

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)
)	

Building Materials Holding Corporation and its affiliates, as debtors and debtors in possession (collectively, the “Debtors”), hereby submit this motion (the “Motion”) for entry of an order, pursuant to section 107(b) of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the “Bankruptcy Code”), and Rule 9018 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), authorizing the Debtors to file under seal an unredacted version of the performance incentive plan (the “Incentive Plan”) contained in the Employment Agreement (as defined below) by and between certain of the Debtors and George and Randolph Davis in connection with the Debtors’ Motion for an Order Authorizing Incentive Payments to Randolph

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Davis (the “Incentive Plan Motion”),² and to file a redacted version of the Incentive Plan with such motion. In support of this Motion, the Debtors respectfully represent as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicate for the relief requested herein is section 107(b) of the Bankruptcy Code, along with Bankruptcy Rule 9018

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.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Incentive Plan Motion.

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.

RELEVANT BACKGROUND

6. As set forth more fully in the Incentive Plan Motion, 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. (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. In addition, 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. Specifically, 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").

7. To, among other things, induce Randolph and George Davis to remain with the Debtors, on July 10, 2009, the Debtors filed their 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. Additionally, the Debtors and Randolph Davis amended his Employment Agreement to provide for a performance incentive plan (the "Incentive Plan") for Mr. Davis to replace the Contingent Consideration payments, which are no longer due to Mr. Davis, as an incentive for him to maximize the profitability of the Davis Business Unit.

8. Because the amendment with respect to the Incentive Plan occurred 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, 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 [Docket No. 425] (the “Prior Order”) authorizing the Debtors to assume the Purchase Agreement (which includes the Employment Agreement with Randolph Davis), but not the Incentive Plan.³

9. On the date hereof, the Debtors filed the Incentive Plan Motion, requesting the Court to enter an order authorizing them to adopt and implement the Incentive Plan. The Incentive Plan contains, among other things, certain detailed information, which is confidential and not publically available (the “Confidential Information”), regarding the incentive payments that will be paid to Randolph Davis if the relief sought in the Incentive Plan Motion is approved. The Debtors respectfully submit that, for the reasons set forth below, the Confidential Information warrants protection from public disclosure with the filing of the Incentive Plan Motion.

RELIEF REQUESTED

10. The Debtors respectfully request the Court to enter an order, pursuant to section 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018, authorizing them to file a redacted version of the Incentive Plan (the “Redacted Incentive Plan”)—redacting the Confidential Information—with the Incentive Plan Motion. The Debtors further request that the order approving this Motion authorize them to file an unredacted version of the Incentive Plan (the “Unredacted Incentive Plan”) under seal, and direct that the Unredacted Incentive Plan

³ The Prior Order also clarified that 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.

remain under seal, confidential and not made available to anyone, except for the Court,⁴ the Office of the United States Trustee, counsel to the Committee, and others (a) at the discretion of the Debtors or (b) upon further Court order.

BASIS FOR RELIEF REQUESTED

11. Section 107(b) of the Bankruptcy Code provides bankruptcy courts with the power to issue orders that will protect entities from potential harm that may result from the disclosure of certain confidential information. This section provides, in relevant part:

On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court's own motion, the bankruptcy court may --

- (1) protect an entity with respect to a trade secret or confidential research, development, or commercial information; or
- (2) protect a person with respect to scandalous or defamatory matter contained in a paper filed in a case under this title.

11 U.S.C. § 107(b).

12. Bankruptcy Rule 9018 defines the procedures by which a party may move for relief under section 107(b) of the Bankruptcy Code. Bankruptcy Rule 9018 provides that “[o]n motion, or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information [or] (2) to protect any entity against scandalous or defamatory matter contained in any paper filed in a case under the Code . . .” Fed. R. Bankr. P. 9018.

⁴ In accordance with Rule 9018-1(b) of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware, the Unredacted Incentive Plan will be submitted to the Court in a prominently marked envelope with the agenda for the hearing on the Motion.

13. The Debtors submit that good cause exists for the Court to grant the relief requested herein, as the Unredacted Incentive Plan contains confidential and commercially sensitive information relating to the bonus payments to be made to Randolph Davis if the relief sought in the Incentive Plan Motion is approved. The Debtors submit that filing the Unredacted Incentive Plan under seal is therefore necessary because disclosing the proposed amounts to be paid in connection with the Incentive Plan may create an unhealthy work environment and erode employee morale, thereby jeopardizing the Debtors' chapter 11 efforts and overall business performance.

