

**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)

**CERTIFICATION OF COUNSEL REGARDING STIPULATION  
(1) WITHDRAWING THOMAS PARTIES' PROOFS OF CLAIM  
AND (2) REJECTING THE OCTOBER 17, 2005 STOCK PURCHASE  
AGREEMENT AND ASSET PURCHASE AGREEMENT**

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.

Several years before filing these bankruptcy cases on June 16, 2009, BMC Construction, Inc. (which is now Reorganized Debtor SelectBuild Construction, Inc.) acquired 100% of the stock of HnR Framing Systems, Inc. (“**HnR**”) pursuant to a Securities Purchase Agreement dated October 17, 2005 (the “**SPA**”) among BMC Construction, Inc., HnR, Robert R. Thomas and the Restated Robert R. Thomas Trust dated April 14, 1999. In addition, FSC Construction, Inc., (which was subsequently merged into what is now Reorganized Debtor HnR) acquired certain assets of Home Building Components, Inc. (“**HBC**”) pursuant to an Asset

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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.

Purchase Agreement dated October 17, 2005 (the “**APA**”) among FSC Construction, Inc., HnR, HBC, Robert R. Thomas and the Restated Robert R. Thomas Trust dated April 14, 1999.

The Reorganized Debtors that were parties to the SPA and the APA intended to assume those agreements in connection with confirmation of the Plan. However, a dispute has arisen between the parties to the agreements regarding the amount necessary to “cure” alleged defaults in connection with the assumption of the SPA and APA.

On November 19, 2010, this Court entered a Memorandum Order [Docket No. 1744] determining that the parties’ dispute, concerning the amount necessary to cure alleged defaults under section 365 of the Bankruptcy Code in connection with the assumption of the SPA and APA, is a matter to be left to the Alternate Dispute Resolution provisions of those agreements.

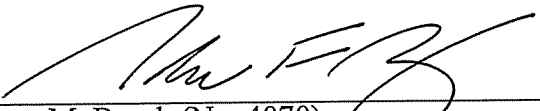
Since that time, the parties have negotiated a settlement of their dispute that calls for the Debtors to reject the SPA and APA and for each of Robert R. Thomas, the Restated Thomas Trust dated April 14, 2009 (as successor in interest to the Restated Robert R. Thomas Trust dated April 14, 1999), HBC, Gregg Street, LLC, Ralph Road, LLC and Crosthwaite Circle, LLC (collectively, the “**Thomas Parties**”) to withdraw with prejudice all proofs of claim they have filed in these cases. These terms will be effectuated pursuant to the Stipulation (1) Withdrawing Thomas Parties’ Proofs of Claim and (2) Rejecting October 17, 2005 Stock Purchase Agreement and Asset Purchase Agreement (the “**Stipulation**”) that is attached as Exhibit 1 to the proposed order (the “**Proposed Order**”) attached to this Certification as Exhibit A.

The Reorganized Debtors submit that the Stipulation and Proposed Order are appropriate and consistent with the parties’ discussions, and that entry of the Proposed Order is

in the best interests of the Reorganized Debtors, their estates and creditors.<sup>2</sup> The Thomas Parties have consented to the entry of the Proposed Order approving the Stipulation. Accordingly, the Reorganized Debtors respectfully request the Court to enter the Proposed Order, attached hereto as Exhibit A, at its earliest convenience without further notice or a hearing.

Dated: Wilmington, Delaware  
April 21, 2011

YOUNG CONAWAY STARGATT & TAYLOR, LLP



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ATTORNEYS FOR REORGANIZED DEBTORS

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<sup>2</sup> Pursuant to section 8.11 of the Plan, from and after the Effective Date, and without further approval by the Court, the Debtors may compromise and settle Claims. In addition, section 6.4 of the Plan and paragraph 20(b) of the Confirmation Order each provide, in part, that “[i]f an objection to a proposed Cure Claim is sustained by the Bankruptcy Court, the Reorganized Debtors may elect to reject such Executory Contract or Unexpired Lease in lieu of assuming it.”

