

**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)
)	
Debtors.)	Jointly Administered
)	
)	

VERIFIED STATEMENTS OF CONNECTIONS

I, Brian K. Cuttone, declare under penalty of perjury:

1. I am an Attorney at Law located at 1233 W. Shaw Avenue, Suite 100, in Fresno, California 93711 (the "*Firm*").
2. Building Materials Holding Corporation and its affiliates, as debtors and debtors in possession (collectively, the "*Debtors*") have requested that the Firm provide legal services to the Debtors, and the Firm has consented to provide such services.
3. I state that the Firm did represent the Debtors prior to their bankruptcy filings.
4. The Firm may have performed services in the past, may currently perform services and may perform services in the future, in matters unrelated to these chapter 11 cases, for persons that are parties in interest in these chapter 11 cases. The Firm does not perform services for any such person in connection with these chapter 11 cases, or have any relationship with any such person, their attorneys or accountants that would be adverse to the Debtors or their

¹ 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.

estates. Furthermore, if the Firm is either (i) not a law firm or (ii) a law firm that did not represent the Debtors prior to their bankruptcy filings, the Firm is a "disinterested person" under 11 U.S.C. § 101(14), such that the Firm:

- (a) is not a creditor, an equity security holder, or an insider of any of the Debtors;
- (b) is not and was not, within 2 years before the date of the filing of the petition, a director, officer, or employee of any of the Debtors; and
- (c) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the Debtors, or for any other reason.

5. As part of its customary practice, the Firm is retained in cases, proceedings, and transactions involving many different parties, some of whom may represent or be employed by the Debtors, claimants, and parties-in-interest in the Debtors' chapter 11 cases.

6. Neither I nor any principal, partner, director, officer, etc. of, or professional employed by, the Firm has agreed to share or will share any portion of the compensation to be received from the Debtors with any other person other than the principal and regular employees of the Firm.

7. In the ordinary course of its business, the Firm confirms conflicts by reviewing its client base. The Firm's client base contains information regarding the Firm's present and past representations. Pursuant to Federal Rule of Bankruptcy Procedure 2014(a), I obtained a list of the entities identified in Rule 2014(a) from counsel to the Debtors for purposes of searching the aforementioned database and determining the connection(s) which the Firm has with such entities. The Firm's review identified the following connections:

8. NONE

9. Neither I nor any principal, partner, director, officer, etc. of or professional employed by, the Firm, insofar as I have been able to ascertain, holds or represents any interest adverse to the Debtors or their estates with respect to the matter(s) upon which this Firm is to be employed. Furthermore, if the Firm is either (i) not a law firm or (ii) a law firm that did not represent the Debtors prior to their bankruptcy filings, I state that neither I nor any principal, partner, director, officer, etc. of or professional employed by, the Firm, insofar as I have been able to ascertain, holds or represents any interest adverse to the Debtors.

10. The Debtors owe the Firm \$2,002.51 for prepetition services, the payment of which is subject to limitations contained in the United States Bankruptcy Code, 11 U.S.C. § §101-1532. If the Firm is either (i) not a law firm or (ii) a law firm that did not represent the Debtors prior to their bankruptcy filings, my signature below acknowledges that the Firm understands that any and all pre-petition claims that it has against the Debtors will be deemed waived if the Firm's employment is authorized.

11. As of June 16, 2009, which was the date on which the Debtors commenced these chapter 11 cases, the Firm was party to an engagement or services agreement with the Debtors. A copy of such agreement is attached as *Exhibit A* to this Declaration.

12. As of June 16, 2009, the Firm was not party to an agreement for indemnification with certain of the Debtors.

13. If the Firm is not a law firm, the following is a list of all payments which the Firm received from the Debtors during the year prior to the Debtors' bankruptcy filings:

14. The Firm is conducting further inquiries regarding its retention by any creditors of the Debtors, and upon conclusion of that inquiry, or at any time during the period of

its employment, if the Firm should discover any facts bearing on the matters described herein, the Firm will supplement the information contained in this Declaration.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Date: August 6, 2009



BRIAN K. CUTTONE, Attorney at Law

BRIAN K. CUTTONE
ATTORNEY AT LAW

CUTTONE

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February 2, 2009

ATTORNEY-CLIENT FEE AGREEMENT

BRIAN K. CUTTONE ("Cuttone"), the **LAW OFFICE OF RUSSELL D. COOK** ("Cook") and **BMC West** ("Client") hereby agree that attorneys Cuttone and Cook will provide legal services to Client on the terms set forth below. Client acknowledges that Cuttone and Cook are not partners or associates of one another and maintain separate practices. Client further acknowledges that Cuttone and Cook have agreed to work together as "joint counsel" for Client and will divide the work of Client based upon their individual expertise, to serve client and to avoid duplication of services performed. Cuttone and Cook are collectively referred to herein as Attorney.

