managers of the Davis Business Unit.

² The Debtors paid a purchase price of approximately \$78.6 million for the Davis Brothers Framing business.

7. The Debtors entered into the Purchase Agreement because Randolph and George Davis and Davis Brothers Framing had established a vibrant business and strong business relationships in Southern California, specializing in high-density residential construction as well as single-family developments. By purchasing the business of Davis Brothers Framing, the Debtors were able to quickly establish a profitable framing business unit and solidify their multi-family strategy in the Southern California region. The Davis Business Unit remains highly profitable for the Debtors, accounting for approximately 28% of the Debtors' 2008 California revenues for continuing operations and is projected to represent approximately 22% of 2009 California revenues.

8. The Purchase Agreement requires that, as part of the purchase price, the Debtors make additional payments annually for a period of three years to Randolph and George Davis upon the achievement of certain earnings targets (the "*Contingent Consideration*"). This payment of Contingent Consideration is due each year in which the Davis Business Unit achieves the required earnings targets and is subject to setoffs for certain liabilities and expenses. After the first anniversary of the purchase and based on achievement of the earnings targets, the Debtors paid approximately \$3.1 million in Contingent Consideration. Additionally, the amount of Contingent Consideration due for the twelve-month period ending June 30, 2009 has been fixed at \$2,483,490, subject to a final true-up between the parties based on the financial statements of the Davis Business Unit for the months of October and November 2009.

9. A central factor in the success of the Davis Business Unit is the managerial prowess of, and network of relationships among employees and highly loyal customers cultivated and maintained by, Randolph and George Davis. In light of the importance of Randolph and George Davis' management skills and business relationships to the success of

this business unit, the Purchase Agreement provides that the Debtors will keep Randolph and George Davis employed in management positions for a period of three years following July 31, 2006, with an option for the parties to extend this period of employment.³

10. In order to induce Randolph and George Davis to remain with the Debtors (among other reasons), on July 10, 2009, the Debtors filed a Motion for an Order Authorizing Assumption of the Purchase Agreement with Davis Brothers Framing, Inc., *et al.* [Docket No. 168] (the "**Prior Motion**"). Subsequent to the filing of the Prior Motion, the Debtors entered into discussions with Randolph Davis regarding the terms and conditions of his Employment Agreement with the Debtors. As a result of these discussions and pursuant to its terms, the Employment Agreement with Randolph Davis has been extended to July 31, 2010.

11. In addition, the Debtors and Randolph Davis have amended his Employment Agreement to provide for a performance incentive plan (the "**Incentive Plan**," a redacted version of which is attached hereto as **Exhibit B⁴**) for Mr. Davis to replace the Contingent Consideration payments, which are no longer due to Mr. Davis, as an incentive for Mr. Davis to maximize the profitability of the Davis Business Unit. Because this amendment took place after the Debtors filed the Prior Motion, the Debtors did not ask the Court to approve the Incentive Plan in connection with the Prior Motion. Rather, with the consent of Mr. Davis,

³ As clarified in the Prior Order (as defined herein), the Purchase Agreement includes the Employment, Confidentiality, Noncompetition, and Nonsolicitation Agreements (as amended, the "**Employment Agreements**") entered into on July 31, 2006 by and between certain of the Debtors and George Davis and Randolph Davis respectively.

⁴ Concurrently with the filing of this Motion, the Debtors have filed their Motion for an Order Pursuant to Section 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018 for Authorization to File Under Seal Exhibit to Debtors' Motion for an Order Authorizing Incentive Payments to Randolph Davis, thereby requesting this Court to enter an order, pursuant to section 107(b) of the Bankruptcy Code, and Rule 9018 of the Federal Rules of Bankruptcy Procedure, authorizing them to file under seal an unredacted version of the Incentive Plan and to file a redacted version thereof with this Motion.

the Debtors indicated that they would seek authority from this Court to adopt and implement the Incentive Plan upon additional notice and opportunity for a hearing. Accordingly, on August 11, 2009 the Court entered an Order Authorizing Assumption of the Purchase Agreement with Davis Brothers Framing, Inc., *et al.* [Docket No. 425] (the "**Prior Order**") which authorized the Debtors to assume the Purchase Agreement (which includes the Employment Agreement with Randolph Davis), but not the Incentive Plan.

