

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
)	
	)	Objection Deadline: July 9, 2009 at 4:00 p.m. (ET)
	)	Hearing Date: July 16, 2009 at 4:30 p.m. (ET)

**DEBTORS' APPLICATION FOR AN ORDER APPROVING THE EMPLOYMENT OF
GIBSON, DUNN & CRUTCHER LLP AS ATTORNEYS FOR THE DEBTORS IN
POSSESSION *NUNC PRO TUNC* TO THE PETITION DATE**

Building Materials Holding Corporation and its affiliates, as debtors and debtors in possession (collectively, the "***Debtors***"), submit this Application (the "***Application***") for the entry of an order, substantially in the form annexed hereto as ***Exhibit 1***, authorizing the Debtors to employ Gibson, Dunn & Crutcher, LLP ("***Gibson, Dunn***") as their general bankruptcy and restructuring counsel *nunc pro tunc* to June 16, 2009 (the "***Petition Date***") pursuant to section 327 of title 11 of the United States Code (the "***Bankruptcy Code***") , Rule 2014(a) of the Federal Rules of Bankruptcy Procedure (the "***Bankruptcy Rules***"), and Rule 2014-1 of the Local Rules for the United States Bankruptcy Court for the District of Delaware (the "***Local Rules***"), and to compensate Gibson, Dunn pursuant to section 330 of the Bankruptcy Code. In support of this Application, the Debtors submit the Declaration of Michael A. Rosenthal in support of the Application (the "***Rosenthal Declaration***," a copy of which is annexed hereto as ***Exhibit 2***) and respectfully represent as follows:

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.

JURISDICTION AND VENUE

1. The Court has jurisdiction to consider this Application pursuant to 28 U.S.C. sections 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. section 157(b). Venue is proper pursuant to 28 U.S.C. sections 1408 and 1409.

RELIEF REQUESTED

2. By this Application, the Debtors seek entry of an order authorizing them, effective as of the Petition Date and subject to the terms and conditions described in the Engagement Letter (defined below), to employ Gibson, Dunn as the Debtors' general bankruptcy and restructuring counsel in the Chapter 11 Cases (as defined below) pursuant to section 327 of the Bankruptcy Code, Bankruptcy Rule 2014(a), and Local Rule 2014-1, and to compensate Gibson, Dunn pursuant to section 330 of the Bankruptcy Code.

BACKGROUND

3. On June 16, 2009, each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the "*Chapter 11 Cases*"). The Debtors continue to operate their businesses and manage their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in the Chapter 11 Cases.

4. The Debtors are one of the largest providers of residential building products and construction services in the United States. The Debtors distribute building materials, manufacture building components (e.g., millwork, floor and roof trusses, and wall panels), and provide construction services to professional builders and contractors through a network of 31 distribution facilities, 43 manufacturing facilities, and five regional construction services facilities.

5. The Debtors operate under two brand names: BMC West® and SelectBuild®.

- ***BMC West.*** Under the BMC West brand, the Debtors market and sell building products, manufacture building components, and provide construction services to professional builders and contractors. Products include structural lumber and building materials purchased from manufacturers, as well as manufactured building components such as millwork, trusses, and wall panels. Construction services include installation of various building products and framing. The Debtors currently offer these products and services in major metropolitan markets in Texas, Washington, Colorado, Idaho, Utah, Montana, North Carolina, California, and Oregon.
- ***SelectBuild.*** Under the SelectBuild brand, the Debtors offer integrated construction services to production homebuilders, as well as commercial and multi-family builders. Services include wood framing, concrete services, managing labor and construction schedules, and sourcing materials. The Debtors currently offer these services in major metropolitan markets in California, Arizona, Nevada and Illinois.

6. On the Petition Date, the Debtors filed their proposed chapter 11 plan (the "***Plan***") and accompanying disclosure statement (the "***Disclosure Statement***"). As set forth in greater detail in the Plan and Disclosure Statement, the Plan contemplates a restructure of the Debtors' balance sheet and ownership structure, as well as an immediate cash distribution to unsecured creditors and an opportunity for such creditors to receive full payment from the Reorganized Debtors, depending on business performance. The Debtors believe that the restructuring proposal embodied in the Plan provides the Debtors' creditors with the best means of maximizing value of the Debtors and their businesses. To implement this restructuring, the Debtors have obtained a commitment to provide \$80 million in the form of debtor-in-possession financing, which the Court approved on an interim basis on June 17, 2009.

