

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

In re:

BUILDING MATERIALS HOLDING
CORPORATION, *et al.*¹

Reorganized Debtors.

Chapter 11

Case No. 09-12074 (KJC)

Jointly Administered

Ref. Docket No. 1391

**CERTIFICATION OF COUNSEL REGARDING STIPULATION
BY AND BETWEEN THE REORGANIZED DEBTORS AND JUAN M. NAVARRO AND
LETICIA RAMIREZ RESOLVING THEIR MOTION FOR RELIEF FROM THE
AUTOMATIC STAY AND/OR RELIEF FROM THE CONFIRMATION INJUNCTION**

On February 3, 2010, Juan M. Navarro and Leticia Ramirez (the “Navarro Plaintiffs”), through counsel, filed the *Motion of Juan M. Navarro and Leticia Ramirez for Relief from the Automatic Stay and/or Relief from the Confirmation Injunction* [Docket No. 1391] (the “Motion”) seeking relief from stay and or plan injunction to prosecute a lawsuit styled Juan Martinez Navarro and Leticia Ramirez v. Floyd Thomas Pearson et al., Case No. CV2009-009158, filed in the Superior Court of the State of Arizona (the “Navarro Litigation”), to (i) proceed to liquidate their claims in the Navarro Litigation and (ii) permit any such claims to be satisfied against the Reorganized Debtors to the extent of the limits of available insurance including deductibles and/or otherwise to be satisfied in accordance with the provisions of the Debtors’ confirmed plan.

¹ The Reorganized Debtors, along with the last four digits of each Reorganized 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 Reorganized Debtors is 720 Park Boulevard, Suite 200, Boise, Idaho 83712.

The hearing to consider the relief requested in the Motion is scheduled for February 22, 2010. Responses to the Motion were due on or before February 16, 2009 at 4:00 p.m. (the “Objection Deadline”), but the Navarro Plaintiffs extended the deadline for the Reorganized Debtors to respond until February 19, 2009 at 4:00 p.m. No other objections or responses to the Motion were received prior to the Objection Deadline. The Reorganized Debtors have now reached a consensual resolution of the Motion with the Navarro Plaintiffs.

As a result of the discussions, the Debtors and the Navarro Plaintiffs (collectively, the “Parties”) have entered into the *Stipulation Resolving Motion of Juan M. Navarro and Leticia Ramirez for Relief from the Automatic Stay and/or Relief from the Confirmation Injunction* (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 Plan Injunction and, to the extent applicable, the automatic stay being granted in favor of the Navarro Plaintiffs for the sole purpose of allowing the Navarro Plaintiffs to proceed with the Navarro Litigation against the applicable Reorganized Debtors and any other applicable defendants.
- (b) The Navarro Plaintiffs acknowledge and agree that the Navarro Plaintiffs’ recovery by judgment or settlement, if any, against the Reorganized Debtors shall be funded from the remaining deductible under automobile liability insurance (the “Insurance”) through ACE American Insurance Company (“ACE American”) consisting of: (a) 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; 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 Reorganized 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 from any proceeds of the Insurance, to the extent available.
- (c) The Parties acknowledge and agree that the Stipulation shall fully and finally resolve, and the Navarro Plaintiffs waive and release, any direct, pre-petition, post-petition, administrative, or other claim against the Reorganized Debtors of any kind or nature arising out of or related to the

Navarro Litigation, and any such claim filed in the Bankruptcy Court shall be automatically expunged without further action by the Reorganized Debtors or the Bankruptcy Court, provided, however, that the Navarro Plaintiffs shall retain a claim to the extent necessary to obtain payment of the deductible and other proceeds from available Insurance.

The applicable Reorganized 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"). As a result, under the confirmed Joint Plan of Reorganization for the Debtors Under Chapter 11 of the Bankruptcy Code Amended December 14, 2009 (With Technical Modifications), the claim with respect to the deductible would be a Class 5 L/C General Unsecured Claim that must be paid in full.

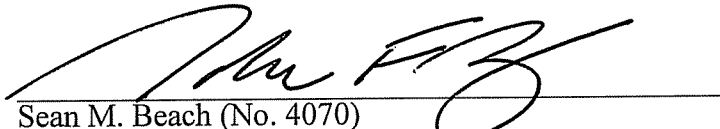
Attached hereto as Exhibit 1 is a proposed order approving the Stipulation (the "Proposed Order"). The Stipulation is attached to the Proposed Order as Exhibit A.

[Signature page to follow]

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
February 19, 2010

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ATTORNEYS FOR REORGANIZED DEBTORS

EXHIBIT 1

Proposed Order

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

In re:

BUILDING MATERIALS HOLDING
CORPORATION, *et al.*¹

Reorganized Debtors.

Chapter 11

Case No. 09-12074(KJC)

Jointly Administered

Ref. Docket Nos. 1391 and _____

**ORDER APPROVING STIPULATION
BY AND BETWEEN THE REORGANIZED DEBTORS AND JUAN M. NAVARRO AND
LETICIA RAMIREZ RESOLVING THEIR MOTION FOR RELIEF FROM THE
AUTOMATIC STAY AND/OR RELIEF FROM THE CONFIRMATION INJUNCTION**

The Court having considered the Stipulation by and between the Reorganized Debtors and Juan M. Navarro and Leticia Ramirez for Relief From Automatic Stay and/or Relief from the Confirmation Injunction, 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 Reorganized 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

¹ The Reorganized Debtors, along with the last four digits of each Reorganized 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 Reorganized Debtors is 720 Park Boulevard, Suite 200, Boise, Idaho 83712.