1. CONDITIONS. This Agreement will not take effect, and Attorney will have no obligation to provide legal services, until Client returns a signed copy of this Agreement and pays the initial deposit called for under Paragraph 4.

2. SCOPE OF SERVICES. Client hires Attorney to provide legal services in the following matters: *BMC West v. Ennis Homes et al.* and in any bankruptcy case that may be filed by Ennis Homes and titled *In re Ennis Homes, inter alia*. Attorney will provide those legal services reasonably required to represent Client. Attorney will take reasonable steps to keep Client informed of progress and to respond to Client's inquiries. If a court action is filed, Attorney will represent Client through trial and post-trial motions and any matters related to any bankruptcy filing. This Agreement does not cover representation on appeal or in execution proceedings after judgment or termination of any bankruptcy proceeding. Separate arrangements must be agreed to for those services. Services in any matter not described above will require a separate written agreement.

3. CLIENT'S DUTIES. Client agrees to be truthful with Attorney, to cooperate, to keep Attorney informed of any information or developments which may come to Client's attention, to abide by this Agreement, to pay Attorney's bills on time, and to keep Attorney advised of Client's address, telephone number and whereabouts. Client will assist Attorney in providing necessary information and documents and will appear when necessary at legal proceedings.

4. DEPOSIT. Client agrees to pay Attorney an initial deposit of \$3,000 by February 2, 2009. The hourly charges will be charged against the deposit. The initial deposit, as well as any future deposit, will be held in a trust account. Client authorizes Attorney to use that fund to pay the fees and other charges as they are incurred.

EXHIBIT "A"

Payments from the fund will be made upon remittance to client of a billing statement. Client acknowledges that the deposit is not an estimate of total fees and costs, but merely an advance for security.

Whenever the deposit is exhausted, Attorney reserves the right to demand further deposits, each up to a maximum of \$25,000 before a trial or arbitration date is set or commences, whichever may be the case. Once a trial or arbitration date is set, Client shall pay all sums then owing and deposit the attorneys' fees estimated to be incurred in preparing for and completing the trial or arbitration, as well as the jury fees or arbitration fees, expert witness fees and other costs likely to be assessed. Those sums may exceed the maximum deposit.

Client agrees to pay all deposits after the initial deposit within seven (7) days of Attorney's demand. Unless otherwise agreed in writing, any unused deposit at the conclusion of Attorney's services will be refunded.

5. LEGAL FEES AND BILLING PRACTICES. Client agrees to pay by the hour at Attorney's prevailing rates for all time spent on Client's matter by Attorney's legal personnel. Current hourly rates for legal personnel are as follows:

Russell D. Cook	\$265/hour
Neal D. Douglas	\$200/hour
Brian K. Cuttone	\$250/hour
Associates	\$175/hour
Paralegals	\$90/hour
Law clerks	\$90/hour

The rates on this schedule are subject to change on 30 days' written notice to Client. If Client declines to pay increased rates, Attorney will have the right to withdraw as attorney for Client.

The time charged will include the time Attorney spends on telephone calls relating to Client's matter, including calls with Client, witnesses, opposing counsel or court personnel. The legal personnel assigned to Client's matter may confer among themselves about the matter, as required and appropriate. When they do confer, each person will charge for the time expended, as long as the work done is reasonably necessary and not duplicative. Likewise, if more than one of the legal personnel attends a meeting, court hearing or other proceeding, each will charge for the time spent. Attorney will charge for waiting time in court and elsewhere and for travel time, both local and out of town.

