

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

In re:

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

Debtors.

Chapter 11

Case No. 09-12074 (KJC)

Jointly Administered

Ref. Docket No. 541

**CERTIFICATION OF COUNSEL REGARDING STIPULATION  
BY AND BETWEEN THE DEBTORS AND SUNTRUST BANK  
RESOLVING THE MOTION OF SUNTRUST BANK FOR DETERMINATION THAT  
THE AUTOMATIC STAY DOES NOT APPLY OR, IN THE ALTERNATIVE, TO  
MODIFY THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362**

On August 31, 2009, SunTrust Bank ("SunTrust") filed the *Motion of SunTrust Bank for Determination that the Automatic Stay Does Not Apply Or, In the Alternative, To Modify the Automatic Stay Pursuant to 11 U.S.C. § 362* [Docket No. 541] (the "Motion"). The Motion sought relief for SunTrust to enforce its rights under a certain mortgage concerning real property owned by non-debtor GT Greens, LLC and with respect to which Debtor SelectBuild Southern California, Inc., successor by merger to SelectBuild Florida, LLC ("SelectBuild"), claims to have certain lien rights.

The hearing to consider the relief requested in the Motion was originally scheduled for September 18, 2009. Responses to the Motion were due on or before September 11, 2009 at 4:00 p.m. (the "Objection Deadline"), but SunTrust extended the deadline for the Debtors to respond until September 16, 2009. No other objections or responses to the Motion

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<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.

were received prior to the Objection Deadline. Subsequent to the filing of the Motion, the Debtors negotiated a consensual resolution of the Motion with SunTrust.

As a result of the discussions, the Debtors and SunTrust (collectively, the “Parties”) have entered into the *Stipulation Resolving the Motion of SunTrust Bank For Determination That the Automatic Stay Does Not Apply Or, In the Alternative, To Modify the Automatic Stay Pursuant to 11 U.S.C. § 362* (the “Stipulation”) which consensually resolves the Motion. The pertinent terms of the Stipulation are as follows:

The Parties acknowledge and agree to relief from the automatic stay being granted in favor of SunTrust to permit SunTrust to take all actions to enforce any rights it may have under the mortgage against non-debtor GT Greens, LLC and SelectBuild including foreclosure of the mortgage to final resolution and execute upon any judgment obtained in mortgage proceedings currently pending in St. Lucie County, Florida; provided, however, that SunTrust shall not be entitled to pursue any monetary claim against SelectBuild as a result of the relief from stay provided; provided, further, however, that SunTrust reserves the right, if any, to pursue in the Bankruptcy Court any monetary claim against SelectBuild for any attorney’s fees incurred by SunTrust with respect to SelectBuild’s defense of the foreclosure action and SelectBuild reserves the right to dispute such claim on any appropriate basis.

Attached hereto as Exhibit 1 is a proposed form of order approving the Stipulation (the “Proposed Order”). The Stipulation is attached to the Proposed Order as Exhibit A.

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WHEREFORE, the Debtors respectfully request entry of the Proposed Order  
approving the Stipulation at the Court's earliest convenience without further notice or a hearing.

Dated: Wilmington, Delaware  
September 16, 2009

YOUNG CONAWAY STARGATT & TAYLOR, LLP



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---- and ----

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ATTORNEYS FOR DEBTORS  
AND DEBTORS IN POSSESSION

**EXHIBIT 1**

**Proposed Order**

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

In re:

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

Debtors.

Chapter 11

Case No. 09-12074(KJC)

Jointly Administered

Ref. Docket Nos. 541 and \_\_\_\_\_

**ORDER APPROVING STIPULATION  
BY AND BETWEEN THE DEBTORS AND SUNTRUST BANK  
RESOLVING THE MOTION OF SUNTRUST BANK FOR DETERMINATION THAT  
THE AUTOMATIC STAY DOES NOT APPLY OR, IN THE ALTERNATIVE, TO  
MODIFY THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362**

The Court having considered the Stipulation by and between the Debtors and SunTrust Bank Resolving the Motion of SunTrust Bank for Determination That the Automatic Stay Does Not Apply or, In the Alternative, To Modify the Automatic Stay Pursuant to 11 U.S.C. § 362 , 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 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 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.

