

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

In re:

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

Debtors.

Chapter 11

Case No. 09-12074 (KJC)

Jointly Administered

Ref. Docket No. 827

**CERTIFICATION OF COUNSEL REGARDING STIPULATION  
BY AND BETWEEN THE DEBTORS AND MARSHELLE HARRIS,  
VANCE GETTIS, JACARRE WILLIAMS, MAURICE HENDERSON,  
MARSHAE PETER AND KAMERON KOUNTZ RESOLVING THEIR  
MOTION FOR RELIEF FROM THE AUTOMATIC STAY**

On November 4, 2009, Marshelle Harris, Vance Gettis, Jacarre Williams, Maurice Henderson, Marshae Peter and Kameron Kountz (the “Harris Plaintiffs”), through their counsel, filed the *Motion of Marshelle Harris, Vance Gettis, Jacarre Williams, Maurice Henderson, Marshae Peter and Kameron Kountz for Relief from the Automatic Stay* [Docket No. 827] (the “Motion”) seeking relief from the automatic stay to prosecute a lawsuit styled Marshelle Harris, et al. v. BMC Construction, Inc. et. al, Case No. C09-00148, filed in the Superior Court of California, County of Contra Costa (the “State Court Action”), to liquidate their claims, and to seek satisfaction of any judgment or other resolution obtained in the first instance from the proceeds of any insurance coverage available to the Debtors that may be applicable to the Harris Plaintiffs’ claims.

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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.

The hearing to consider the relief requested in the Motion was originally scheduled for November 19, 2009. Responses to the Motion were due on or before November 12, 2009 at 4:00 p.m. (the “Objection Deadline”), but the Harris Plaintiffs extended the deadline for the Debtors to respond until November 17, 2009 at 11:00 a.m. No other objections or responses to the Motion were received prior to the Objection Deadline. In order to have more time to reach a consensual resolution of the Motion, the parties agreed to move the hearing on the Motion to the omnibus hearing in these chapter 11 proceedings currently scheduled for December 15, 2009. The Debtors have now reached a consensual resolution of the Motion with the Harris Plaintiffs.

As a result of their discussions, the Debtors and the Harris Plaintiffs (collectively, the “Parties”) have entered into the *Stipulation Resolving the Motion of Marshelle Harris, Vance Gettis, Jacarre Williams, Maurice Henderson, Marshae Peter and Kameron Kountz for Relief from the Automatic Stay* (the “Stipulation”) which consensually resolves the Motion. The pertinent terms of the Stipulation are as follows:

- (a) The Parties acknowledge and agree to relief from the automatic stay being granted in favor of the Harris Plaintiffs for the purpose of allowing the Harris Plaintiffs to proceed with the State Court Action against the Debtor-Defendants, including the conduct of discovery pursuant to the California Code of Civil Procedure, participation in mediation, if applicable, and conducting a trial or other resolution, as necessary, to resolve any factual matters related to the Harris Plaintiffs’ claims and the defenses related thereto.
- (b) The Parties acknowledge and agree the Harris Plaintiffs’ recovery by judgment or settlement, if any, against the Debtor-Defendants shall be funded in the first instance from the remaining deductible under the Debtor-Defendants’ insurance (the “Insurance”), (including, without limitation, certain policies issued through ACE American Insurance Company (“ACE American”) consisting of: (a) automobile liability policy number ISA H08012970, covering the policy period of 11/11/2006 to 11/11/2007, with a \$3 million per accident liability limit and a \$1 million per accident deductible (of which approximately \$950,000 remains); and (b) excess policy number XOO G2378970A, covering the

policy period of 11/11/2006 to 11/11/2007, with policy limits of \$10,000,000 each occurrence (\$10,000,000 in the aggregate) and an Insured's Retained Limit of \$2,000,000), **which the applicable Debtor shall pay in cash, in full when and if it becomes due**, and any recovery in excess of the remaining deductible shall be paid, in the first instance, from any proceeds of the Insurance, to the extent available.