Time is charged in minimum units of one-tenth (.1) of an hour. The following have higher minimum charges:

Telephone calls:	two-tenths (.2) of an hour
Letters:	two-tenths (.2) of an hour
Other:	N/A

6. COSTS AND OTHER CHARGES.

(a) Attorney will incur various costs and expenses in performing legal services under this Agreement. Client agrees to pay for all costs, disbursements and expenses in addition to the hourly fees. The costs and expenses commonly include, service of process charges, filing fees, court and deposition reporters' fees, jury fees, notary fees, deposition costs, long distance telephone charges, messenger and other delivery fees, postage, photocopying and other reproduction costs, travel costs including parking, mileage, transportation, meals and hotel costs, investigation expenses, consultants' fees, expert witness, professional, mediator, arbitrator and/or special master fees and other similar items. Except for the items listed below, all costs and expenses will be charged at Attorney's cost.

In-office photocopying:	.20/page
Facsimile charges:	1 per page if over 20 pages
Mileage:	.51 per mile
Other:	N/A

(b) Out of town travel. Client agrees to pay transportation, meals, lodging and all other costs of any necessary out-of-town travel by Attorney's personnel. Client will also be charged the hourly rates for the time legal personnel spend traveling.

(c) Experts, Consultants and Investigators. To aid in the preparation or presentation of Client's case, it may become necessary to hire expert witnesses, consultants or investigators. Client agrees to pay such fees and charges. Attorney will select any expert witnesses, consultants or investigators to be hired, and Client will be informed of persons chosen and their charges.

Additionally, Client understands that if the matter proceeds to court action or arbitration, Client may be required to pay fees and/or costs to other parties in the action. Any such payment will be entirely the responsibility of Client.

7. **BILLING STATEMENTS.** Attorney will send Client periodic statements for fees and costs incurred. Each statement will be payable within seven (7) days of its mailing date. Client may request a statement at intervals of no less than 30 days. If Client so requests, Attorney will provide one within 10 days. The statements shall include the amount, rate, basis of calculation or other method of determination of the fees and costs, which costs will be clearly identified by item and amount.

8. DISCHARGE AND WITHDRAWAL. Client may discharge Attorney at any time. Attorney may withdraw with Client's consent or for good cause. Good cause includes Client's breach of this Agreement, refusal to cooperate or to follow Attorney's advice on a material matter or any fact or circumstance that would render Attorney's continuing representation unlawful or unethical. When Attorney's services conclude, all unpaid charges will immediately become due and payable. After services conclude, Attorney will, upon Client's request, deliver Client's file, and property in Attorney's possession unless subject to the lien provided in Paragraph 8 above, whether or not Client has paid for all services.

9. DISCLAIMER OF GUARANTEE AND ESTIMATES. Nothing in this Agreement and nothing in Attorney's statements to Client will be construed as a promise or guarantee about the outcome of the matter. Attorney makes no such promises or guarantees. Attorney's comments about the outcome of the matter are expressions of opinion only. Any estimate of fees given by Attorney shall not be a guarantee. Actual fees may vary from estimates given.

10. ENTIRE AGREEMENT. This Agreement contains the entire agreement of the parties. No other agreement, statement, or promise made on or before the effective date of this Agreement will be binding on the parties.

11. SEVERABILITY IN EVENT OF PARTIAL INVALIDITY. If any provision of this Agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire Agreement will be severable and remain in effect.

12. MODIFICATION BY SUBSEQUENT AGREEMENT. This Agreement may be modified by subsequent agreement of the parties only by an instrument in writing signed by both of them, or an oral agreement only to the extent that the parties carry it out.

13. EFFECTIVE DATE. This Agreement will govern all legal services performed by Attorney on behalf of Client commencing with the date Attorney first performed services. The date at the beginning of this Agreement is for reference only. Even if this Agreement does not take effect, Client will be obligated to pay Attorney the reasonable value of any services Attorney may have performed for Client.

THE PARTIES HAVE READ AND UNDERSTOOD THE FOREGOING TERMS AND AGREE TO THEM AS OF THE DATE ATTORNEY FIRST PROVIDED SERVICES. IF MORE THAN ONE CLIENT SIGNS BELOW, EACH ~~AGREES TO BE LIABLE~~, JOINTLY AND SEVERALLY, FOR ALL OBLIGATIONS UNDER THIS AGREEMENT. CLIENT SHALL RECEIVE A FULLY EXECUTED DUPLICATE OF THIS AGREEMENT.

DATED: _____

2.4.09


Authorized Representative of BMC WEST

DATED: _____


BRIAN K. CUTTONE

DATED: _____

RUSSELL D. COOK