ORDERED that the 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  
September \_\_\_\_\_, 2009

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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, <i>et al.</i>,<sup>1</sup></b>	)	<b>Case No. 09-12074 (KJC)</b>
<b>Debtors.</b>	)	<b>Jointly Administered</b>
	)	
	)	

**STIPULATION RESOLVING THE MOTION OF SUNTRUST BANK FOR  
DETERMINATION THAT THE AUTOMATIC STAY DOES NOT APPLY  
OR, IN THE ALTERNATIVE, TO MODIFY THE AUTOMATIC STAY  
PURSUANT TO 11 U.S.C. § 362**

SunTrust Bank ("*SunTrust*"), and Building Materials Holding Corporation and its affiliates, the debtors and debtors in possession in the above-referenced cases (collectively, the "*Debtors*," and together with the Claimants, 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*"). Each Debtor is continuing to operate its business and manage its properties as a debtor in possession pursuant to sections 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;

<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.



WHEREAS, on August 31, 2009, SunTrust filed with the Court the Motion of SunTrust Bank for Determination that the Automatic Stay Does Not Apply or, in the Alternative, To Modify the Automatic Stay Pursuant to 11 U.S.C. § 362, seeking a determination that the automatic stay does not apply or, in the alternative, relief from the automatic stay to permit Sun Trust to take all actions to enforce any rights it may have under a certain Mortgage, Security Agreement and Assignment of Rents and Profits (the "Mortgage") against non-debtor GT Greens, LLC, including foreclosure of the Mortgage to final resolution and execute upon any judgment obtained.

WHEREAS, Debtor SelectBuild claims to have certain lien rights with respect to the Property;

WHEREAS, given the relatively small amount secured by SelectBuild's lien rights, the Debtors are willing to stipulate to relief from the automatic stay to permit SunTrust to enforce its any rights it may have under the Mortgage against non-debtor GT Greens, LLC, including foreclosure of the Mortgage to final resolution and execute any judgment obtained.

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 automatic stay being granted in favor of SunTrust to permit SunTrust to take all actions to enforce any rights it may have under the Mortgage against non-debtor GT Greens, LLC and SelectBuild including foreclosure of the Mortgage to final resolution and execute upon any judgment obtained in mortgage foreclosure proceedings currently pending in the Circuit Court of the 19<sup>th</sup> Judicial Circuit in and for St. Lucie County, Florida, Case No. 522008CA008494; provided, however, that SunTrust shall not be entitled to pursue any monetary claim against SelectBuild as a result of the relief from stay provided herein; provided, further, however, that SunTrust

reserves the right, if any, to pursue in the Bankruptcy Court any monetary claim against SelectBuild for any attorney's fees incurred by SunTrust with respect to SelectBuild's defense of the foreclosure action and SelectBuild reserves the right to dispute such claim on any appropriate basis.

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. 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.

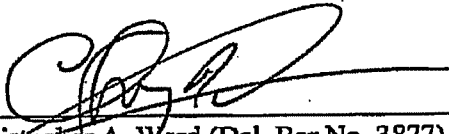
5. All of the recitals set forth above are incorporated by reference as if fully set forth herein. This Stipulation constitutes the complete express agreement of the Parties hereto concerning the subject matter hereof, and no modification or amendment to this Stipulation shall be valid unless it is in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

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.

<p>For Building Materials Holding Corporation and its affiliates, as debtors and debtors in possession</p> <p><u>Maureen Thomas w/ permission</u> Maureen E. Thomas, Esq. 982 Coledale Ct. White Lake, MI 48386</p> <p>Dated: <u>9/16/2009</u></p>	<p>For SunTrust Bank</p> <p><u></u> Christopher A. Ward (Del. Bar No. 3877) Shanti M. Katona, Esquire <b>POLSINELLI SHUGHART PC</b> 222 Delaware Avenue, Suite 1101 Wilmington, Delaware 19801 (302) 252-0920 (Telephone) (302) 252-0921 (Facsimile) <a href="mailto:cward@polsinelli.com">cward@polsinelli.com</a> <a href="mailto:skatona@polsinelli.com">skatona@polsinelli.com</a></p> <p>Dated: <u>9/16/09</u></p>
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