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U.S. BANKRUPTCY COURT  
DISTRICT OF DELAWARE

IN RE:	Chapter 11
BUILDING MATERIALS HOLDING CORPORATION, <i>et al.</i> , <sup>1</sup>	Case No. 09-12074 (KJC)
Debtors.	Jointly Administered

## VERIFIED STATEMENTS OF CONNECTIONS

**I, David B. Johnston, declare under penalty of perjury:**

1. I am a **partner of Livengood, Fitzgerald, PLLC, located at 121 Third Avenue, P.O. Box 908, Kirkland, WA 98083-0908** (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. If the Firm is a law firm, 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

<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.

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 **partner** 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 database 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. **Building Materials Holding Corporation, and BMC West Corporation.**

9. Neither I nor any **partner** 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 **partner** 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 \$2,625.00 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:

**[The Debtors recommend (and the U.S. Trustee requests) that the  
OCP organize payments in the following columns: invoice date,  
invoice amount, date(s) of service covered by invoice, payment date**

**and payment amount. Retainers and draws on retainers should be specifically noted as such]**

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

  
David B. Johnston

# **EXHIBIT A**

LAW OFFICES

LIVENGOOD, CARTER, TJOSSEM, FITZGERALD & ALSKOG

A PROFESSIONAL LIMITED LIABILITY COMPANY

DAVID A. ALSKOG  
DAVID B. JOHNSTON  
JOHN J. WHITE, JR.  
DAVID J. SEELEY  
JAMES E. HURT  
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GORDON A. LIVENGOOD (1921 - 2001)

March 19, 2002

RECEIVED

APR 04 2002

Mr. Paul S. Street  
Senior Vice President  
Building Materials Holding Corporation  
720 Park Boulevard, Suite 200  
P.O. Box 70006  
Boise, ID 83707-0106

LIVENGOOD, CARTER, TJOSSEM,  
FITZGERALD & ALSKOG

**Re: Standard Terms of Engagement for Legal Services**

Dear Mr. Street:

This letter sets forth the standard terms of our engagement as your lawyers. Unless modified in writing by mutual agreement, these terms will be an integral part of our agreement with you. Therefore, we ask that you review this letter carefully and contact us promptly if you have any questions. We suggest that you retain this letter in your file. Please sign and return the enclosed copy, confirming that you understand and agree with these terms.

The Scope of Our Work

You should have a clear understanding of the legal services we will provide. Any questions that you have should be dealt with promptly.

We will at all times act on your behalf to the best of our ability. Any expressions on our part concerning the outcome of your legal matters are expressions of our best professional judgment, but are not guarantees. Such opinions are necessarily limited by our knowledge of the facts and are based on the state of the law at the time they are expressed.

Who Will Provide the Legal Services

Customarily, each client of the firm is served by a principal attorney contact. The principal attorney should be someone in whom you have confidence and with whom you enjoy working. You are free to request a change of principal attorney at any time. Subject to the supervisory role of the principal attorney, your work or parts of it may be performed by other

lawyers, paralegals and legal assistants in the firm. Such delegation may be for the purpose of involving lawyers, paralegals or legal assistants with special expertise in a given area or for the purpose of providing services on the most efficient and timely basis. Whenever practicable, we will advise you of the names of those attorneys, paralegals and legal assistants who work on your matters.

#### How Fees Will Be Set

In determining the amount to be charged for the legal services we provide to you we will consider:

- The time and effort required, the novelty and complexity of the issues presented, and the skill required to perform the legal services promptly;
- The fees customarily charged in the community to similar services and the value of the services to you;
- The amount of money or value of property involved; and the results obtained;
- The time constraints imposed by you as our client and other circumstances, such as an emergency closing, the need for injunctive relief from court, or substantial disruption of other office business;
- The nature and longevity of our professional relationship with you;
- The experience, reputation and expertise of the lawyers performing the services;
- The extent to which office procedures and systems have produced a high quality product efficiently.

Among these factors, the time and effort required are typically weighted most heavily. We will keep accurate records of the time we devote to your work, including conferences (both in person and over the telephone), negotiations, factual and legal research and analysis, document preparation and revision, travel on your behalf, court appearances (if applicable), and other related matters. We record our time in units of tenths of an hour.

The hourly rates of our lawyers and legal assistants have an important bearing on the fees we charge. These rates are reviewed annually and adjusted to reflect current levels of legal experience, changes in overhead costs and other factors. This usually occurs in January. If you ever have a question about the hourly rate in effect, please contact me. Many of our attorneys have developed special expertise in a particular area of law and are able to deliver services in their specialty area with greater efficiency. These lawyers are assigned both regular and specialty rates. Their time may be charged at a specialty rate when they provide services in their specialty areas. My current general hourly rate is \$200.00 per hour. Rates for others in our office are presently as follows:

Attorney's time	\$165 - \$275 per hour
Paralegal	\$100 per hour
Legal assistant time	\$ 50 - \$ 80 per hour
Word processing document preparation time	\$ 50 per hour

We are often requested to estimate the amount of fees and costs likely to be incurred in connection with a particular matter. Whenever possible we will furnish such an estimate based upon our professional judgment, but always with a clear understanding that it is not a maximum or fixed fee quotation. The ultimate cost frequently is more or less than the amount estimated.