- (c) The Parties acknowledge and agree that the Harris Plaintiffs can submit any recovery by judgment or settlement, if any, in excess of the amount covered by the remaining deductible and the Insurance as a general unsecured claim against the applicable Debtor-Defendant in the net amount outstanding.

The Debtors are willing to pay the remaining deductible in cash in full when and if it becomes due and payable because the deductible is subject to prepetition letters of credit of which ACE American is the beneficiary. Wells Fargo Bank issued the prepetition letters of credit under the terms of the Debtors' Second Amended and Restated Credit Agreement, dated as of November 10, 2006 (the "Prepetition Credit Agreement"). The Prepetition Credit Agreement is secured by substantially all of the Debtors' assets.

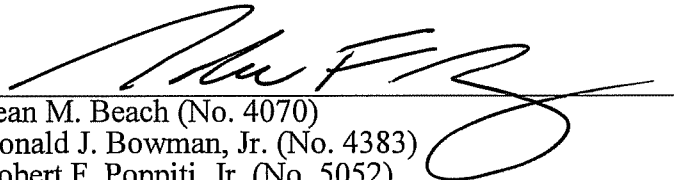
Attached hereto as Exhibit 1 is a proposed form of order approving the Stipulation (the "Proposed Order"). The Stipulation is attached to the Proposed Order as Exhibit A.

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

WHEREFORE, the Debtors respectfully request entry of the Proposed Order approving the Stipulation at the Court's earliest convenience without further notice or a hearing.

Dated: Wilmington, Delaware  
November 25, 2009

YOUNG CONAWAY STARGATT & TAYLOR, LLP



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---- and ----

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ATTORNEYS FOR DEBTORS  
AND DEBTORS IN POSSESSION

**EXHIBIT 1**

Proposed Order

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

In re:

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

Debtors.

Chapter 11

Case No. 09-12074(KJC)

Jointly Administered

Ref. Docket Nos. 827 and \_\_\_\_\_

**ORDER APPROVING STIPULATION BY AND BETWEEN THE DEBTORS AND  
MARSELLE HARRIS, VANCE GETTIS, JACARRE WILLIAMS, MAURICE  
HENDERSON, MARSHAE PETER AND KAMERON KOUNTZ RESOLVING THEIR  
MOTION FOR RELIEF FROM THE AUTOMATIC STAY**

The Court having considered the Stipulation by and between the Debtors and Marshelle Harris, Vance Gettis, Jacarre Williams, Maurice Henderson, Marshae Peter and Kameron Kountz Resolving the Motion of Marshelle Harris, Vance Gettis, Jacarre Williams, Maurice Henderson, Marshae Peter and Kameron Kountz for Relief From Automatic Stay, a copy of which is attached hereto as Exhibit A; the Court having determined that good and adequate cause exists for approval of the Stipulation; and the Court having determined that no further notice of the Stipulation must be given; and it appearing that the Stipulation 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:

ORDERED that the Stipulation is approved, and the terms and conditions of the Stipulation are incorporated in this Order by reference as if fully set forth herein; and it is further

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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.

ORDERED that the Debtors are authorized and empowered to take any and all steps or perform any and all such acts as are necessary to carry out or otherwise effectuate the terms, conditions and provisions of the Stipulation; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine any and all matters arising from or related to the interpretation or implementation of this Order or the Stipulation.

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

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Kevin J. Carey  
Chief United States Bankruptcy Judge

**EXHIBIT A**

Stipulation



In re )  
 )  
BUILDING MATERIALS HOLDING )  
CORPORATION, *et al.*,<sup>1</sup> )  
 )  
Debtors, )  
\_\_\_\_\_)  
 )  
MARSHELLE HARRIS, VANCE )  
GETTIS, JACARRE WILLIAMS, )  
MAURICE HENDERSON, )  
MARSHAE PETER AND KAMERON )  
KOUNTZ )  
 )  
Movants, )  
v. )  
 )  
SELECTBUILD NORTHERN )  
CALIFORNIA, BMC CONSTRUCTION, )  
INC., BUILDING MATERIALS )  
HOLDING CORPORATION, AND )  
JOHN DOES 1-20 )  
 )  
Respondents. )

Chapter 11  
Case No. 09-12074 (KJC)  
  
(Jointly Administered)  
  
  
  
  
  
  
Related Docket Item No. 827

Building Materials Holding Corporation and its affiliates, the debtors and debtors in possession in the above-referenced cases (collectively, the "*Debtors*"), on the one hand, and Marshelle Harris, Vance Gattis, and four minors acting through their Guardian Ad Litem, Tracy

<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 (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).

