

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE 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. 1516

**CERTIFICATION OF COUNSEL REGARDING STIPULATION
RESOLVING THE MOTION OF BROOKFIELD HOMES
SAN DIEGO INC. FOR RELIEF FROM THE AUTOMATIC STAY**

On April 4, 2010, Brookfield Homes San Diego Inc. ("Brookfield"), through counsel, filed the *Motion of Brookfield Homes San Diego Inc. for Relief from the Automatic Stay* [Docket No. 1516] (the "Motion") seeking relief from the automatic stay and/or the plan injunction to (i) allow Brookfield to pursue its claims for indemnification and damages against debtor H.N.R. Framing Systems, Inc. in Case No. 37-2008-00086579 filed in the San Diego Superior Court (the "Brookfield 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.

The hearing to consider the relief requested in the Motion was originally scheduled for April 19, 2010 at 2:00 p.m., but was adjourned to May 19, 2010 at 11:30 a.m. Responses to the Motion were due on or before April 14, 2010 at 4:00 p.m. (the "Objection

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.

Deadline”), but Brookfield extended the Objection Deadline for the Reorganized Debtors to May 12, 2010 at 4:00 p.m. No other objections or responses to the Motion were received prior to the Objection Deadline. The Reorganized Debtors and Brookfield have now reached a consensual resolution of the Motion.

As a result of the discussions, the Debtors and Brookfield (collectively, the “Parties”) have entered into the *Stipulation Resolving the Motion of Brookfield Homes San Diego Inc. 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 plan injunction and, to the extent applicable, the automatic stay being granted in favor of Brookfield for the sole purpose of allowing Brookfield to prosecute and/or settle the Brookfield Litigation to recover applicable insurance proceeds from the Policies (as defined in the Stipulation).
- (b) If any action by Brookfield in prosecuting and/or settling the Brookfield Litigation causes the Insurers (as defined in the Stipulation) to have a claim against any of the Debtors on account of any deductible and/or self-insured retention under the Policies (including, but not limited to, with respect to defense costs), Brookfield shall, at the Debtors’ option, (i) pay such deductible and/or self-insured retention directly to the applicable Insurer, or (ii) reimburse the applicable Debtor with respect to such claim within 30 days of receipt of an invoice from the Debtor with respect thereto.
- (c) Brookfield acknowledges and agrees that the Debtors are making no representations concerning the availability of insurance under the Policies and that the Insurers have all available defenses under the Policies, including with respect to defenses, if any, that arise as the result of the Debtors entering into this stipulation with the Brookfield. Brookfield further acknowledges and agrees that the Debtors retain all defenses they may have with respect to the Brookfield Litigation.
- (d) The Parties acknowledge and agree that the Stipulation fully and finally resolves, and Brookfield waives and releases, and hereby withdraws without the need for any further action, 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 Brookfield Litigation, provided, however, that Brookfield shall retain a claim to the extent necessary to obtain insurance proceeds from the Policies.

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

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
May 10, 2010

YOUNG CONAWAY STARGATT & TAYLOR, LLP



Sean M. Beach (No. 4070)
Donald J. Bowman, Jr. (No. 4383)
Robert F. Poppiti, Jr. (No. 5052)
The Brandywine Building
1000 West Street, 17th Floor
P.O. Box 391
Wilmington, Delaware 19899-0391
Telephone: (302) 571-6600
Facsimile: (302) 571-1253

----and----

GIBSON, DUNN & CRUTCHER LLP
Michael A. Rosenthal (admitted *pro hac vice*)
200 Park Avenue, 47th Floor
New York, New York 10166-0193
Telephone: (212) 351-4000
Facsimile: (212) 351-4035

Aaron G. York (admitted *pro hac vice*)
2100 McKinney Avenue, Suite 1100
Dallas, Texas 75201-6911
Telephone: (214) 698-3100
Facsimile: (214) 571-2900

ATTORNEYS FOR THE REORGANIZED DEBTORS

EXHIBIT 1

Proposed Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE 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. 1516 and _____

**ORDER APPROVING STIPULATION
RESOLVING THE MOTION OF BROOKFIELD HOMES
SAN DIEGO INC. FOR RELIEF FROM THE AUTOMATIC STAY**