**EXHIBIT A**

**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 No. \_\_\_\_\_

**ORDER APPROVING STIPULATION (1) WITHDRAWING THOMAS PARTIES'  
PROOFS OF CLAIM AND (2) REJECTING OCTOBER 17, 2005 STOCK PURCHASE  
AGREEMENT AND ASSET PURCHASE AGREEMENT**

Upon consideration of the *Stipulation (1) Withdrawing Thomas Parties' Proofs of Claim and (2) Rejecting October 17, 2005 Stock Purchase Agreement and Asset Purchase Agreement (the "Stipulation")*, a copy of which is attached hereto as Exhibit 1; and it appearing, based on the statements made in the Certification of Counsel accompanying the Stipulation, 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 hereby approved, and the terms and conditions of the Stipulation are incorporated into 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, pursuant to section 6.4 of the Plan and paragraph 20(b) of the Confirmation Order, the SPA and the APA are hereby rejected effective as of the date of this Order; and it is further

ORDERED that all remaining proofs of claim filed by the Thomas Parties in these cases, including, but not limited to, proof of claim #2338, #2348, and #2349, are hereby withdrawn with prejudice to refiling; and it is further

ORDERED that the claims agent in these chapter 11 cases, The Garden City Group, Inc., is hereby authorized and empowered to amend the claims register in these chapter 11 cases to comport with entry of this Order; and it is further

ORDERED that the Reorganized Debtors are authorized and empowered to take any and all necessary steps to carry out and 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: April \_\_, 2011  
Wilmington, Delaware

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Kevin J. Carey  
Chief United States Bankruptcy Judge

**EXHIBIT 1**

**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>4</sup></b>	)	<b>Case No. 09-12074 (KJC)</b>
<b>Reorganized Debtors.</b>	)	<b>Jointly Administered</b>

**STIPULATION (1) WITHDRAWING THOMAS PARTIES' PROOFS OF CLAIM AND (2) REJECTING OCTOBER 17, 2005 STOCK PURCHASE AGREEMENT AND ASSET PURCHASE AGREEMENT**

Building Materials Holding Corporation and its affiliates, the reorganized debtors in the above-referenced cases (collectively, the "*Reorganized Debtors*"), and Robert R. Thomas, the Restated Thomas Trust dated April 14, 2009 (as successor in interest to the Robert R. Thomas Trust dated April 14, 1999), Home Building Components, Inc., Gregg Street, LLC, Ralph Road, LLC and Crosthwaite Circle, LLLC (collectively, the "*Thomas Parties*" and, together with the Reorganized Debtors, the "*Parties*"), hereby respectfully stipulate and agree as follows:

**RECITALS**

WHEREAS, on October 17, 2005, BMC Construction, Inc. acquired 100% of the stock of HnR Framing Systems, Inc. ("*HnR*") pursuant to a Securities Purchase

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<sup>4</sup> The Reorganized 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



Agreement dated October 17, 2005 (the "*SPA*") among BMC Construction, Inc., HnR, Robert R. Thomas and the Restated Robert R. Thomas Trust dated April 14, 1999;

WHEREAS, on October 17, 2005, FSC Construction, Inc. acquired certain assets of Home Building Components, Inc. ("*HBC*") pursuant to an Asset Purchase Agreement dated October 17, 2005 (the "*APA*") among FSC Construction, Inc., HnR, HBC, Robert R. Thomas and the Restated Robert R. Thomas Trust dated April 14, 1999;

WHEREAS, on or about December 29, 2005, BMC Construction, Inc. changed its name to SelectBuild Construction, Inc.;

WHEREAS, on or about January 1, 2007, FSC Construction, Inc. was merged into HnR;

WHEREAS, on June 16, 2009 (the "*Petition Date*"), each of the now Reorganized 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*") and the Reorganized Debtors' cases are being jointly administered pursuant to rule 1015(b) of the Federal Rules of Bankruptcy Procedure;

WHEREAS, Gregg Street, LLC filed proof of claim #2347 in the amount of \$407,808.86 against HnR with respect to the rejection of a lease of property on Gregg Street in Poway, California (the "*Gregg Street Lease*");

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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.

WHEREAS Ralph Road, LLC filed proof of claim #2342 in the amount of \$418,408.22 against SelectBuild Construction, Inc. with respect to the rejection of a lease of property on Ralph Road in Imperial, California (the "*Ralph Road Lease*");<sup>5</sup>

WHEREAS, Crosthwaite Circle, LLC filed proof of claim #2348 against SelectBuild Construction, Inc. with respect to a contingent claim for indemnity under the Lease Termination Agreement related to a lease of property on Crosthwaite Circle in Poway, California;

WHEREAS, Robert R. Thomas filed proof of claim #2349 against Building Materials Holding Corporation with respect to a claim under the 2005 Deferred Compensation Plan;

WHEREAS Robert R. Thomas filed proof of claim #2338 against SelectBuild Construction, Inc. with respect to claims under the SPA and APA;<sup>6</sup>

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 Reorganized Debtors' joint plan of reorganization (the "*Plan*") and, on January 4, 2010 (the "*Effective Date*"), the Reorganized Debtors' Plan became effective;

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<sup>5</sup> Gregg Street, LLC and Ralph Road, LLC each filed multiple proofs of claim with respect to the rejection of the Gregg Street Lease and the Ralph Road Lease. The duplicate claims were expunged by the Court as multiple debtor duplicates pursuant to the Order Sustaining, In Part, Debtors' Sixth Omnibus (Substantive) Objection to Claims Pursuant to Section 502(b) of the Bankruptcy Code, Bankruptcy Rules 3003 and 3007 and Local Rule 3007-1.