Thomas (collectively the "*Harris Plaintiffs*," and together with the Debtors, the "*Parties*") hereby respectfully stipulate and agree as follows:

**RECITALS**

WHEREAS, on June 16, 2009 (the "*Petition Date*"), each of the Debtors filed with the United States Bankruptcy Court for the District of Delaware (the "*Court*") voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "*Bankruptcy Code*"). Each Debtor is continuing to operate its business and manage its properties as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors' cases are being jointly administered pursuant to rule 1015(b) of the Federal Rules of Bankruptcy Procedure.

WHEREAS, on or about December 4, 2008, the Harris Plaintiffs filed suit against, among others, Building Materials Holding Corporation and certain other misidentified Debtor entities (collectively, the "*Debtor-Defendants*") in the Superior Court of California, County of Costa Contra, Case No. C08 03028 (the "*Harris Litigation*").

WHEREAS the Harris Litigation involves alleged property damage and personal injuries related to a motor vehicle accident allegedly occurring on or about December 5, 2006 and Debtor SelectBuild Northern California, Inc. (sued erroneously as "KBI Norcal") has filed an answer in the Harris Litigation.

WHEREAS the Debtor-Defendants have insurance (the "*Insurance*"), including, without limitation, certain policies issued through ACE American Insurance Company ("ACE American") consisting of: (a) automobile liability policy number ISA H08012970, covering the policy period of 11/11/2006 to 11/11/2007, with a \$3 million per accident liability limit and a \$1 million per accident deductible (of which approximately \$950,000 remains); and (b) excess policy number XOO G2378970A, covering the policy period of 11/11/2006 to 11/11/2007, with

policy limits of \$10,000,000 each occurrence (\$10,000,000 in the aggregate) and an Insured's Retained Limit of \$2,000,000.<sup>2</sup>

WHEREAS, on November 4, 2009, the Harris Plaintiffs filed with the Court the Motion of Marshelle Harris, Vance Gettis, Jacarre Williams, Maurice Henderson, Marshae Peter, and Kameron Kountz for Relief from the Automatic Stay, seeking relief to from the automatic stay to allow them (i) to prosecute the Harris Litigation to judgment or other resolution, (ii) to liquidate their claim against the Debtor-Defendants, and (iii) to seek satisfaction of any judgment or other resolution obtained against the Debtor-Defendants in the first instance from the proceeds of any insurance coverage available to the Debtor-Defendants that may be applicable to the Harris Plaintiffs' claims.

WHEREAS, the Debtors are willing to stipulate to relief from the automatic stay in favor of the Harris Plaintiffs for the sole purpose of allowing the Harris Plaintiffs to proceed with the Harris Litigation against the Debtor-Defendants, with any recovery to be limited in the first instance to any applicable remaining deductible under the Insurance, which the applicable Debtor shall pay in full when and if it becomes due, and any recovery in excess of the remaining deductible shall be paid in the first instance from any proceeds of the Insurance, to the extent available.

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<sup>2</sup>The brief summary of the Insurance contained herein is for descriptive purposes only and is not intended to be binding on the Debtors or ACE American or constitute their position with respect to the proper interpretation and meaning thereof. Nothing herein is intended to modify, amend or otherwise alter the terms of the Insurance, any coverage provided thereunder or any letters of credit or other collateral.