The Court having considered the Stipulation by and between the Reorganized Debtors and Brookfield Homes San Diego Inc. for Relief from Automatic Stay and/or Relief from the Plan 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: May _____, 2010
Wilmington, Delaware

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 THE MOTION OF BROOKFIELD HOMES SAN DIEGO INC. FOR RELIEF FROM THE AUTOMATIC STAY

Brookfield Homes San Diego Inc. ("*Claimant*"), and Building Materials Holding Corporation and its affiliates, the reorganized debtors in the above-referenced cases (collectively, the "*Debtors*," and together with the Claimants, 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 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*

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.

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 generally 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*") generally prevents persons or entities from bringing or continuing any actions against the Debtors on account of prepetition claims;

WHEREAS, on April 14, 2010, the Claimant filed with the Court the Motion of Brookfield Homes San Diego Inc. for Relief From Automatic Stay, seeking relief to proceed against certain insurance proceeds which may be recoverable by the Claimant as a result of Case No. 37-2008-00086579 in the San Diego Superior Court ("*Action*");

WHEREAS, the Claimants asserts that the Debtors are insured with respect to the claims alleged in the Action under the following insurance policies: Clarendon America Insurance Company and Lloyd's of London (the "*Insurers*"); Policy Numbers WCE0623990015 and 618A01635001015; Policy Terms June 1, 1999 to August 7, 2000 and August 7, 2000 to February 7, 2002, respectively (the "*Policies*");

WHEREAS, the Debtors are willing to stipulate to relief from the Plan Injunction (and the automatic stay, to the extent applicable) in favor of the Claimant for the sole purpose of allowing the Claimant to proceed with the Action to recover applicable insurance proceeds from the Policies, with certain conditions as provided below to protect the Debtors from administrative expense.

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 the automatic stay, to the extent applicable) being granted in favor of the Claimant for the sole purpose of allowing the Claimant to prosecute and/or settle the Action to recover applicable insurance proceeds from the Policies.

2. If any action by Claimant in prosecuting and/or settling the Action causes the Insurers to have a claim against any of the Debtors on account of any deductible and/or self-insured retention under the Policies (including, but not limited to, with respect to defense costs), the Claimant shall, at the Debtors' option, (i) pay such deductible and/or self-insured retention directly to the applicable Insurer, or (ii) reimburse the applicable Debtor with respect to such claim within 30 days of receipt of an invoice from the Debtor with respect thereto.

3. The Claimant acknowledges and agrees that the Debtors are making no representations concerning the availability of insurance under the Policies and that the Insurers have all available defenses under the Policies, including with respect to defenses, if any, that arise as the result of the Debtors entering into this stipulation with the Claimant. The Claimant further acknowledges and agrees that the Debtors retain all defenses they may have with respect to the Action.

4. The Parties hereby acknowledge and agree that this Stipulation shall fully and finally resolve, and the Claimant waives and releases, and hereby withdraws without the need for any further action, 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 Action, provided, however, that the Claimant shall retain a claim to the extent necessary to obtain insurance proceeds from the Policies.

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 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.

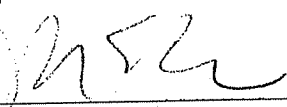
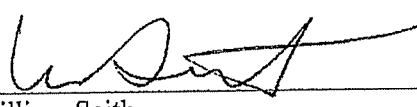
9. It is acknowledged that each Party has participated in and jointly consented to the drafting of this Stipulation and that any claimed ambiguity shall not be construed for or against either Party on account of such drafting.

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 Court, and the Parties agree to present the Stipulation promptly to the Court for approval. If the 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. This Stipulation shall become effective immediately upon entry of an order approving the Stipulation.

<p>For Building Materials Holding Corporation and its affiliates, as debtors and debtors in possession</p>  <hr/> <p>Maureen E. Thomas, Esq. 982 Coledale Ct. White Lake, MI 48386</p> <p>Dated: <u>5-9-10</u></p>	<p>For Brookfield Homes San Diego Inc.</p>  <hr/> <p>William Seith Authorized representative for Brookfield Homes San Diego Inc.</p> <p>Dated: <u>5/7/10</u></p>
---	--