

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

|                                                                           |   |                                                                |
|---------------------------------------------------------------------------|---|----------------------------------------------------------------|
| <b>IN RE:</b>                                                             | ) |                                                                |
|                                                                           | ) | <b>Chapter 11</b>                                              |
| <b>BUILDING MATERIALS HOLDING CORPORATION, <i>et al.</i>,<sup>1</sup></b> | ) |                                                                |
|                                                                           | ) | <b>Case No. 09-12074 (KJC)</b>                                 |
| <b>Debtors.</b>                                                           | ) |                                                                |
|                                                                           | ) | <b>Jointly Administered</b>                                    |
|                                                                           | ) |                                                                |
|                                                                           | ) | <b>Objection Deadline: November 12, 2009 at 4:00 p.m. (ET)</b> |
|                                                                           | ) | <b>Hearing Date: November 19, 2009 at 11:00 a.m. (ET)</b>      |
|                                                                           | ) |                                                                |

**DEBTORS' MOTION FOR AN ORDER AUTHORIZING REJECTION OF THAT  
CERTAIN UNEXPIRED LEASE WITH PARKER METROPOLITAN, L.P.**

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***, authorizing the Debtors to reject that certain unexpired lease (the "***Frisco Lease***") by and between Parker Metropolitan, L.P. (the "***Landlord***") and BMC West Corporation<sup>2</sup> for the property described therein located at 10351 Home Road, Frisco, Texas (the "***Premises***"), dated as of November 1, 2000. In support thereof, the Debtors respectfully represent:

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<sup>1</sup> 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.

<sup>2</sup> BMCW SouthCentral, L.P. is the named counterparty on the Frisco Lease. After the parties executed the Frisco Lease, BMCW SouthCentral, L.P. was merged into BMC West Corporation.

## **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.

## **RELIEF REQUESTED**

2. By this Motion, the Debtors, pursuant to sections 365(a), 1107(a), and 1108 of title 11 of the United States Code (the "*Bankruptcy Code*") and Federal Rule of Bankruptcy Procedure 6006, seek entry of an order authorizing them to reject the Frisco Lease.

## **BACKGROUND**

3. 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*").

4. 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.

5. 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.

6. 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 FRISCO LEASE**

7. Prior to the Petition Date, the Debtors entered into the Frisco Lease for the use and occupancy of the Premises. The Debtors have determined that the lease rate for the Frisco Lease exceeds the market rate for similar leases in the Frisco vicinity. Accordingly, and as part of their cost-cutting, restructuring, and consolidation efforts, the

Debtors have decided to terminate the Frisco Lease. The Debtors intend to lease an alternate location in the Frisco area at a lower rate.

### **BASIS FOR RELIEF REQUESTED**

8. Pursuant to section 365(a) of the Bankruptcy Code, the Debtors seek authority to reject the Frisco Lease. 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). "[T]he purpose behind allowing the assumption or rejection of executory contracts is to permit the trustee or debtor-in-possession to use valuable property of the estate and to 'renounce title to and abandon burdensome property.'" *Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.)*, 4 F.3d 1095, 1098 (2d Cir. 1993) (quoting 2 Collier On Bankruptcy ¶ 365.01[1] (15th ed. 1993)).

9. Courts defer to a debtor's business judgment in rejecting executory contracts or unexpired leases, and upon finding that a debtor has exercised its sound business judgment, approve such rejections under section 365(a) of the Bankruptcy Code. *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 523 (1984) (recognizing the "business judgment" standard used to authorize rejection of executory contracts), *superseded by statute on other grounds*, 11 U.S.C. § 1113, *as recognized in Mason v. Official Comm. of Unsecured Creditors (In re FBI Distrib. Corp.)*, 330 F.3d 36, 44 (1st Cir. Mass. 2003); *Sharon Steel Corp. v. Nat'l Fuel Gas Distrib. Corp. (In re Sharon Steel Corp.)*, 872 F.2d 36, 39-40 (3d Cir. 1989) (recognizing the "business judgment" standard, which requires only that the rejection will benefit the estate); *In re Trans World Airlines, Inc.*, 261 B.R. 103, 120 (Bankr. D. Del. 2001) ("A debtor's determination to reject an executory contract is governed by the business judgment standard."). The business judgment standard is "not a difficult standard to satisfy and requires

only a showing that rejection will benefit the estate." *In re Exide Techs.*, 340 B.R. 222, 239 (Bankr. D. Del. 2006); *see also In re III Enters., Inc. V*, 163 B.R. 453, 469 (Bankr. E.D. Pa. 1994) (observing that courts do not "disturb [a debtor's] decision to reject [a lease] unless the decision is so unreasonable that it could not be based on sound business judgment, but only on bad faith or whim") (internal citations and quotations omitted).

