

**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. 1529

**CERTIFICATION OF COUNSEL REGARDING
STIPULATION RESOLVING THE MOTION OF KB HOME
PHOENIX, INC. FOR RELIEF FROM THE AUTOMATIC STAY**

On April 14, 2010, KB HOME Phoenix, Inc. (“KB Home”), through counsel, filed the *Motion of KB HOME Phoenix, Inc. for Relief from the Automatic Stay* [Docket No. 1529] (the “Motion”) seeking relief from the automatic stay and/or the plan injunction to (i) allow KB Home to pursue its claims for indemnification and damages against certain debtors in Case Nos. CV2007-005386, CV2009-016814, and CV2009-019438 filed in the Maricopa County Superior Court of the State of Arizona and Case No. CV2005-00663 filed in the Pinal County Superior Court of the State of Arizona (collectively, the “State Court Actions”) 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.

Subsequent to the filing of the Motion, the Reorganized Debtors entered into discussions with KB Home in an attempt to reach a consensual resolution of the Motion. As a

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.

result of the discussions, the Debtors and KB Home (collectively, the “Parties”) have entered into the *Stipulation Resolving the Motion of KB HOME Phoenix, 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 KB Home for the sole purpose of allowing KB Home to prosecute and/or settle the State Court Actions to recover applicable insurance proceeds from the Policies (as defined in the Stipulation).
- (b) If any action by KB Home in prosecuting and/or settling the State Court Actions causes, or will cause, any of 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), KB Home must negotiate, pay, or otherwise satisfy such deductible and/or self-insured retention directly to the applicable Insurer, or KB Home must withdraw its claim in the State Court Actions (or portion thereof) causing the Insurer to have a claim against any Debtor before any Debtor incurs any obligation to pay any deductible and/or self-insured retention.
- (c) Notwithstanding anything to the contrary herein, no Debtor shall tender, or be required to tender, any claim in the State Court Actions to American Safety Indemnity Company or Steadfast Insurance Company unless and until each of the following conditions are satisfied: (i) KB Home requests the Debtors to tender to one or both of these Insurers in a writing pursuant to which KB Home agrees to pay to the applicable Insurer, immediately as directed by the Debtors, the self-insured retention amount required to trigger coverage under the applicable Policies; and (ii) KB Home in fact pays the applicable Insurer, as directed by the Debtors, the applicable self-insured retention amount.
- (d) KB Home acknowledges and agrees that the Debtors are making no representations concerning the availability of insurance under the Policies and that each Insurer has 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 KB Home. KB Home further acknowledges and agrees that the Debtors retain all defenses they may have with respect to the State Court Actions.
- (e) The Parties acknowledge and agree that the Stipulation fully and finally resolves, and KB Home 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 State Court Actions, provided, however, that KB Home 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 14, 2010

YOUNG CONAWAY STARGATT & TAYLOR, LLP



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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. 1529 and _____

**ORDER APPROVING STIPULATION RESOLVING THE MOTION OF
KB HOME PHOENIX, INC. FOR RELIEF FROM THE AUTOMATIC STAY**

The Court having considered the Stipulation by and between the Reorganized Debtors and KB HOME Phoenix, Inc. for Relief from the 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 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

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

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 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 KB HOMES PHOENIX, INC. FOR
RELIEF FROM THE AUTOMATIC STAY**

KB HOME Phoenix, Inc. (the "*Claimant*"), and Building Materials Holding Corporation and its affiliates, the reorganized debtors in the above-referenced cases (collectively, the "*Debtors*," and together with the Claimant, 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*

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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 April 14, 2010, the Claimant filed with the Court the Motion of KB Homes Phoenix, Inc. for Relief from the Automatic Stay, seeking relief to proceed against the applicable Debtors in Case Nos. CV2007-005386, CV2009-016814 and CV2009-019438 in Maricopa County Superior Court of the State of Arizona and Case No. CV2005-00663 in the Pinal County Superior Court of the State of Arizona (collectively, the "*State Court Actions*");

WHEREAS, the Claimant asserts that the applicable Debtors are insured with respect to the claims alleged in the State Court Actions by the insurance companies (the "*Insurers*") under the insurance policies (the "*Policies*") shown on Exhibit A hereto;

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 State Court Actions to recover applicable insurance proceeds from the Policies, if applicable, with certain conditions as provided below to protect the Debtors from incurring any 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 State Court Actions to recover applicable insurance proceeds from the Policies.

