

**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. 956 and 1777

**CERTIFICATION OF COUNSEL REGARDING STIPULATION RESOLVING THE  
REQUEST OF D.R. HORTON, INC. FOR RELIEF FROM THE 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 [Docket No. 956] (the "Procedures Order"). In accordance with the Procedures Order, on January 3, 2011, the Reorganized Debtors filed the *Notice of Stipulation Resolving the Request of D.R. Horton, Inc. for Relief from the Plan Injunction* [Docket No. 1777] (the "Notice") with respect to the *Stipulation Resolving the Request of D.R. Horton, Inc. for Relief from the Plan Injunction* (the "Stipulation"). Pursuant to the Procedures Order, the objection deadline for the Notice and the Stipulation was January 18, 2011 at 4:00 p.m. (ET).

D. R. Horton Inc., defined as the "Claimant" in the Stipulation, tendered defense and indemnification to BMC West Corporation ("BMC West"), one of the Reorganized Debtors, of two claims alleging defects in construction of single family residences: (i) the first claim, a lawsuit currently identified as *Vintage Creek Homeowners' Association vs. D.R. Horton, Inc.*, Washington Circuit Court Case No. 0107175CV; and (ii) the second claim, a statutory claim filed under Oregon

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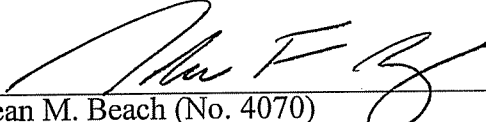
<sup>1</sup> The Reorganized Debtors, along with the last four digits of each Reorganized Debtor's tax identification number, are as follows: Building Materials Holding Corporation (4269), BMC West Corporation (0454), SelectBuild Construction, Inc. (1340), SelectBuild Northern California, Inc. (7579),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

Revised Statute 700.565 and currently referred to as *Hacker v. D.R. Horton, Inc.* (together, the “Actions”). Under the Stipulation, the Claimant will be permitted to prosecute and/or settle these claims against BMC West in the Actions so long as it limits any recovery to applicable insurance proceeds from the Policies (as defined in the Stipulation).

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. Attached hereto as Exhibit 1 is a proposed form of order (the “Proposed Order”) approving the Stipulation. The Reorganized Debtors respectfully request the Court to enter the Proposed Order without further notice or a hearing at the earliest convenience of the Court.

Dated: Wilmington, Delaware  
January 20, 2011

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ATTORNEYS FOR REORGANIZED DEBTORS

**EXHIBIT 1**

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. 956, 1777 and \_\_\_\_\_

**ORDER APPROVING STIPULATION RESOLVING THE REQUEST OF  
D.R. HORTON, INC. FOR RELIEF FROM THE PLAN INJUNCTION**

Upon consideration of the *Certification of Counsel Regarding Stipulation Resolving the Request of D.R. Horton, Inc. for Relief from the Plan Injunction* (the "Certification of Counsel");<sup>2</sup> and the Court having found, based on the statements made in the Certification of Counsel, that notice of the Stipulation was provided in accordance with the Procedures Order; 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.
2. This Court shall retain jurisdiction with respect to all matters arising from or related to the interpretation or implementation of this Order.

Dated: January \_\_\_\_\_, 2011  
Wilmington, Delaware

\_\_\_\_\_  
Kevin J. Carey  
Chief United States Bankruptcy Judge

<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.

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

**EXHIBIT A**

Stipulation



WHEREAS, 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 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 Claimant has requested that Debtor agree to lift the Plan Injunction to allow Claimant to proceed to recover certain insurance proceeds that may be recoverable by Claimant in connection with (i) a lawsuit entitled Vintage Creek Homeowners' Association vs D.R. Horton, Inc. pending in Washington Circuit Court Case No. 0107175CV and (ii) a statutory claim filed under ORS 700.565 referred to as Hacker vs D.R. Horton, Inc. (collectively the "Actions").

WHEREAS, the Claimant asserts it is entitled to recover from either or both of the following insurance policies issued to the Debtors by the listed insurance companies (the "*Insurers*"): Royal Insurance Company Policy No. P2TV463132-002 (11-11-02 to 11-11-03) and National Union Fire Insurance Company GL4806023 11-11-2003-11-11-2004) (the "*Policies*");

WHEREAS, the Debtors are willing to stipulate to relief from the Plan Injunction in favor of the Claimant for the sole purpose of allowing the Claimant to proceed with the

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specified Actions and to enforce any settlement or judgment in Claimant's favor from the available liability insurance proceeds of the Policies.

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 proceed with the specified Actions and to enforce any settlement or judgment in Claimant's favor from the available liability insurance proceeds of the Policies.

2. 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 Actions.

3. The Parties hereby acknowledge and agree that this Stipulation shall fully and finally resolve, and the Claimant waives and releases, 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 specified Actions, provided, however, the Claimant shall retain a claim to the extent necessary to obtain insurance proceeds from the Policies.

4. 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



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into evidence in any proceeding other than a proceeding to approve or enforce this Stipulation or any of its terms.

5. 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.

6. 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.

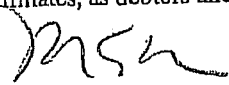
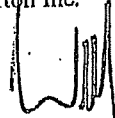
7. All of the recitals set forth above are incorporated by reference as if fully set forth herein. This Stipulation constitutes the complete express agreement of the Parties hereto concerning the subject matter hereof, and no modification or amendment to this Stipulation shall be valid unless it is in writing, signed by the Party or Parties to be charged and approved by the Court.

8. 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.

9. 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.

10. 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.

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

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| <p>For<br/>Building Materials Holding Corporation and its<br/>affiliates, as debtors and debtors in possession</p> <p></p> <hr/> <p>Maureen E. Thomas, Esq.<br/>982 Coledale Ct.<br/>White Lake, MI 48386</p> <p>Dated: <u>12-21-10</u></p> | <p>For<br/>D.R. Horton Inc.</p> <p></p> <hr/> <p>William R. Joseph, Esq.<br/>Dunn Carney Allen Higgins &amp; Tongue LLP<br/>851 SW 6th, Ste. 1500<br/>Portland, OR 97204</p> <p>Dated: <u>12/29/10</u></p> |
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