14. Furthermore, if the Confidential Information is made publically available, those in the Debtors' industry (and perhaps employers outside of their industry) may use such information to lure away Randolph Davis by offering enhanced compensation and incentive opportunities. Such a result would cause a significant disruption to the Debtors' business operations, as the David Brothers Unit accounted for nearly 30% of the Debtors' 2008 California revenues and is currently projected to represent a significant amount going forward.

15. To safeguard against the prejudice the Debtors and their estates would incur if they were forced to divulge the Confidential Information, the Debtors submit that permitting them to file the Unredacted Incentive Plan under seal, and the Redacted Incentive Plan with the Incentive Plan Motion, is appropriate. Absent such relief, the Debtors' business operations could suffer substantial harm which, in turn, would jeopardize their efforts in these proceedings.

16. Accordingly, for the foregoing reasons, the Debtors submit that approval of this Motion is necessary and in the best interests of the Debtors, their estates and creditors.

NOTICE

17. 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 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.

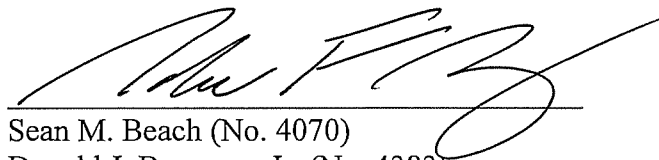
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CONCLUSION

WHEREFORE, the Debtors respectfully request the Court to enter an order, substantially in the form attached hereto as Exhibit A, granting the relief requested in the Motion and such other and further relief as is just and proper.

Dated: Wilmington, Delaware
October 26, 2009

YOUNG CONAWAY STARGATT &
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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 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** (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.

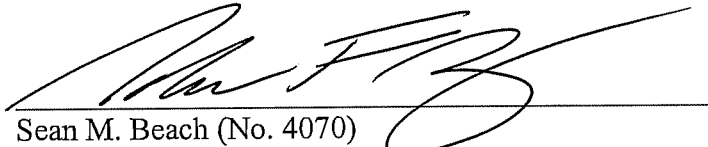
PLEASE TAKE FURTHER NOTICE THAT A HEARING TO CONSIDER THE MOTION WILL BE HELD ON NOVEMBER 19, 2009 AT 11:00 A.M. (ET) BEFORE THE HONORABLE KEVIN J. CAREY AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 MARKET STREET, 5TH FLOOR, COURTROOM NO. 5, WILMINGTON, DELAWARE 19801.

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)	Case No. 09-12074 (KJC)
CORPORATION, <i>et al.</i>,¹)	
)	Jointly Administered
Debtors.)	
)	Ref. Docket No. _____

**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**

Upon consideration of the motion (the "Motion")² of the above-captioned debtors and debtors in possession (the "Debtors") for entry of an order, pursuant to section 107(b) of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code"), and Rule 9018 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), authorizing the Debtors to file under seal the Unredacted Incentive Plan in connection with the Debtors' Motion for an Order Authorizing Incentive Payments to Randolph Davis (the "Incentive Plan Motion"), and to file the Redacted Incentive Plan with the Incentive Plan Motion; and due and sufficient notice of the Motion having been given; and it appearing that no other or further notice need be provided; and it appearing that the relief requested by this Motion is in the best interests of the Debtors, their estates and creditors and other parties in interest; and after due deliberation and sufficient cause appearing therefor, it is hereby:

¹ The Debtors, along with the last four digits of each Debtor's tax identification number, are as follows: Building Materials Holding Corporation (4269), BMC West Corporation (0454), SelectBuild Construction, Inc. (1340), SelectBuild Northern California, Inc. (7579), Illinois Framing, Inc. (4451), C Construction, Inc. (8206), TWF Construction, Inc. (3334), H.N.R. Framing Systems, Inc. (4329), SelectBuild Southern California, Inc. (9378), SelectBuild Nevada, Inc. (8912), SelectBuild Arizona, LLC (0036), and SelectBuild Illinois, LLC (0792). The mailing address for the Debtors is 720 Park Boulevard, Suite 200, Boise, Idaho 83712.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

ORDERED that the Motion is granted; and it is further

ORDERED that pursuant to section 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018, the Debtors are authorized to file under seal the Unredacted Incentive Plan and to file only the Redacted Incentive Plan with the Incentive Plan Motion; and it is further

ORDERED that pursuant to section 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018, the Unredacted Incentive Plan shall be filed under seal and shall remain under seal, confidential and not made available to anyone, except for the Court, the Office of the United States Trustee, counsel to the Committee, and others (a) at the discretion of the Debtors or (b) upon further Court order; and it is further

ORDERED, that this Court shall retain jurisdiction with respect to 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