THE DEBTORS' RETENTION OF GIBSON, DUNN

A. Qualifications of Gibson, Dunn

7. Gibson, Dunn is an international law firm with approximately 1,000 attorneys. The firm maintains offices in New York City, Los Angeles, Orange County, San Francisco, Palo Alto, Dallas, Denver, and Washington, D.C., as well as in London, Paris, Munich, Brussels, Dubai, and Singapore. Gibson, Dunn has extensive expertise and experience in virtually all aspects of the law that may arise in these Chapter 11 Cases. In particular, Gibson, Dunn has substantial bankruptcy and restructuring, corporate, employee benefits, environmental, finance, intellectual property, labor and employment, litigation, real estate, securities, and tax expertise.

8. The numerous attorneys practicing in Gibson, Dunn's international Business Restructuring and Reorganization Practice Group have played significant roles in many large and complex cases under the Bankruptcy Code, including without limitation, representing the debtors in the chapter 11 cases of The FINOVA Group Inc., FLAG Telecom Holdings Limited, American Pad and Paper Company, House2Home, Inc., Convergent Communications, Inc., Medscape, Inc., Microage, Inc., Money's Foods, TBS Shipping Inc., CollegeClub.com, Asbestos Claims Management Services, Financial News Network, First RepublicBank Corporation, Resorts International, Solutia, Inc., Advanced Tissue Sciences, Inc., Fleetwood Enterprises, Inc., and Scotia Pacific Company LLC.

9. Gibson, Dunn is intimately familiar with the Debtors' business and financial affairs. For approximately 17 years, Gibson, Dunn & Crutcher LLP has acted as principal outside legal counsel to the Debtors. The scope of that representation has been very broad-based and, among other things, has included providing advice regarding: equity and debt

financings; mergers, acquisitions, and divestitures; SEC reporting; corporate governance; corporate tax; labor; litigation; and, more recently, chapter 11 planning.

10. On January 15, 2009, Paul S. Street, Senior Vice President, Chief Administrative Officer, General Counsel, and Corporate Secretary of Building Materials Holding Corporation, executed an engagement letter with Gibson, Dunn, a true and correct copy of which is attached to the Rosenthal Declaration as Exhibit A (the "*Engagement Letter*"), concerning services to be provided to the Debtors by Gibson, Dunn after that date.² Since then, Gibson, Dunn has continued to provide the Debtors with a wide array of legal services in connection with their business affairs and restructuring and reorganization efforts, including (a) chapter 11 planning and preparation; (b) advice regarding prepetition restructuring negotiations with various parties, and (c) counsel regarding the Debtors' litigation, corporate, corporate governance, SEC compliance, tax and labor and employment needs. Gibson, Dunn's professionals have worked closely with the Debtors' management and other professionals with regard to these matters and, given both past representations and recent work, are well-acquainted with the Debtors' corporate history, debt structure, and business operations. As a result, Gibson, Dunn has developed relevant experience and expertise regarding the Debtors that will assist it in providing effective and efficient services in these Chapter 11 Cases.

B. Scope Of Services To Be Provided

11. The Debtors seek to employ Gibson, Dunn on an hourly basis to act as the Debtors' general bankruptcy and restructuring counsel in the Chapter 11 Cases and in any and all

² Prior to that date, Gibson, Dunn provided legal services either without a formal engagement letter or, from and after July 23, 2008, pursuant to the terms and conditions of a July 23, 2008, engagement letter executed by the Debtors.

matters that arise with respect thereto or to the Debtors. In particular, the Debtors anticipate that Gibson, Dunn will render, among others, the following professional services:

- (a) advise the Debtors of their rights, powers, and duties as debtors in possession under chapter 11 of the Bankruptcy Code;
- (b) prepare, on behalf of the Debtors, all necessary and appropriate applications, motions, proposed orders, other pleadings, notices, schedules, and other documents, and review all financial and other reports to be filed in these Chapter 11 Cases;
- (c) advise the Debtors concerning, and prepare responses to, applications, motions, other pleadings, notices, and other papers that may be filed and served in these Chapter 11 Cases;
- (d) advise the Debtors with respect to, and assist in the negotiation and documentation of, financing agreements and related transactions;
- (e) review the nature and validity of any liens asserted against the Debtors' property and advise the Debtors concerning the enforceability of such liens;
- (f) advise the Debtors regarding their ability to initiate actions to collect and recover property for the benefit of their estates;
- (g) counsel the Debtors in connection with the formulation, negotiation, and promulgation of a plan of reorganization and related documents;
- (h) advise and assist the Debtors in connection with any potential property dispositions;
- (i) advise the Debtors concerning executory contract and unexpired lease assumptions, assignments, and rejections as well as lease restructurings and recharacterizations;
- (j) assist the Debtors in reviewing, estimating, and resolving claims asserted against the Debtors' estates;
- (k) commence and conduct any and all litigation necessary or appropriate to assert rights held by the Debtors, protect assets of the Debtors' chapter 11 estates, or otherwise further the goal of completing the Debtors' successful reorganization;
- (l) provide corporate, employee benefit, environmental, litigation, tax, and other general nonbankruptcy services to the Debtors to the extent requested by the Debtors; and
- (m) perform all other necessary or appropriate legal services in connection with these Chapter 11 Cases for or on behalf of the Debtors.

12. The Debtors require knowledgeable counsel to provide these essential professional services. Gibson, Dunn has stated its desire and willingness to act in this case and

provide the necessary services as attorneys for the Debtors. As noted above, Gibson, Dunn has substantial expertise in all of these areas, and has gained valuable knowledge of the Debtors' business and financial affairs as a result of its prepetition representation of the Debtors. For all of these reasons, the Debtors believe that Gibson, Dunn is both well qualified and uniquely able to represent the Debtors' interests in these Chapter 11 Cases.

C. Prepetition Payments To Gibson, Dunn

13. As reflected above, since January 15, 2009, the Debtors have employed Gibson, Dunn under the terms and conditions of the Engagement Letter. The vast majority of the services provided by Gibson, Dunn to the Debtors since execution of the Engagement Letter have related either to the Debtors' prepetition reorganization and restructuring efforts or to planning for the possibility of these Chapter 11 Cases.

14. Upon execution of the Engagement Letter, the Debtors provided an advance deposit in the amount of \$250,000 to Gibson, Dunn on or about January 15, 2009. On or about April 8, 2009, the Debtors agreed to increase the advance deposit from \$250,000 to \$350,000 (the "*Advance Deposit*") and wired Gibson, Dunn the funds necessary to effectuate this increase. A true and correct copy of the April 8, 2009, agreement relative to this increase is attached to the Rosenthal Declaration as Exhibit B.

15. From the inception of the Advance Deposit arrangement in January 2009, Gibson, Dunn has placed the Advance Deposit on account and presented the Debtors with a statement for services rendered and expenses incurred at least twice per month. Upon the presentation of each statement, Gibson, Dunn immediately applied the Advance Deposit against the fees and disbursements reflected in the statement. In turn, as provided in the Engagement Letter, the Debtors would promptly replenish the Advance Deposit by wire transfer to the agreed

upon level. At no point since execution of the Engagement Letter has the amount of Gibson, Dunn's outstanding, unpaid fees and expenses with respect to the Debtors exceeded the amount of the Advance Deposit on account with Gibson, Dunn.