ORDERED that the Reorganized 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
February __, 2010

Kevin J. Carey
Chief United States Bankruptcy Judge

EXHIBIT A

Stipulation

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

IN RE:)	
)	Chapter 11
BUILDING MATERIALS HOLDING CORPORATION, et al.,¹)	
)	Case No. 09-12074 (KJC)
Reorganized Debtors.)	
)	Jointly Administered
)	
)	

STIPULATION RESOLVING MOTION OF JUAN M. NAVARRO AND LETICIA RAMIREZ FOR RELIEF FROM THE AUTOMATIC STAY AND/OR RELIEF FROM THE CONFIRMATION INJUNCTION

Building Materials Holding Corporation and its affiliates, the reorganized debtors in the above-referenced cases (collectively, the "*Debtors*"), on the one hand, and Juan M. Navarro and Leticia Ramirez (collectively the "*Navarro 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 title 11 of the United States Code (the "*Bankruptcy Code*"). The Debtors' cases are being jointly administered pursuant to rule 1015(b) of the Federal Rules of Bankruptcy Procedure. On December 17, 2009, the Court entered an Order Confirming Joint

¹The 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.

Plan of Reorganization for the Debtors Under Chapter 11 of the Bankruptcy Code Amended December 14, 2009 (With Technical Modifications) [Docket No. 1182] (the "**Confirmation Order**") confirming the Debtors' joint plan of reorganization (the "**Plan**"). On January 4, 2010 (the "Effective Date"), the Debtors' Plan became effective.

WHEREAS from the Petition Date until the Effective Date, the automatic stay imposed by 11 U.S.C. § 362 prevented persons or entities from bringing or continuing any actions against the Debtors on account of prepetition claims, and from and after the Effective Date the injunction imposed by the Plan and Confirmation Order (the "**Plan Injunction**") prevents persons or entities from bringing or continuing any actions against the Debtors on account of prepetition claims.

WHEREAS, on or about June 3, 2009, the Navarro Plaintiffs filed suit against, among others, Building Materials Holding Corporation (the "**Debtor-Defendant**") in the Superior Court of the State of Arizona, In and For the County of Maricopa, Case No. CV2009-009158 (the "**Navarro Litigation**").

WHEREAS the Navarro Litigation involves alleged personal injuries related to a motor vehicle accident allegedly occurring on or about July 28, 2007.

WHEREAS the Debtor-Defendant has automobile liability insurance (the "**Insurance**") through ACE American Insurance Company ("**ACE American**") consisting of: (a) 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; and (b) 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 \$2,000,000.²

WHEREAS, on February 3, 2010, the Navarro Plaintiffs filed with the Court the Motion of Juan M. Navarro and Leticia Ramirez for Relief from the Automatic Stay and/or Relief from the Confirmation Injunction, seeking relief to from the automatic stay and Plan Injunction to allow them (i) to proceed to liquidate their claims in the Navarro Litigation whether by litigation, arbitration, mediation, settlement or otherwise, and (ii) permit any such claims to be satisfied against the Debtors to the extent of the limits of available insurance including deductibles and/or otherwise to be satisfied in accordance with the provisions of the Plan.

WHEREAS, the Debtors are willing to stipulate to relief from the automatic stay and Plan Injunction in favor of the Navarro Plaintiffs for the sole purpose of allowing the Navarro Plaintiffs to proceed with the Navarro Litigation against the applicable Debtors and any other applicable defendants, with any recovery against the Debtors to be limited to any applicable 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 from any proceeds of the Insurance, to the extent available.

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

1. The Parties hereby acknowledge and agree to relief from the Plan Injunction and, to the extent applicable, the automatic stay being granted in favor of the Navarro

² 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.

Plaintiffs for the sole purpose of allowing the Navarro Plaintiffs to proceed with the Navarro Litigation against the applicable Debtors and any other applicable defendants.

2. The Navarro Plaintiffs hereby acknowledge and agree that the Navarro Plaintiffs' recovery by judgment or settlement, if any, against the Debtors shall be funded 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 from any proceeds of the Insurance, to the extent available.

3. The Parties hereby acknowledge and agree that this Stipulation shall fully and finally resolve, and the Navarro Plaintiffs waive and release, any direct, pre-petition, post-petition, administrative, or other claim against the Debtors of any kind or nature arising out of or related to the Navarro Litigation, and any such claim filed in the Bankruptcy Court shall be automatically expunged without further action by the Debtors or the Bankruptcy Court, provided, however, that the Navarro Plaintiffs shall retain a claim to the extent necessary to obtain payment of the deductible and other proceeds from available Insurance..

4. 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.

5. 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.

6. 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.

7. 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.

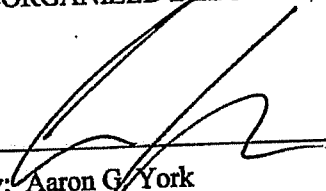
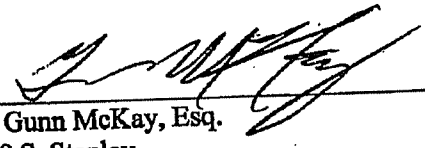
8. It is acknowledged that each Party has participated in and jointly consented to the drafting of this Stipulation and that any claimed ambiguity shall not be construed for or against either Party on account of such drafting.

9. 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.

10. 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.

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

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

<p>For REORGANIZED DEBTORS</p> <hr/> <p>By:  Aaron G. York Gibson, Duffin & Crutcher, LLP 2100 McKinney Avenue, Suite 1100 Dallas, Texas 75201 Tel: (214) 698-3239 Dated: <u>2/18/2010</u></p>	<p>For Navarro Plaintiffs</p> <hr/> <p> By: Gunn McKay, Esq. 1019 S. Stapley Mesa, AZ 85204 Tel: (480) 275-6660 Dated: <u>2/18/2010</u></p>
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