12. Pursuant to this Motion, the Debtors seek authority to adopt and implement the Incentive Plan.

THE INCENTIVE PLAN

13. The Incentive Plan is designed to encourage and reward both overall sales volume and marginal profitability. In that regard, the Incentive Plan is based on a sliding scale whereby Mr. Davis will be paid an increasing percentage of total gross margin dollars from the Davis Business Unit as the Debtors' gross margin increases, provided that the Davis Business Unit achieves certain baseline sales metrics.⁵ As the Davis Business Unit's gross margin (marginal profitability) increases, the percentage of gross margin dollars owed to Mr. Davis increases. As the Davis Business Unit's overall sales volume increases, the total dollar amount owed to Mr. Davis is likely to concomitantly increase because the amount of gross margin dollars will be higher. However, if overall sales volume is increased at the expense of marginal profitability, the amount owed to Mr. Davis will be less than what would be owed to Mr. Davis if overall sales volume is not increased at the expense of marginal profitability because a reduction

⁵ The Debtors regard the percentage of total gross margin dollars owed to Mr. Davis pursuant to the Incentive Plan to be confidential proprietary information. Accordingly, the Debtors have filed the Incentive Plan under seal and have provided a copy of the Incentive Plan to the Creditors' Committee and the U.S. Trustee.

in marginal profitability reduces the percentage of gross margin dollars that are owed to Mr. Davis. In this manner, the Incentive Plan aligns the interests of the Debtors and Mr. Davis.

BASIS FOR RELIEF REQUESTED

I. The Debtors' Adoption of the Incentive Plan Is In the Ordinary Course of Business Under Section 363(c) of the Bankruptcy Code

14. Even though the Debtors agreed to seek authority from this Court to adopt and implement the Incentive Plan upon additional notice and opportunity for a hearing, the Debtors believe that Court approval of the Incentive Plan is not necessary under section 363(c) of the Bankruptcy Code. Pursuant to section 363(c), "the trustee may enter into transactions...in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing."

15. The Third Circuit has adopted a "two-step inquiry for determining whether a transaction is in 'the ordinary course of business': a 'horizontal dimension' test and a 'vertical dimension' test." *In re Roth American, Inc.*, 975 F.2d 949, 952 (3d Cir. 1992); *see also In re Nellson Nutraceutical, Inc.*, 369 B.R. 787, 797 (Bankr. D. Del. 2007); *Vision Metals, Inc. v. SMS DEMAG, Inc. (In re Vision Metals, Inc.)*, 325 B.R. 138, 143 (Bankr. D. Del. 2005). "The inquiry deemed horizontal is whether, from an industry-wide perspective, the transaction is of the sort commonly undertaken by companies in that industry." *Roth American*, 975 F.2d at 953. "The inquiry deemed vertical (more appropriately characterized as the creditor's expectation test) analyzes the transactions from the vantage point of a hypothetical creditor and [the inquiry is] whether the transaction subjects a creditor to economic risk of a nature different from those he accepted when he decided to extend credit." *Id.* (internal citations and quotations omitted) (brackets in original).

16. "[I]f the Court determines that a transaction is in the ordinary course of a debtor's business, the Court will not entertain an objection to the transaction, provided that the conduct involves a business judgment made in good faith upon a reasonable basis and within the scope of authority under the Bankruptcy Code. ... Put another way, the Court will not disturb a transaction within the ordinary course of business if 'the trustee can articulate reasons for his conduct (as distinct from a decision made arbitrarily or capriciously).'" *In re Nellson Nutraceutical, Inc.*, 369 B.R. 787, 797 (Bankr. D. Del. 2007) (quoting *In re Curlew Valley Assocs.*, 14 B.R. 506, 513 (Bankr. D. Utah 1981)) (internal citations omitted).

17. The Debtors believe that the adoption of the Incentive Plan was in the ordinary course of the Debtors' business. The Incentive Plan satisfies the horizontal dimension test because comparable incentive plans are common in the Debtors' industry. Similarly, the Incentive Plan satisfies the vertical dimension test because a hypothetical creditor would anticipate, and perhaps request, the Debtors' adoption of the Incentive Plan. This is especially true in light of the Contingent Consideration arrangement that existed prior to the Petition Date which served, in part, as an incentive for Mr. Davis to maximize profitability. Indeed, in three recent cases "bankruptcy courts have determined that an incentive plan established post-petition by a debtor-in-possession for the benefit of senior management is in the ordinary course of the debtor's business." *In re Nellson Nutraceutical, Inc.*, 369 B.R. 787, 798 (Bankr. D. Del. 2007) (citing *In re Global Home Prods., LLC*, 369 B.R. 778 (Bankr. D. Del. 2007); *In re Dana Corp.*, 358 B.R. 567 (Bankr. S.D.N.Y. 2006)). Accordingly, the Court should not "entertain an objection to the transaction" because "the conduct involves a business judgment made in good faith upon a reasonable basis and within the scope of authority under the Bankruptcy Code," as

explained more fully below. *In re Nellson Nutraceutical, Inc.*, 369 B.R. 787, 797 (Bankr. D. Del. 2007).