NOW THEREFORE, subject to the approval of the Court, in order to avoid the costs, risks and inconveniences of litigation, it is hereby stipulated, agreed as follows (the "*Stipulation*"):

1. The foregoing WHEREAS clauses are incorporated herein by reference thereto.
2. The Parties hereby acknowledge and agree to relief from the automatic stay being granted in favor of the Harris Plaintiffs for the purpose of allowing the Harris Plaintiffs to proceed with the Harris Litigation against the Debtor-Defendants, including the conduct of discovery pursuant to the California Code of Civil Procedure, participation in mediation, if applicable, and conducting a trial or other resolution, as necessary, to resolve any factual matters related to the Harris Plaintiffs' claims and the defenses related thereto.
3. The Parties hereby acknowledge and agree the Harris Plaintiffs' recovery by judgment or settlement, if any, against the Debtor-Defendants shall be funded in the first instance from the remaining deductible under the Insurance, which the applicable Debtor shall pay in cash, in full when and if it becomes due, and any recovery in excess of the remaining deductible shall be paid, in the first instance, from any proceeds of the Insurance, to the extent available.
4. The Parties hereby acknowledge and agree that the Harris Plaintiffs can submit any recovery by judgment or settlement, if any, in excess of the amount covered by the remaining deductible and the Insurance as a general unsecured claim against the applicable Debtor-Defendant in the net amount outstanding.
5. The Parties hereby acknowledge and agree that this Stipulation is entered into solely for the convenience of the Parties and neither this Stipulation nor the fact of its

execution will constitute any admission or acknowledgment or liability or wrongdoing on the part of any of the Parties. The Parties will not offer this Stipulation or the fact of its execution into evidence in any proceeding other than a proceeding to approve or enforce this Stipulation or any of its terms.

6. Each party shall bear its own attorneys' fees and costs with respect to the execution and delivery of this Stipulation. Each of the undersigned are duly authorized and empowered to execute this Stipulation.

7. This Stipulation is governed by and shall be construed in accordance with the law of the State of Delaware, without regard to its conflict of laws provisions. The Bankruptcy Court shall retain exclusive jurisdiction to resolve any disputes or controversies arising from or related to this Stipulation.

8. All of the recitals set forth above are incorporated by reference as if fully set forth herein. This Stipulation constitutes the complete express agreement of the Parties hereto concerning the subject matter hereof, and no modification or amendment to this Stipulation shall be valid unless it is in writing, signed by the Party or Parties to be charged and approved by the Bankruptcy Court.

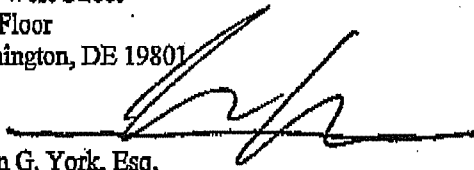
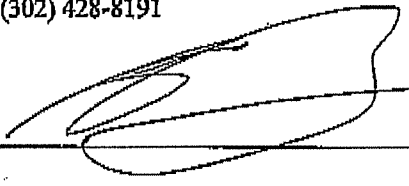
9. It is acknowledged that each Party has participated in and jointly consented to the drafting of this Stipulation and that any claimed ambiguity shall not be construed for or against either Party on account of such drafting.

10. This Stipulation may be executed in counterparts, any of which may be transmitted by facsimile or electronic mail, and each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

11. This Stipulation is subject to approval of the Bankruptcy Court, and the Parties agree to present the Stipulation promptly to the Bankruptcy Court for approval. If the Bankruptcy Court does not approve this Stipulation, the Parties will revert to their pre-Stipulation positions, without any prejudice whatsoever from having entered into this Stipulation.

12. The undersigned attorneys are authorized to execute this Stipulation on behalf of their respective clients.

13. This Stipulation shall become effective immediately upon entry of an order approving the Stipulation.

For DEBTORS	For <i>Marshelle Harris, Vance Gettis, Jacarrie Williams, Maurice Henderson, Marshae Peter and Kameron Kountz (the "Harris Plaintiffs")</i>
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and 	and 
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Dated: <u>11/16/2009</u>	Dated: <u>11/24/09</u>