10. The Debtors have determined, in the sound exercise of their business judgment, that eliminating costs that are unnecessary to the operation of their business is in the best interests of their estates and creditors. As part of this cost-cutting initiative, the Debtors have determined that the lease rate on the Frisco Lease exceeds the market rate for similar leases in the Frisco vicinity. Accordingly, and as part of their cost-cutting, restructuring, and consolidation efforts, the Debtors have decided to terminate the Frisco Lease. The Debtors intend to lease an alternate location in the Frisco area at a lower rate. For this reason, the Debtors believe their decision to reject the Frisco Lease satisfies the "business judgment" standard applicable to the rejection of unexpired leases of real property under section 365 of the Bankruptcy Code.

#### **REQUEST FOR WAIVER OF STAY**

11. To implement the foregoing, the Debtors seek a waiver of any stay of the effectiveness of the order approving this Motion. Pursuant to Bankruptcy Rule 6004(h), any "order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 10 days after entry of the order, unless the court orders otherwise." While the Debtors do not believe that Bankruptcy Rule 6004(h) applies to the relief requested in this motion, to the extent applicable, ample cause exists to waive any stay of the effectiveness of this order because the Debtors' estates may be liable to pay any postpetition

obligations arising under the Frisco Lease as administrative expenses of their estates.

Accordingly, the Debtors submit that ample cause exists to justify a waiver of the 10-day stay under Bankruptcy Rule 6004(h), to the extent applicable.

### **NOTICE**

12. 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) the Landlord as provided in the Frisco Lease; 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**

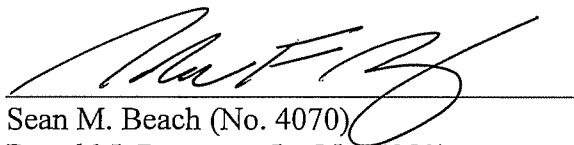
13. No prior request for the relief sought in this Motion has been made to this or any other court.

***Remainder of page intentionally left blank***

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 30, 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**

|                                                                           |   |                                                                |
|---------------------------------------------------------------------------|---|----------------------------------------------------------------|
| <b>In re:</b>                                                             | ) |                                                                |
|                                                                           | ) | <b>Chapter 11</b>                                              |
|                                                                           | ) |                                                                |
| <b>BUILDING MATERIALS HOLDING CORPORATION, <i>et al.</i>,<sup>1</sup></b> | ) | <b>Case No. 09-12074 (KJC)</b>                                 |
|                                                                           | ) |                                                                |
| <b>Debtors.</b>                                                           | ) | <b>Jointly Administered</b>                                    |
|                                                                           | ) |                                                                |
|                                                                           | ) | <b>Objection Deadline: November 12, 2009 at 4:00 p.m. (ET)</b> |
|                                                                           | ) | <b>Hearing Date: November 19, 2009 at 11:00 a.m. (ET)</b>      |

**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) the Landlord as Provided in the Frisco Lease; 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 Rejection of That Certain Unexpired Lease With Parker Metropolitan, L.P.** (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.**