<sup>6</sup> A substantially identical proof of claim filed by the Restated Robert R. Thomas Trust dated April 14, 2009 was disallowed by the court as duplicative of proof of claim #2338 by order dated November 19, 2009.

WHEREAS, proofs of claim #2347 and #2342 were allowed as General Unsecured Claims and Gregg Street, LLC and Ralph Road, LLC received their respective distributions from the Unsecured Cash Fund under the Plan with respect to such claims;

WHEREAS, the relevant Reorganized Debtors intended to assume the SPA and the APA in connection with confirmation of the Plan;

WHEREAS, a dispute has arisen between the Parties regarding the amount necessary to "cure" alleged defaults in connection with the assumption of the SPA and APA;

WHEREAS, section 6.4 of the Plan and paragraph 20(b) of the Confirmation Order each provide, in relevant part, that "[i]f an objection to a proposed Cure Claim is sustained by the Bankruptcy Court, the Reorganized Debtors may elect to reject such Executory Contract or Unexpired Lease in lieu of assuming it[;]"

WHEREAS the Reorganized Debtors and the Thomas Parties have agreed, as part of the resolution of their dispute, to file this stipulation pursuant to which the Reorganized Debtors shall reject the SPA and the APA in lieu of assuming them and the Thomas Parties shall withdraw with prejudice all of their remaining proofs of claim filed in these cases.

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 Thomas Parties hereby withdraw with prejudice all of their remaining proofs of claim in these cases, including, but not limited to, proof of claim #2338, #2348, and #2349; provided, however, that the Thomas Parties may retain and

shall not be required to disgorge any distributions previously received on account of their claims.

2. The Reorganized Debtors hereby reject the SPA and the APA.

3. The Thomas Parties acknowledge and agree that they shall have no claim against the Reorganized Debtors or their estates with respect to the rejection of the SPA and the APA.

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 of 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.

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.

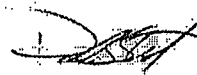
7. All of the recitals set forth above are incorporated by reference as if fully set forth herein. No modification or amendment to this Stipulation shall be valid unless it is in writing, signed by the Party or Parties to be charged.

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.

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

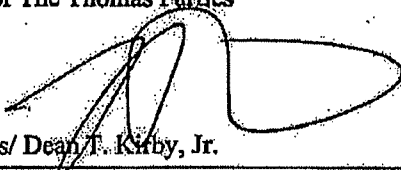
<p>For Building Materials Holding Corporation and its affiliates, as reorganized debtors</p>  <p><b>PAUL S. STREET</b> Chief Administrative Officer Maureen E. Thomas, Esq. 982 Coledale Ct. White Lake, MI 48386</p> <p>Dated: _____</p>	<p>For The Thomas Parties</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>Dated: _____</p>
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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.

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

<b>For Building Materials Holding Corporation and its affiliates, as reorganized debtors</b>	<b>For The Thomas Parties</b>  /s/ Dean T. Kirby, Jr.
Maureen E. Thomas, Esq. 982 Coledale Ct. White Lake, MI 48386  Dated: _____	Dean T. Kirby, Jr. Kirby & McGuinn, A P.C. 707 Broadway, Suite 1750 San Diego, CA 92101 Attorneys of record for the Thomas Parties Dated: 4/15/11

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)

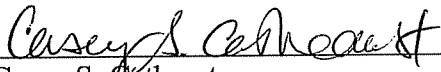
Jointly Administered

**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 April 21, 2011, she caused a copy of the **Certification of Counsel Regarding Stipulation (1) Withdrawing Thomas Parties' Proofs of Claim and (2) Rejecting the October 17, 2005 Stock Purchase Agreement and Asset Purchase Agreement** to be served as indicated upon the parties identified on the attached service list and the following party:

Dean T. Kirby, Jr., Esq.  
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707 Broadway, Suite 1750  
San Diego, CA 92101  
(Counsel to the Thomas Parties)  
*First Class Mail*

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

SWORN TO AND SUBSCRIBED before me this 21st day of April, 2011.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:  
**DEBBIE ELLEN LASKIN**  
**NOTARY PUBLIC**  
**STATE OF DELAWARE**  
**My commission expires Dec. 21, 2012**

<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**  
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**BUILDING MATERIALS HOLDING CORPORATION**  
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