

**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

**Objection Deadline: December 21, 2010 at 4:00 p.m. (ET)**

**NOTICE OF STIPULATION RESOLVING PROOF OF CLAIM OF  
POST UPTOWN, L.L.C., POST APARTMENT HOMES, L.P., POST GP HOLDINGS,  
INC. AND POST MIDTOWN SQUARE, L.P. AND REORGANIZED DEBTORS  
FIFTEENTH OMNIBUS (SUBSTANTIVE) OBJECTION THERETO**

PLEASE TAKE NOTICE that, on June 16, 2009 (the "Petition Date"), the above-captioned debtors and debtors in possession (collectively, the "Debtors"), now the Reorganized Debtors under the Plan (as defined below), filed voluntary petitions for relief under title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code").

PLEASE TAKE FURTHER NOTICE that, on December 17, 2009, the United States Bankruptcy Court for the District of Delaware (the "Court") entered the *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 Order") confirming the Debtors' joint plan of reorganization (as may be amended or supplemented from time to time, the "Plan"). The Plan became effective on January 4, 2010 (the "Effective Date").

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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.

**PLEASE TAKE FURTHER NOTICE** that from the Petition Date until the Effective Date, the automatic stay imposed by section 362 of the Bankruptcy Code prohibited 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 the Confirmation Order (the “Plan Injunction”) prevents persons or entities from bringing or continuing any actions against the Reorganized Debtors on account of prepetition claims.

**PLEASE TAKE FURTHER NOTICE** that, 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* [Docket No. 956] (the “Procedures Order”), pursuant to which the Debtors were authorized to adopt and implement the Automatic Stay Relief Procedures (as defined in the Procedures Order).

**PLEASE TAKE FURTHER NOTICE** that, in accordance with the Procedures Order, the Debtors hereby give notice of entry into the *Stipulation Resolving Proof of Claim of Post Uptown, L.L.C., Post Apartment Homes, L.P., Post GP Holdings, Inc., and Post Midtown Square, L.P. and Reorganized Debtors Fifteenth Omnibus (Substantive) Objection Thereto* (the “Stipulation”),<sup>2</sup> a copy of which is attached hereto as Exhibit A. Pursuant to the Stipulation, as set forth more fully therein, the parties have agreed to relief from the Plan Injunction in favor of Post Uptown, L.L.C., Post Apartment Homes, L.P., Post GP Holdings, Inc. and Post Midtown Square, L.P. (collectively, the “Claimants”) for the sole purpose of allowing the Claimants to proceed with that certain action currently identified as *Post Uptown, L.L.C., Post Apartment Homes, L.P., Post GP Holdings, Inc. and Post Midtown Square, L.P. vs. Royal Door, Staz-On*

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Stipulation.

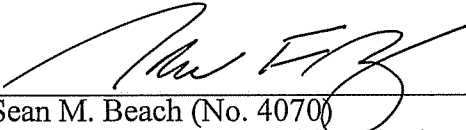
*Roofing, SWI Finishing, Inc., Sam White Investments, Inc., Texas EIFS, LLC and Monarch Windows and Doors, LLC*, Cause No. 2008-13691 (the “Action”), pending in the 333rd Judicial District Court of Harris County, Texas for the sole purposes of allowing the Claimants to proceed with the Action or commence New Litigation in accordance with the terms and conditions of the Stipulation: (i) to liquidate the claims previously asserted in the Action and the Proof of Claim; and (ii) in the event that the Claimants obtain a judgment in the Action or New Litigation, to recover on account of such judgment against the applicable insurance proceeds from the Policies, subject to those certain conditions set forth in Paragraph 3 of the Stipulation to protect the Debtors and their estates from any administrative expense given the uncertainty surrounding the provisions of the Policies themselves.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the Procedures Order, Notice Parties (as defined in the Procedures Order) are required to file objections to the Stipulation with the Court and serve the same on the Debtors’ undersigned counsel within fifteen (15) days of service of this notice. In accordance with the Procedures Order, unresolved objections shall be heard before the Honorable Kevin J. Carey at the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 5th Floor Courtroom No. 5, Wilmington, Delaware 19801.

**PLEASE TAKE FURTHER NOTICE THAT IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF REQUESTED HEREIN WITHOUT FURTHER NOTICE OR A HEARING.**

Dated: Wilmington, Delaware  
December 6, 2010

YOUNG CONAWAY STARGATT & TAYLOR, LLP



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Sean M. Beach (No. 4070)  
Donald J. Bowman, Jr. (No. 4383)  
Robert F. Poppiti, Jr. (No. 5052)  
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Aaron G. York (admitted *pro hac vice*)  
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ATTORNEYS FOR REORGANIZED DEBTORS

**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 PROOF OF CLAIM OF POST UPTOWN, L.L.C., POST APARTMENT HOMES, L.P., POST GP HOLDINGS, INC. AND POST MIDTOWN SQUARE, L.P. AND REORGANIZED DEBTORS FIFTEENTH OMNIBUS  
(SUBSTANTIVE) OBJECTION THERETO**