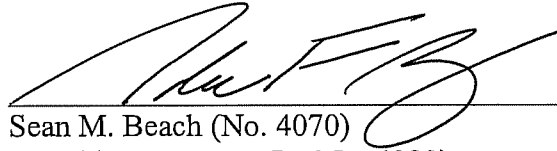
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<sup>1</sup> The Debtors, along with the last four digits of each Debtor’s tax identification number, are as follows: Building Materials Holding Corporation (4269), BMC West Corporation (0454), SelectBuild Construction, Inc. (1340), SelectBuild Northern 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 30, 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**

|                                                |   |                                |
|------------------------------------------------|---|--------------------------------|
| <b>IN RE:</b>                                  | ) |                                |
|                                                | ) | <b>Chapter 11</b>              |
| <b>BUILDING MATERIALS HOLDING</b>              | ) |                                |
| <b>CORPORATION, <i>et al.</i>,<sup>1</sup></b> | ) | <b>Case No. 09-12074 (KJC)</b> |
|                                                | ) |                                |
| <b>Debtors.</b>                                | ) | <b>Jointly Administered</b>    |
|                                                | ) |                                |
|                                                | ) | <b>Ref. Docket No. _____</b>   |

**ORDER AUTHORIZING REJECTION OF THAT CERTAIN UNEXPIRED LEASE  
WITH PARKER METROPOLITAN, L.P.**

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 reject that certain unexpired lease (the "***Frisco Lease***") by and between Parker Metropolitan, L.P. (the "***Landlord***") and BMC West Corporation for the property described therein located at 10351 Home Road, Frisco, Texas (the "***Premises***"), 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

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<sup>1</sup> 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.

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 365(a) of the Bankruptcy Code, the Debtors are authorized to reject the Frisco Lease.
3. In accordance with that certain *Order Pursuant to Sections 501, 502, and 1111(a) of the Bankruptcy Code, Bankruptcy Rules 2002 and 3003(c)(3), and Local Rule 2002-1(e) Establishing Bar Dates for Filing Proofs of Claim and Approving the Form and Manner of Notice Thereof* [Docket No. 248], any claim for damages allegedly arising from the rejection of the Frisco Lease (a "**Rejection Damages Claim**") must be filed on or before the date which is thirty (30) days from the entry of this Order (the "**Rejection Bar Date**"). Any holder of a Rejection Damages Claim which fails to timely file a proof of such claim on or before the Rejection Bar Date shall not be treated as a creditor for purposes of receiving any distributions under the Plan.
4. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.
5. The Debtors do not waive any claims they may have against the Landlord, whether or not such claims arise under, are related to the rejection of, or are independent of the Frisco Lease.

6. Nothing herein shall prejudice the rights of the Debtors to argue that any claim for damages arising from the rejection of the Frisco Lease is limited to the remedies available under any applicable termination provision of such Frisco Lease, or that any such claim is an obligation of a third party, and not that of the Debtors or their estates.

7. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such motion and the requirements of Bankruptcy Rule 6006(c) and the Local Bankruptcy Rules are satisfied by such notice.

8. To the extent Bankruptcy Rule 6004(h) is applicable, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

9. This Court shall retain jurisdiction with respect to all matters arising from or relating to the interpretation or implementation of this Order.

Date: Wilmington, Delaware  
November \_\_, 2009

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Kevin J. Carey  
Chief United States Bankruptcy Judge

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

In re:

BUILDING MATERIALS HOLDING  
CORPORATION, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 09-12074 (KJC)

Jointly Administered

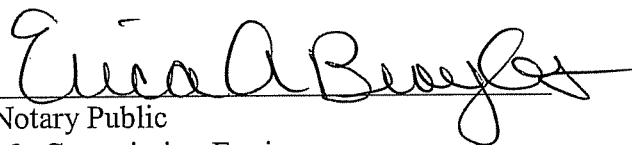
**AFFIDAVIT OF SERVICE**

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 October 30, 2009, she caused a copy of the **Debtors' Motion for an Order Authorizing Rejection of That Certain Unexpired Lease With Parker Metropolitan, L.P.** to be served as indicated upon the parties identified on the attached service lists.

  
Casey S. Cathcart

SWORN TO AND SUBSCRIBED before me this 30th day of October, 2009.

  
Notary Public  
My Commission Expires:

**ERICA A. BROYLES  
NOTARY PUBLIC  
STATE OF DELAWARE  
My commission expires Sept. 6, 2013**

<sup>1</sup> 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**  
**SPECIAL SERVICE LIST RE: MOTION TO REJECT FRISCO LEASE**  
**10/30/2009**

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**10/30/2009**

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**2002 SERVICE LIST**  
**BUILDING MATERIALS HOLDING CORPORATION**  
**10/30/2009**

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