2. If any action by Claimant in prosecuting and/or settling the State Court Actions causes, or will cause, any of the Insurers to have a claim against any of the Debtors on account of any deductible and/or self-insured retention under any of the Policies (including, but not limited to, with respect to defense costs), the Claimant must negotiate, pay, or otherwise satisfy such deductible and/or self-insured retention directly to the applicable Insurer, or the Claimant must withdraw its claim in the State Court Actions (or portion thereof) causing the Insurer to have a claim against any Debtor before any Debtor incurs any obligation to pay any deductible and/or self-insured retention.

3. Notwithstanding anything to the contrary herein, no Debtor shall tender, or be required to tender, any claim in the State Court Actions to American Safety Indemnity Company or Steadfast Insurance Company unless and until each of the following conditions are satisfied: (i) the Claimant requests the Debtors to tender to one or both of these Insurers in a writing pursuant to which the Claimant agrees to pay to the applicable Insurer, immediately as directed by the Debtors, the self-insured retention amount required to trigger coverage under the applicable Policies; and (ii) the Claimant in fact pays the applicable Insurer, as directed by the Debtors, the applicable self-insured retention amount.

4. The Claimant acknowledges and agrees that the Debtors are making no representations concerning the availability of insurance under the Policies and that each Insurer has 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 State Court Actions.

5. 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 State Court Actions, provided, however, that the Claimant shall retain a claim to the extent necessary to obtain insurance proceeds from the Policies.

6. 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.

7. 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.

8. 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.

9. 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

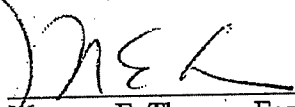
hereto concerning the subject matter hereof, and no modification or amendment to this Stipulation shall be valid unless it is in writing, and signed by the Party or Parties to be charged.

10. 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.

11. 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.

12. 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.

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

<p>For Building Materials Holding Corporation and its affiliates, as Reorganized Debtors</p> <p></p> <p>Maureen E. Thomas, Esq. 982 Coledale Ct. White Lake, MI 48386</p> <p>Dated: <u>5-5-10</u></p>	<p>For KB HOME Phoenix, Inc.</p> <p>_____</p> <p>Dated: _____</p>
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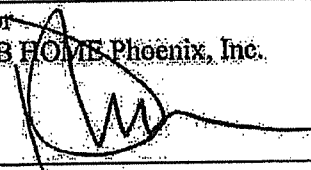
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For Building Materials Holding Corporation and its affiliates, as Reorganized Debtors	For KB HOME Phoenix, Inc. 
Maureen E. Thomas, Esq. 982 Coledale Ct. White Lake, MI 48386	Dated: <u>5-10-10</u>
Dated: _____	

SK Ranch Homeowners Association v. KB Home Phoenix Inc.

LG Our File No: 08837;1436.02/ Case No: CV2005-00663

SUBJECT MATTER	INSURANCE CARRIER	POLICY NO.	TO/THROUGH DATE
BBP CONCRETE	NATIONAL UNION FIRE INSURANCE w/o AIG	BE357706	6/26/98-99
BBP CONCRETE	CNA INSURANCE	CO1062590500	6/26/98-99
BBP CONCRETE	AMERICAN GUARANTY & LIABILITY	GLO5217154-00 SU005218647	6/26/01-02
BBP CONCRETE	FEDERATED INSURANCE	6.31648E+12	6/26/00-01
BBP CONCRETE	STEADFAST INSURANCE	SCO521715401 SU0521864701	6/26/01-03
BBP CONCRETE	AMERICAN SAFETY INSURANCE	XG103-1164-001 Binder ESL006099-04-02 ESU006495-04-01-EXCESS	6/26/03-05

