

**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. 956 and 1653

**CERTIFICATION OF COUNSEL REGARDING STIPULATION
RESOLVING THE REQUEST OF S&S CONCRETE & MATERIALS, LLC
FOR RELIEF FROM THE AUTOMATIC STAY AND PLAN INJUNCTION**

On November 19, 2009, the Court entered the Order, Pursuant to Sections 105 and 362 of the Bankruptcy Code and Bankruptcy Rule 9019, Authorizing the Debtors to Implement Omnibus Procedures for Modifying the Automatic Stay as It Relates to Certain Prepetition Litigation (the "Procedures Order") [Docket No. 956]. In accordance with the Procedures Order, on August 10, 2010, the Reorganized Debtors filed the *Notice of Stipulation Resolving the Request of S&S Concrete & Materials, LLC for Relief from the Automatic Stay and Plan Injunction* (the "Notice") [Docket No. 1653] with respect to the *Stipulation Resolving the Request of S&S Concrete & Materials, LLC for Relief from the Automatic Stay and Plan Injunction* (the "Stipulation"). Pursuant to the Procedures Order, the objection deadline was August 25, 2010 at 4:00 p.m. (ET).

SelectBuild Nevada, Inc., one of the Reorganized Debtors, filed the State Court Action referenced in the Stipulation against S&S Concrete & Materials, LLC ("S&S") related to

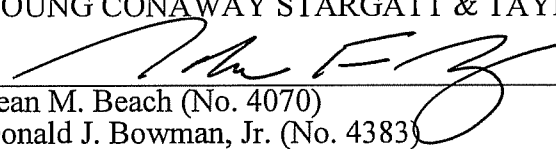
¹ The Reorganized Debtors, along with the last four digits of each Reorganized Debtor's tax identification number, are as follows: Building Materials Holding Corporation (4269), BMC West Corporation (0454), SelectBuild Construction, Inc. (1340), SelectBuild Northern California, Inc. (7579), Illinois 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.

concrete supplied by S&S that SelectBuild Nevada, Inc. alleges was defective. On July 15, 2010, S&S filed in the State Court Action S&S Concrete & Materials, LLC's Counterclaim (Proposed—Subject to Motion for Relief From Bankruptcy State) (the "Counterclaim") that generally alleges that S&S and SelectBuild Nevada, Inc. entered into an oral contract under which S&S provided additional services and concrete to SelectBuild Nevada, Inc. in exchange for SelectBuild Nevada, Inc.'s alleged promise to resolve the issues related to the defective concrete and cover the costs related thereto. Under the Stipulation, S&S will be permitted to prosecute and/or settle this Counterclaim for purposes of defensive setoff only against SelectBuild Nevada, Inc.'s claims in the State Court Action.

The undersigned hereby certifies that, as of the date hereof, he has received no answer, objection or other responsive pleading to the Notice or the Stipulation. It is hereby respectfully requested that the Order approving the Stipulation attached hereto as Exhibit 1 be entered at the earliest convenience of the Court.

Dated: Wilmington, Delaware
August 30, 2010

YOUNG CONAWAY STARGATT & TAYLOR, LLP



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---- and ----

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ATTORNEYS FOR REORGANIZED DEBTORS

EXHIBIT 1

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. 956, 1653 and _____

**ORDER APPROVING STIPULATION RESOLVING
THE REQUEST OF S&S CONCRETE & MATERIALS, LLC
FOR RELIEF FROM THE AUTOMATIC STAY AND PLAN INJUNCTION**

Upon consideration of the *Certification of Counsel Regarding Stipulation Resolving the Request of S&S Concrete & Materials, LLC for Relief from the Automatic Stay and Plan Injunction* (the "Certification of Counsel"); and the Court having found, based on the statements made in the Certification of Counsel, that notice of the Stipulation (as defined in the Certification of Counsel) was provided in accordance with the Procedures Order (as defined in the Certification of Counsel); and good and sufficient cause appearing therefor, it is hereby ORDERED that:

1. The Stipulation, a copy of which is attached hereto as Exhibit A, is hereby approved.

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.

2. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: August ____, 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, <i>et al.</i> ¹)	Case No. 09-12074 (KJC)
Reorganized Debtors.)	Jointly Administered

STIPULATION RESOLVING THE REQUEST OF S&S CONCRETE & MATERIALS, LLC FOR RELIEF FROM AUTOMATIC STAY AND PLAN INJUNCTION

S&S Concrete & Materials, LLC (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 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, SelectBuild Nevada, Inc., one of the Debtors, filed an action against the Claimant in the District Court of Clark County, Nevada; Case No. A607695 (the "*State Court Action*");

WHEREAS, the Claimant has requested that the Debtors stipulate to lift the Plan Injunction (and the automatic stay, to the extent applicable) to allow the Claimant to assert S&S Concrete and Materials, LLC's Counterclaim (Proposed—Subject to Motion for Relief From Bankruptcy Stay) in the form filed by the Claimant in the State Court Action on or about July 15, 2010 (the "*Counterclaim*");

WHEREAS, under the facts of this case, 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 prosecute and/or settle the Counterclaim in the State Court Action for purposes of defensive setoff against SelectBuild Nevada, Inc.'s claims only.

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 Counterclaim in the State Court Action for purposes of defensive setoff against SelectBuild Nevada, Inc.'s claims only; the Claimant acknowledges and agrees that it shall not be entitled to any affirmative monetary recovery against SelectBuild Nevada, Inc. with respect to the Counterclaim and the Plan Injunction (and the automatic stay, to the extent applicable) remains in force with respect to any effort by Claimant to obtain any affirmative monetary recovery against SelectBuild Nevada, Inc. with respect to the Counterclaim.

2. 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, or that the Counterclaim is valid (which the Debtors specifically dispute). 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.

3. 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.

4. 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.

5. 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

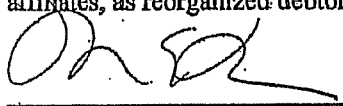
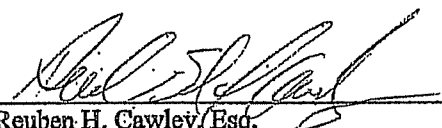
hereto concerning the subject matter hereof, and no modification or amendment to this Stipulation shall be valid unless it is in writing, signed by the Party or Parties to be charged.

6. 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.

7. 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.

8. 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.

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

For Building Materials Holding Corporation and its affiliates, as reorganized debtors 	For S&S Concrete & Materials, LLC 
Maureen E. Thomas, Esq. 982 Coledale Ct. White Lake, MI 48386	Reuben H. Cawley, Esq. Attorney at Law Wilson Elser Moskowitz Edelman & Dicker LLP 300 South 4 th Street—11 th Floor Las Vegas, NV 89101-6014
Dated: 8-4-10	Dated: 8/9/10