Post Uptown, L.L.C., Post Apartment Homes, L.P., Post GP Holdings, Inc. and Post Midtown Square, L.P. (collectively, the “Claimants”) and Building Materials Holding Corporation and its affiliates, the debtors in possession in the above-referenced cases (collectively, the “Debtors,” and together with the Claimants, the “Parties”), herby 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 chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). Each Debtor is continuing to operate its business and manage its properties as a debtor in possession

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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.

pursuant to section 1107(a) and 1108 of the Bankruptcy Code. The Debtors' cases are being jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure;

WHEREAS, on December 7, 2009 the Debtors filed the Joint Plan of Reorganization for the Debtors Under Chapter 11 of the Bankruptcy Code (the "Plan");

WHEREAS, on December 17, 2009, the Court entered an order approving the Plan [Docket No. 1182] (the "Confirmation Order") and the Plan became effective on January 4, 2010 (the "Effective Date");

WHEREAS, from the Petition Date until the Effective Date, the automatic stay imposed by section 362 of the Bankruptcy Code 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 the 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 August 31, 2009, the Claimants filed their proof of claim (Claim No. 2432) (the "Proof of Claim") asserting a claim for \$1,165,683.90 regarding alleged construction defects regarding a multi-building apartment complex located in Houston, TX (and being the same claims asserted in the Action (as defined below));

WHEREAS, on February 19, 2010 the Debtors filed their Fifteenth Omnibus (Substantive) Objection to Claims Pursuant to Section 502(b) of the Bankruptcy Code, Bankruptcy Rules 2003 and 3007 and Local Rule 3007-1 [Docket No. 1432] objecting to, among other claims, the Proof of Claim;

WHEREAS, the Claimants are seeking relief from the Plan Injunction to liquidate their Proof of Claim and to proceed against any insurance proceeds which may be recoverable by

Claimants as a result of that certain litigation styled *Post Uptown, L.L.C., Post Apartment Homes, L.P., Post GP Holdings, Inc. and Post Midtown Square, L.P. vs. Royal Door, Staz-On Roofing, SWI Finishing, Inc., Sam White Investments, Inc., Texas E I F S, LLC and Monarch Windows and Doors, LLC*, pending under Cause No. 2008-13691 (the “Action”) in the 333rd Judicial District Court of Harris County, Texas (the “State Court”);

WHEREAS, the Debtors had answered the Action prior to the Petition Date and their defense was being provided by certain pre-petition insurance carriers;

WHEREAS, the Debtors and the Claimants have agreed that the Claimants’ Proof of Claim should be liquidated in the Action or, solely in the event that the State Court determines that the Debtors cannot be added back into the Action, then in another litigation in the State Court commenced by the Claimants no later than forty-five (45) days after the Court’s entry of an order approving this Stipulation (with any such litigation commenced by the Claimants in accordance with the terms and conditions of this Stipulation being referred to herein as “New Litigation”), as opposed to being liquidated in the Bankruptcy Court; provided, however, that any and all rights and defenses available to the Debtors under state law or otherwise with respect to such Action shall be, and hereby are, expressly preserved, and that in the event any such New Litigation is properly commenced by the Claimants in accordance with the terms and conditions of this Stipulation, any and all rights and defenses available to the Debtors under state law or otherwise with respect to such New Litigation shall be, and hereby are, expressly preserved;

WHEREAS, the Claimants assert that they are entitled to recover from certain pre-petition insurance policies (the “Policies”) issued by certain of the Debtors’ insurers (each, an “Insurer”), with respect to the claims alleged in the Action and in the Proof of Claim;



WHEREAS, the Debtors are willing to stipulate to relief from the Plan Injunction in favor of the Claimants for the sole purposes of allowing the Claimants to proceed with the Action or commence New Litigation in accordance with the terms and conditions of this Stipulation: a) to liquidate the claims previously asserted in the Action and their Proof of Claim; b) in the event that the Claimants obtain a judgment in the Action or New Litigation, to recover on account of such judgment against the applicable insurance proceeds from the Policies, subject to those certain conditions set forth in Paragraph 3 below to protect the Debtors and their estates from any administrative expense given the uncertainty surrounding the provisions of the Policies themselves; and c) in the event that the Claimants obtain a judgment in the Action or New Litigation, the Claimants shall be allowed a general unsecured claim against the Debtors' estate for any portion of such judgment not covered by insurance proceeds;

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

1. The Parties hereby acknowledge and agree to relief from the Plan Injunction being granted solely in favor of the Claimants for the sole purposes of allowing the Claimants to proceed with the Action or commence New Litigation in accordance with the terms and conditions of this Stipulation: a) to liquidate the claims previously asserted in the Action and their Proof of Claim; and b) in the event that the Claimants obtain a judgment in the Action or New Litigation, to recover on account of such judgment against the applicable insurance proceeds from the Policies, subject to those certain conditions set forth in Paragraph 3 below to protect the Debtors and their estates from any administrative expense given the uncertainty surrounding the provisions of the Policies themselves; provided, however, that any and all rights and defenses available to the Debtors under state law or otherwise with respect to such Action

shall be, and hereby are, expressly preserved, and that in the event any such New Litigation is properly commenced by the Claimants in accordance with the terms and conditions of this Stipulation, any and all rights and defenses available to the Debtors under state law or otherwise with respect to such New Litigation shall be, and hereby are, expressly preserved.