**KB Home v. CH2, et al.
Lorber, Greenfield & Polito, LLP**

Maricopa County Superior Court Case No.: CV2007-005386

SUBCONTRACTOR	INSURANCE CARRIER	POLICY NO.	POLICY - PERIOD
BBP CONCRETE CO. nka SELECTBUILD ARIZONA, LLC	AMERICAN GUARANTEE & LIABILITY INSURANCE C/O ZURICH	GLOS217154-00	6/26/01-6/26/02
BBP CONCRETE CO. nka SELECTBUILD ARIZONA, LLC	CNA INSURANCE	CO1062590500	6/26/98-99
BBP CONCRETE CO. nka SELECTBUILD ARIZONA, LLC	FEDERATED INSURANCE c/o FEDERATED MUTUAL GROUP	0631648; 0632461	6/26/00-6/26/04
BBP CONCRETE CO. nka SELECTBUILD ARIZONA, LLC	AMERICAN SAFETY INDEMNITY COMPANY	BINDER; XGI03-4464-001; ESCL006099-04-02 ESL 006099-03-01	6/26/03-6/26/05
BBP CONCRETE CO. nka SELECTBUILD ARIZONA, LLC	STEADFAST INSURANCE COMPANY c/o ZURICH	SCO521715401; SUO521864701	6/26/02-6/26/03; 6/26/01-6/26/05

<small> As a condition of this contract, the Contractor shall provide and maintain the following insurance coverage for the duration of the contract and for 90 days thereafter. The Contractor shall provide evidence of such insurance coverage to the Project Manager. </small>			
<small> SUBCONTRACTOR'S RESPONSIBILITIES AND OBLIGATIONS </small>			
BBP Concrete Co. nka SelectBuild Arizona, LLC	FEDERATED INSURANCE	0631648	6/26/00 - 6/26/01
BBP Concrete Co. nka SelectBuild Arizona, LLC	AMERICAN GUARANTEE & LIABILITY INSURANCE	0632461 <i>Excess</i> GLOS217154-00	6/26/00 - 6/26/01 6/26/01 - 6/26/02
BBP Concrete Co. nka SelectBuild Arizona, LLC	STEADFAST INSURANCE COMPANY	SCOS21715401; SUO5218647 SUO521864701; <i>Excess</i>	6/26/02 - 6/26/03 6/26/01 - 6/26/02 6/26/02 - 6/26/03

<p>BBP Concrete Co. aka SelectBuild Arizona, LLC</p>	<p>AMERICAN SAFETY INDEMNITY COMPANY</p>	<p>BBP Concrete Co. (Greenway Pkwy) 10860 Greenway Pkwy Phoenix, AZ 85024</p>	<p>XGI034464001</p> <p>ESL006099-04-02;</p> <p>ESU006495-04-01 <i>Excess</i></p>	<p>6/26/03 - 6/26/04; 6/26/04 - 6/26/05 6/26/04 - 6/26/05</p>
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Aguilar, et al v. KB Home Phoenix, Inc. (Greenway Parc) LCR Control No. 083372030 02 / Case No. CV-2009-016394			
SUBCONTRACTOR	INSURANCE CARRIER AND ADDRESS	POLICY NO.	POLICY PERIOD
Knaipp Brothers Industries, LLC nka Selectbuild Nevada, Inc	FEDERATED SERVICE INSURANCE COMPANY	625832; 632253	10/1/98-10/1/99 10/1/99-10/1/00

Tracy, et al. v. KB Homes Phoenix (Boatner)
 Lorber, Greenfield, Polito File #: 08837,088.02, Maricopa Sup'r. Court No. CV2009-019438

BBP CONCRETE	FEDERATED INSURANCE	0631648	06/26/99-06/26/01
BBP CONCRETE	NATIONAL UNION FIRE INSURANCE CO. c/o AIG	DE706701 Excess Policy	06/26/99-06/26/00
BBP CONCRETE	AMERICAN GUARANTEE & LIABILITY INSURANCE	GLOS217154-00	06/26/01-06/26/02
BBP CONCRETE	STEADFAST INSURANCE	SUOS218647	06/26/01-06/26/02
		SUOS21864701 Excess Policies	06/26/02-06/26/03
BBP CONCRETE	AMERICAN SAFETY INDEMNITY COMPANY	XGI034464001	06/26/03-06/26/04
		ESL066099-04-02	06/26/04-07/1/05