

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

In re:

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

Reorganized Debtors.

Chapter 11

Case No. 09-12074 (KJC)

Jointly Administered

Ref. Docket No. 1522

**CERTIFICATION OF COUNSEL REGARDING STIPULATION  
BY AND BETWEEN THE REORGANIZED DEBTORS AND  
K. HOVNANIAN AT BRIDGEPORT, INC. RESOLVING  
THEIR MOTION FOR RELIEF FROM THE AUTOMATIC STAY**

On April 8, 2010, K. Hovnanian at Bridgeport, Inc. ("K. Hovnanian") filed the *Motion of K. Hovnanian at Bridgeport, Inc. for Relief from the Automatic Stay* [Docket No. 1522] (the "Motion") seeking relief to proceed against certain insurance proceeds which may be recoverable by K. Hovnanian as a result of Case No. 37-2008-00085315-CU-CD-CTL in the Superior Court of the State of California, County of San Diego (the "Action").

The Reorganized Debtors filed a limited objection to the Motion on May 5, 2010 [Docket No. 1556], and the hearing to consider the relief requested in the Motion is presently scheduled for July 8, 2010. No other objections or responses to the Motion were received prior to the original Objection Deadline of May 5, 2010. The Reorganized Debtors have now reached a consensual resolution of the Motion with K. Hovnanian.

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<sup>1</sup> 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.

As a result of the discussions, the Reorganized Debtors and K. Hovnanian (collectively, the “Parties”) have entered into the *Stipulation Resolving Motion of K. Hovnanian for Relief from 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 the automatic stay, to the extent applicable) being granted in favor of K. Hovnanian for the sole purpose of allowing K. Hovnanian to prosecute and/or settle the Action to recover applicable insurance proceeds from the following insurance policies: Clarendon America Insurance Company, Policies Number WCE0623990015; Policies Term June 1, 1999 to August 7, 2000, with a per-occurrence deductible of \$5,000, and Lloyd’s of London, Policies Number 618A01635001015; Policies Term August 7, 2000 to February 7, 2002, with a per-occurrence deductible of \$5,000 (the “Policies,” and Clarendon and Lloyds are collectively referred to as the “Insurers”).
- (b) If any action by K. Hovnanian in prosecuting and/or settling the Action causes the Insurers to have a claim against any of the Reorganized Debtors on account of any deductible and/or self-insured retention under the Policies (including, but not limited to, with respect to defense costs), it is agreed that payment of any such deductible and/or self-insured retention shall be made directly to the applicable Insurers by the additional insured carriers funding the defense of K. Hovnanian in the Action. All such payments by these additional insured carriers shall be made through the Joint Defense Funding Agreement administered through JDi Data, Inc. The parties agree that this mechanism, and neither K. Hovnanian nor the Reorganized Debtors, shall be the source of funding for any claim against any of the Reorganized Debtors on account of any deductible and/or self-insured retention under the Policies.
- (c) K. Hovnanian acknowledges and agrees that the Reorganized 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 Reorganized Debtors entering into the Stipulation with K. Hovnanian. K. Hovnanian further acknowledges and agrees that the Reorganized Debtors retain all defenses they may have with respect to the Action.
- (d) The Parties acknowledge and agree that the Stipulation shall fully and finally resolve, and K. Hovnanian waives and releases, and

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 K. Hovnanian shall be deemed to have filed a timely claim in an unliquidated amount with respect to the Action solely to the extent necessary to obtain insurance proceeds from the Policies. For the avoidance of doubt, K. Hovnanian shall not be entitled to any recovery or distribution from the Debtors or their estates other than from applicable insurance Policies.

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.

WHEREFORE, the Reorganized Debtors respectfully request entry of the Proposed Order, attached hereto as Exhibit 1, at the Court’s earliest convenience without further notice or a hearing.

Dated: Wilmington, Delaware  
June 25, 2010

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Robert F. Poppiti, Jr.

Sean M. Beach (No. 4070)  
Donald J. Bowman, Jr. (No. 4383)  
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---- and ----

SACKS TIERNEY P.A.  
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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.*<sup>1</sup>

Reorganized Debtors.

Chapter 11

Case No. 09-12074(KJC)

Jointly Administered

Ref. Docket Nos. 1522 and \_\_\_\_\_

**ORDER APPROVING STIPULATION BY AND BETWEEN  
THE REORGANIZED DEBTORS AND K. HOVNANIAN AT  
BRIDGEPORT, INC. RESOLVING THE MOTION OF K. HOVNANIAN  
AT BRIDGEPORT, INC. FOR RELIEF FROM AUTOMATIC STAY**

The Court having considered the Stipulation Resolving the Motion of K.

Hovnanian at Bridgeport, Inc. 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 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

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<sup>1</sup> 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  
June \_\_\_\_, 2010

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Kevin J. Carey  
Chief United States Bankruptcy Judge

**EXHIBIT A**

Stipulation

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

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

**STIPULATION RESOLVING THE MOTION OF K. HOVNIANIAN AT BRIDGEPORT, INC. FOR RELIEF FROM AUTOMATIC STAY**

K. Hovnianian at Bridgeport, 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 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*

<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.



*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 8, 2010, the Claimant filed with the Court the Motion of K. Hovnanian at Bridgeport, 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. 37-2008-00085315-CU-CD-CTL in the Superior Court of the State of California, County of San Diego (the "*Action*");

WHEREAS, the Claimant asserts that the Debtors are insured with respect to the claims alleged in the Action under the following insurance policies: Clarendon America Insurance Company, Policies Number WCE0623990015; Policies Term June 1, 1999 to August 7, 2000, with a per-occurrence deductible of \$5,000, and Lloyds of London, Policies Number 618A01635001015; Policies Term August 7, 2000-February 7, 2002, with a per-occurrence deductible of \$5,000 (the "*Policies*"); Clarendon and Lloyds are collectively referred to as the "Insurers".

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), it is agreed that payment of any such deductible and/or self-insured retention shall be made directly to the applicable Insurers by the additional insured carriers funding the defense of K. Hovnanian in the Action. All such payments by these additional insured carriers shall be made through the Joint Defense Funding Agreement administered through JDi Data, Inc. The parties agree that this mechanism, and neither Claimant nor Debtors, shall be the source of funding for any claim against any of the Debtors on account of any deductible and/or self-insured retention under the Policies.

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 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 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 be deemed to have filed a timely claim in an unliquidated amount with respect to the Action solely to the extent necessary to obtain insurance proceeds from the Policies. For the avoidance of doubt, Claimant shall not be entitled to any recovery or distribution from the Debtors or their estates other than from applicable insurance 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 and all other bankruptcy proceedings. 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

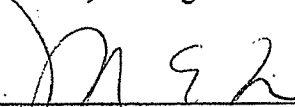

hereto concerning the subject matter hereof, and no modification or amendment to this Stipulation shall be valid unless it is in writing, signed by the Party or Parties to be charged.

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 reorganized debtors</p> <p></p> <hr/> <p>Maureen E. Thomas, Esq. 982 Coledale Ct. White Lake, MI 48386</p> <p>Dated: <u>6-25-2010</u></p>	<p>For K. Hovnanian at Bridgeport, Inc.</p> <p></p> <hr/> <p>Yvette Dumas, Esq.</p> <p>Dated: <u>6/24/10</u></p>
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