2. The Parties hereby acknowledge and agree that in the event that the Claimants obtain a judgment in the Action or New Litigation, the Claimants shall be allowed a general unsecured claim against the Debtors' estate for any portion of such judgment not covered by insurance proceeds.

3. If any action taken by the Claimants would cause the Insurer to have a claim against the Debtors on account of any deductible and/or self insured retention under a Policy, the Claimants acknowledge and agree that they shall not seek any payment under the Policy unless they satisfy directly with the Insurer any such deductible and/or self insured retention.

4. The Parties agree that service of the amended petition to be filed in the Action or the petition in any New Litigation properly commenced by the Claimants in accordance with the terms and conditions of this Stipulation will be sufficient if served on: a) the undersigned counsel for the Debtors; and b) Cynthia A. Tari, Kristen B. Blanford and/or Kenneth C. Riney of Hermes Sargent Bates, LLP, 901 Main Street, Suite 5200, Dallas, Texas 75202, the counsel that had appeared on behalf of the Debtors in the Action.

5. The Parties hereby acknowledge and agree that this Stipulation shall fully and finally resolve, and the Claimants hereby 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 Proof of Claim, the Action and any New Litigation properly commenced by the Claimants in accordance with the terms and conditions of this Stipulation; provided, however,

that the Claimants shall retain: (i) a claim to the extent necessary to obtain insurance proceeds from a Policy; and (ii) a general unsecured claim against the Debtors' estate to the extent any judgment obtained by the Claimants in the Action or New Litigation is not covered by insurance proceeds. For the avoidance of doubt, this Stipulation is not intended and shall not be deemed to permit other parties to the Action to pursue cross-claims against the Debtors without first obtaining an order from the Court lifting the Plan Injunction as to such cross-claims.

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 cost with respect to the execution and delivery of this Stipulation. Each of the undersigned are duly authorized and empowered to execute this Stipulation.

8. The 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 dispute or controversy 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 amendments to this Stipulation shall be valid unless it is in writing, signed by the Party or Parties to be charged and approved by the Court.

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 of such drafting.

11. The 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 of the Court approving the Stipulation.

<p>For DEBTORS</p>  <hr/> <p>Maureen Thomas Esq. Building Materials Holding Corporation 720 Park Boulevard, Suite 200 Boise, ID 83712-7714 Telephone: 248-698-0965</p> <p>Dated: December 2, 2010</p>	<p>For CLAIMANTS</p> <p>HIRSCH &amp; WESTHEIMER, P.C.</p> <p><u>/s/ Michael J. Durrschmidt</u> Michael J. Durrschmidt Texas Bar No. 06287650 700 Louisiana, Floor 25 Houston, Texas 77002 Telephone: 713-220-9165 Facsimile: 713-223-9319 E-mail: <a href="mailto:mdurrschmidt@hirschwest.com">mdurrschmidt@hirschwest.com</a></p> <p>Dated: December 2, 2010</p>
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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

**AFFIDAVIT OF SERVICE**



STATE OF DELAWARE    )  
                                  ) SS  
NEW CASTLE COUNTY    )

Casey S. Cathcart, being duly sworn according to law, deposes and says that she is employed by the law firm of Young Conaway Stargatt & Taylor, LLP, co-counsel to the Reorganized Debtors, and that on December 6, 2010, she caused a copy of the **Notice of Stipulation Resolving Proof of Claim of Post Uptown, L.L.C., Post Apartment Homes, L.P., Post GP Holdings, Inc. and Post Midtown Square, L.P. and Reorganized Debtors' Fifteenth Omnibus (Substantive) Objection Thereto** to be served as indicated upon the parties identified on the attached service list and the following party:

Michael J. Durrschmidt, Esq.  
Hirsch & Westheimer, P.C.  
700 Louisiana Street, 25th Floor  
Houston, TX 77002  
(Counsel to Post Uptown, L.L.C., et al.)  
*First Class Mail*

  
\_\_\_\_\_  
Casey S. Cathcart

SWORN TO AND SUBSCRIBED before me this 6th day of December, 2010.

  
\_\_\_\_\_  
Notary Public  
My Commission Expires:   
**ERICA A. BROYLES**  
**NOTARY PUBLIC**  
**STATE OF DELAWARE**  
**My commission expires Sept. 6, 2013**

<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.

**BUILDING MATERIALS HOLDING CORPORATION**  
**2002 SERVICE LIST**  
**12/6/2010**

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**BUILDING MATERIALS HOLDING CORPORATION**  
**2002 SERVICE LIST**  
**12/6/2010**

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**BUILDING MATERIALS HOLDING CORPORATION**  
**2002 SERVICE LIST**  
**12/6/2010**

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Unsecured Creditors)  
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IKON Financial Services  
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**BUILDING MATERIALS HOLDING CORPORATION**  
**2002 SERVICE LIST**  
**12/6/2010**

Internal Revenue Service  
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(Top 50)  
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Cliff W. Marcek, Esq.  
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