16. On or about June 11, 2009, Gibson, Dunn presented statements in the aggregate amount of \$303,333.16 to the Debtors for then accrued, unpaid fees for services performed and expenses incurred through June 10, 2009. Contemporaneously, Gibson, Dunn applied the Advance Deposit against the amounts due pursuant to such statements. Gibson, Dunn also requested that the Debtors provide Gibson, Dunn with an additional \$750,000 advance deposit in connection with the filing of the Chapter 11 Cases. On the same day, Gibson, Dunn received a payment from the Debtors in the amount of \$1,053,333.16. After receipt of this payment on June 11, 2009, the Advance Deposit then held by Gibson, Dunn was \$1,099,438.81. From June 11, 2009, through June 15, 2009, Gibson, Dunn incurred additional fees and expenses on behalf of the Debtors in the approximate amount of \$388,676.22.³ Prior to commencement of the Chapter 11 Cases, these accrued, unpaid fees and expenses were applied against the Advance Deposit balance, leaving an unapplied Advance Deposit balance as of the Petition Date of \$710,762.59. All prepetition payments were remitted by Debtor, Building Materials Holding Corporation. As of the Petition Date, Gibson, Dunn holds no (or, to the extent applicable, agrees to waive any) prepetition claim against the Debtors.

³ Not all of the fees and expenses incurred by Gibson, Dunn prior to the Petition Date had been processed in Gibson, Dunn's accounting system as of the Petition Date. This required Gibson, Dunn to estimate the amount of certain of those fees and expenses. Gibson, Dunn is in the process of completing its reconciliation of fees for services rendered and expenses incurred through June 15, 2009. In the event that Gibson, Dunn's fees and expenses are less than the estimated amount that was billed to the Debtors, Gibson, Dunn will credit the differential to the unapplied Advance Deposit balance and will give notice of this credit to the Debtors and to the United States Trustee for the District of Delaware. In the event that Gibson, Dunn's fees and expenses exceed the estimated amount that was billed to the Debtors, Gibson, Dunn has agreed to waive any claim that it has against the Debtors' estates on account of such prepetition fees and expenses.

17. In the 12 months prior to the filing of the Chapter 11 Cases, Gibson, Dunn billed, and received payments from, the Debtors in the aggregate amount of \$3,078,315.51 for professional services rendered and expenses incurred. In addition, as set forth above, Gibson, Dunn currently holds an unapplied Advance Deposit from the Debtors in excess of prepetition billings in the amount of approximately \$710,762.59. This Advance Deposit balance will be held by Gibson, Dunn as security for post-petition services and expenses.

D. Gibson, Dunn's Fees for Services to be Rendered in Connection with the Chapter 11 Cases

18. Pursuant to the terms and conditions of the Engagement Letter⁴ and subject to the Court's approval, as set forth in the Rosenthal Declaration, Gibson, Dunn intends to (a) charge for its legal services on an hourly basis in accordance with its ordinary and customary hourly rates in effect on the date services are rendered, and (b) seek reimbursement of actual and necessary out-of-pocket expenses. A list of the professionals currently expected to provide services to the Debtors and the current hourly rates for these professionals for 2009 is attached to the Rosenthal Declaration as Exhibit C. Other attorneys may also provide services to the Debtors as well, depending on the legal issues facing the Debtors.

19. Gibson, Dunn's hourly rates may change from time to time in accordance with Gibson, Dunn's established billing practices and procedures. Gibson, Dunn will maintain detailed, contemporaneous records of time spent, as well as any actual and necessary expenses incurred, in connection with the rendering of the legal services described above by category and nature of the services rendered.

⁴ The Engagement Letter contains an indemnification provision whereby the Debtors agreed to indemnify Gibson, Dunn for any liability arising in connection with Gibson, Dunn's representation of the Debtors. As set forth in the Rosenthal Declaration, Gibson, Dunn has agreed to waive this provision of the Engagement Letter.

20. As set forth in the Rosenthal Declaration, Gibson, Dunn intends to apply to the Court for payment of compensation and reimbursement of expenses in accordance with the procedures set forth in the applicable provisions of section 330 of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules, as those procedures may be modified or supplemented by order of this Court. Gibson, Dunn has agreed not to share with any person or firm the compensation to be paid for professional services rendered in connection with the Chapter 11 Cases, other than as permitted pursuant to section 504 of the Bankruptcy Code.