**II. The Debtors' Adoption of the Incentive Plan
May Be Approved Pursuant to Sections 363(b)
and 503(c)(3) of the Bankruptcy Code**

18. Even if the Court were to determine that the adoption of the Incentive Plan was not in the ordinary course of the Debtors' business, the Court may approve the Incentive Plan pursuant to sections 363(b) and 503(c)(3) of the Bankruptcy Code. 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" for the use. *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.").

19. Similarly, section 503(c)(3) of the Bankruptcy Code permits a debtor-in-possession to incur an obligation for the benefit of managers "outside the ordinary course of business" where such obligation is "justified by the facts and circumstances of the case." Courts have held that the "business judgment" standard is the proper standard for determining whether incentive programs and the payments thereunder are justified under section 503(c)(3). *See, e.g., In re Nobex Corp.*, Case No. 05-20050, Hearing Tr. at 86-87 (Bankr. D. Del. Jan. 12, 2006)

(Walrath, J.) ("I find it quite frankly nothing more than a reiteration of the standard under 363...under which courts had previously authorized transfers outside the ordinary course of business and that [are], based on the business judgment of the debtor....") (discussing the section 503(c)(3) standard); *see also In re Dana Corporation*, 358 B.R. 567, 576 (Bankr. S.D.N.Y. 2006) (citing *Nobex* and applying the business judgment test).

20. 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)). "The reasonable use of incentives and performance bonuses are considered the proper exercise of a debtor's business judgment." *In re Global Home Prods., LLC*, 369 B.R. 778, 784 (Bankr. D. Del. 2007). Thus, "[c]ourts consider the following in determining if the structure of a compensation proposal and the process for developing the proposal meet the 'sound business judgment' test:

- Is there a reasonable relationship between the plan proposed and the results to be obtained, i.e., will the key employee stay for as long as it takes for the debtor to reorganize or market its assets, or, in the case of a performance incentive, *is the plan calculated to achieve the desired performance?* (emphasis added)
- Is the cost of the plan reasonable in the context of the debtor's assets, liabilities and earning potential?
- Is the scope of the plan fair and reasonable; does it apply to all employees; does it discriminate unfairly?
- Is the plan or proposal consistent with industry standards?
- What were the due diligence efforts of the debtor in investigating the need for a plan; analyzing which key employees need to be incentivized; what is available; what is generally applicable in a particular industry?

- Did the debtor receive independent counsel in performing due diligence and in creating and authorizing the incentive compensation?"

In re Dana Corp., 358 B.R. 567, 576-77 (Bankr. S.D.N.Y. 2006) (citations omitted) (alterations in original); *see also In re Global Home Prods., LLC*, 369 B.R. 778, 786 (Bankr. D. Del. 2007) (quoting and applying the *Dana* factors).

21. The Debtors' adoption of the Incentive Plan was an exercise of sound business judgment. As noted previously, the Incentive Plan is specifically designed to encourage and reward both overall sales volume and marginal profitability. The cost of the Incentive Plan is eminently reasonable in the context of the Debtors' assets, liabilities, and earning potential—the Debtors' obligations under the Incentive Plan are tied to the Davis Business Unit's level of profitability. In addition, the scope of the Incentive Plan is fair and reasonable and is consistent with industry standards. Finally, the Debtors' diligence with respect to the Incentive Plan was reasonable under the circumstances as the Debtors desired to maintain an incentive program with respect to the Davis Business Unit after the Contingent Consideration arrangement expired pursuant to its terms. In short, the Incentive Plan is a "reasonable use" of an incentive program and as such should be "considered the proper exercise of [the Debtors'] business judgment." *In re Global Home Prods., LLC*, 369 B.R. 778, 784 (Bankr. D. Del. 2007).

22. Targeted incentive programs such as the Incentive Plan have been repeatedly approved by courts in this jurisdiction. *See, e.g., In re Werner Holding Co. (DE), Inc.*, Case No. 06-10578 (Bankr. D. Del. Dec. 27, 2006) (Carey, J.) (approving executive incentive plan); *In re Global Home Prods., LLC*, 369 B.R. 778, 786 (Bankr. D. Del. 2007) (Gross, J.) (approving management incentive plan and sales bonus plan); *In re Riverstone Networks, Inc.*, Case No. 06-10110 (Bankr. D. Del. Mar. 28, 2006) (Sontchi, J.) (approving an employee bonus

program); *In re Pliant Corp.*, Case No. 06-10001 (Bankr. D. Del. Mar. 14, 2006) (Walrath, J.) (approving management incentive compensation plan); *In re Nobex Corp.*, Case No. 05-20050 (Bankr. D. Del. Jan. 20, 2006) (Walrath, J.) (approving "sale-related incentive pay" to officers, contingent on a successful sale of the company for a price in excess of that offered by an existing, stalking horse bidder, in connection with the debtor's pursuit of a sale of the company).