For certain well defined services, for example, a simple business incorporation or certain types of wills, we will quote a flat fee. It is our policy not to accept representation on a flat fee basis except in such defined-services areas or pursuant to a special arrangement tailored to the needs of a particular client. In all such situations, the flat fee arrangement will be expressed in a letter, setting forth both the amount of the fee and the scope of the services to be provided.

#### Out-of-Pocket Expenses

We typically incur and pay on behalf of our clients a variety of out-of-pocket costs arising in connection with legal services. These include charges made by government agencies and service vendors as well as clerical charges. Whenever such costs are incurred, we will carefully itemize and bill them. Typical of such costs are long distance telephone charges; messenger, courier, and express delivery charges; telecopy and telex charges; printing and reproduction costs; filing fees; deposition and transcript costs; witness fees; travel expenses; charges made by outside experts and consultants, including accountants, appraisers, and other legal counsel (unless arrangements for direct billing have been made); and charges for automated document production (word processing). We incur outside costs as agents for our clients and incur internal expenses on behalf of our clients, who agree that these costs will always be paid on a regular basis.



### Retainer and Trust Deposits

Clients of the firm are commonly asked to deposit a retainer with the firm. The retainer deposit is charged for fees as our legal services are provided. Regular statements will be furnished to you for purposes of restoring the retainer deposit. At the conclusion of our legal representation or at such time as the deposit is unnecessary or is appropriately reduced, the remaining balance or an appropriate part of it will be returned to you. If the retainer deposit proves insufficient to cover current expenses and fees on at least a two-month basis, it may have to be increased.

Deposits which are received to cover specific items will be disbursed as provided in our agreement with you, and you will be notified from time to time of the amounts applied or withdrawn. Any amount remaining after disbursement will be returned to you.

All trust deposits we receive from you, including retainers, will be placed in a trust account for your benefit. By court rule in Washington State, your deposit must be placed in a pooled account if it is not expected to earn a net return, taking into consideration the size and anticipated duration of the deposit and the transaction costs. Other trust deposits will also be placed in the pooled account unless you request a segregated account. Interest earned on the pooled account is payable to charitable foundations established by high courts of Washington State. Interest earned on a segregated trust account will be added to the deposit for your benefit and will be includable in your taxable income.

### Termination

You may terminate our representation at any time, with or without cause, by notifying us. If such termination occurs, your papers and property will be returned to you promptly upon receipt of payment for outstanding fees and costs. Our own files pertaining to the case will be retained. Your termination of our services will not affect your responsibility for payment of legal services rendered and out-of-pocket costs incurred before termination and in connection with an orderly transition of the matter.

We are subject to the Rules of Professional Conduct for Washington State, which lists several types of conduct or circumstances that require or allow us to withdraw from representing a client, including for example: nonpayment of fees or costs, misrepresentation or failure to disclose material facts, action contrary to our advice, and conflict of interest with another client. We try to identify in advance and discuss with our client any situation which may lead to our withdrawal and if withdrawal ever becomes necessary we immediately give the client written notice of our withdrawal.

Billing Arrangements and Terms of Payment

We will bill you on a regular basis, normally each month, for both fees and disbursements. You agree to make payment within 30 days of receiving our statement. Unpaid fees and disbursements accrue interest at the rate of 1% per month from the beginning of the month in which they became overdue. (Where fees and disbursements are regularly paid out of a retainer deposit, no interest will be charged.)

We will give you prompt notice if your account becomes delinquent, and you agree to bring the account or the retainer deposit current. If the delinquency continues and you do not arrange satisfactory payment terms, we will withdraw from the representation and pursue collection of your account. You agree to pay the costs of collecting the debt, including court costs, filing fees and a reasonable attorney's fee.

Your Right to Arbitrate

If you disagree with the amount of our fee, please take up the question with your principal attorney contact or with the firm's managing partner. Typically, such disagreements are resolved to the satisfaction of both sides with little inconvenience or formality. In the event of a fee dispute which is not readily resolved, you have the right to request arbitration under supervision of the state bar association and we agree to participate fully in that process.

Conclusion

We appreciate your taking the time to review this letter and hope it has served to answer some of the questions you may have had about working with our firm. We look forward to representing you and working on your legal matters.

Very truly yours,

LIVENGOOD, CARTER, TJOSSEM,  
FITZGERALD & ALSKOG



David B. Johnston

DBJ/lc

cc: Todd Grogan

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Mr. Paul S. Street  
March 19, 2002  
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We have received and read the original of the above letter. We hereby request and authorize the law firm of LIVENGOD, CARTER, TJOSSEM, FITZGERALD & ALSKOG with DAVID B. JOHNSTON as supervising attorney, to represent BMC WEST under the terms and conditions set forth above, and we agree to make payment for such representation as provided above.

Dated: March 29, 2002.

BUILDING MATERIALS HOLDING CORPORATION



By: Paul S. Street

Its: Senior Vice President, General Counsel  
and Secretary