23. In light of the foregoing, the Debtors respectfully submit that the implementation of the Incentive Plan is an appropriate exercise of the Debtors' business judgment; is necessary and in the best interest of the Debtors, their creditors, and their estates; and should be approved under sections 363(b) and 503(c)(3) of the Bankruptcy Code.

NOTICE

24. 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 the Creditors' Committee; (c) counsel to Wells Fargo Bank, as agent under the Debtors' Prepetition Credit Agreement and DIP Facility (as defined in the Amended Plan); (d) Randolph Davis; 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.

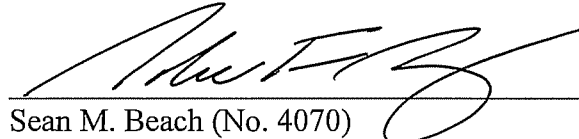
NO PRIOR REQUEST

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

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, <i>et al.</i>,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) Randolph Davis; 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 Incentive Payments to Randolph Davis** (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.

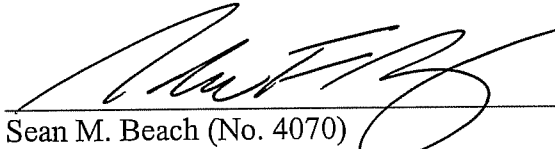
PLEASE TAKE FURTHER NOTICE THAT A HEARING TO CONSIDER THE MOTION WILL BE HELD ON NOVEMBER 19, 2009 AT 11:00 A.M. (ET) BEFORE THE HONORABLE KEVIN J. CAREY AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 MARKET STREET, 5TH FLOOR, COURTROOM NO. 5, WILMINGTON, DELAWARE 19801.

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 INCENTIVE PAYMENTS TO RANDOLPH DAVIS

Upon consideration of the motion (the "*Motion*")² of Building Materials Holding Corporation and its affiliates, as debtors and debtors in possession (collectively, the "*Debtors*") for entry of an order pursuant to sections 363 and 503(c)(3) of title 11 of the United States Code (the "*Bankruptcy Code*"), authorizing incentive payments to Randolph Davis; 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

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² Capitalized terms used but not defined herein shall be given the meanings ascribed to such terms in the Motion.

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

IT IS HEREBY ORDERED:

1. The Motion is granted as set forth below.
2. Pursuant to sections 363 and 503(c)(3) of the Bankruptcy Code, the Debtors are authorized (i) to adopt and implement the Incentive Plan and (ii) to make payments consistent with the Incentive Plan.
3. The Debtors are authorized to take any action necessary to effectuate the terms of this Order without further order of the Court.
4. This Court shall retain jurisdiction over any and all matters arising from or related to the implementation or interpretation of this Order.

Dated: Wilmington, Delaware
November ____, 2009

Kevin J. Carey
Chief United States Bankruptcy Judge

EXHIBIT B

Incentive Plan

10-8/6/09
Law 8/6/09

August 1, 2009 through July 31, 2010

The schedule below will be used to calculate a performance incentive to Randy Davis. Gross Margin will be taken from the operating statement for business unit #8830 for the duration of the plan. All jobs must be closed on a timely and accurate basis and in accordance with company policies and procedures.

<u>Gross Margin</u>	<u>%</u>	<u>% Payoff of Gross Margin Dollars</u>
Reduced	%	%
	%	%
	%	%
	10%	10%

Randy Davis will be guaranteed Redacted for the term of this program payable Redacted on November 1, 2009, February 1, 2010, May 1, 2010 and August 1, 2010. If the amount earned from the performance incentive is less than the guarantee, there will be no deduction from the guarantee amount. The calculation will be made at the completion of the July 31, 2010 operating statement and any amounts payable to Randy Davis will be made by September 30, 2010. Randy Davis will also be entitled to participate in the company's annual bonus plan, however amounts earned from this Performance Incentive Plan will be deducted from any amounts earned in the annual bonus plan.

RD
SW
8-21-09

12 month Ave:
last 30 months

^aDoes not include gross profit adjustments which are minimal)

Layouts based on Past History:

Calculated amount:

Less guarantee

Additional Incentive

:(S.0005) FURADJO OF JO EAJDUEXJ

Annual Sales

Margin %

Margin \$

Payout % rate

Payout earned

Less guarantee

Additional payqu