E. Gibson, Dunn's Disinterestedness

21. To the best of the Debtors' knowledge, information, and belief, other than in connection with these Chapter 11 Cases, Gibson, Dunn has no connection with the Debtors, their creditors, the United States Trustee for the District of Delaware, any other party in interest, or their respective attorneys and accountants, except as set forth below:

- (a) Gibson, Dunn does not represent, and has not represented, any entity other than the Debtors in matters related to these Chapter 11 Cases;
- (b) Gibson, Dunn does not have any connection with, and has not represented in the past, the United States Trustee for the District of Delaware, or any person employed by the Office of the United States Trustee for the District of Delaware;
- (c) Prior to the Petition Date, Gibson, Dunn performed certain legal services for the Debtors, as described above. As described above, the Debtors do not owe Gibson, Dunn any amount for services performed or expenses incurred prior to the Petition Date;
- (d) Gibson, Dunn has approximately 1,000 attorneys and many other employees. It is possible that certain Gibson, Dunn attorneys or employees hold interests in mutual funds or other investment vehicles that may own Building Materials Holding Corporation's securities;
- (e) From time to time, Gibson, Dunn has referred matters to most or all of the Debtors' professionals to be retained in these Chapter 11 Cases. Likewise, certain of the Debtors' professionals have referred matters to Gibson, Dunn; and
- (f) From time to time, Gibson, Dunn likely has represented, and likely will continue to represent, certain creditors of the Debtors and other parties actually or potentially adverse to the Debtors in matters unrelated to the Debtors or these Chapter 11 Cases. As described below, Gibson, Dunn has undertaken a detailed

search to determine whether it represents or has represented any significant creditors, equity security holders, insiders or other parties in interest in such unrelated matters, and all such known representations within the last three years are described in Exhibit D, attached to the Rosenthal Declaration. Due to the breadth of Gibson, Dunn's client base, the firm is not subject to undue influence of any single client.

22. To check and clear conflicts, and in preparing the Rosenthal Declaration, Gibson, Dunn used a set of procedures that it has developed to ensure compliance with the requirements of the Bankruptcy Code and the Bankruptcy Rules regarding the retention of professionals in chapter 11 cases. As set forth in the Rosenthal Declaration, pursuant to these procedures, Gibson, Dunn performed the following actions to determine whether Gibson, Dunn or any of its attorneys has any connections with, has in the past represented, or is currently representing potential parties in interest in these Chapter 11 cases:

- (a) A list of interested parties (the "***Interested Parties***") was created using information provided by the Debtors and additional information identified by Gibson, Dunn. The list of Interested Parties is comprised of the following entities, whose identities are set forth in Exhibit E, attached to the Rosenthal Declaration:
 - (i) the Debtors;
 - (ii) the Debtors' prepetition and postpetition secured bank lenders;
 - (iii) those holders of more than five percent of the Debtors' equity securities;
 - (iv) current officers and directors of the Debtors and individuals who have served as officers or directors of the Debtors in the past two years;
 - (v) parties to significant litigation with the Debtors;
 - (vi) the Debtors' 50 largest unsecured creditors on a consolidated basis as identified in their chapter 11 petitions;
 - (vii) the unions with whom the Debtors have collective bargaining agreements;
 - (viii) the Debtors' landlords;
 - (ix) the Debtors' utility providers;
 - (x) the Debtors' insurers and insurance brokers;
 - (xi) the Debtors' 50 largest customers;
 - (xii) the Debtors' 50 largest vendors;
 - (xiii) professionals to be employed by the Debtors in these Chapter 11 cases; and

- (xiv) other significant parties.
- (b) Gibson, Dunn compared each of the Interested Parties to the names that Gibson, Dunn maintains in its master client database created from its conflict clearance and billing records. Gibson, Dunn's client database includes: (i) the name of each current or former client; (ii) the names of any entities materially related to, or materially adverse to, such current or former client; and (iii) the names of the Gibson, Dunn attorneys responsible for such current or former clients; (iv) the status of the matter as either "active" or "inactive"; and (v) the dates on which the matter was opened and/or closed; and
- (c) Any matches between the Interested Parties and the entities in Gibson, Dunn's client database were identified, reviewed by an attorney and compiled for purposes of the Rosenthal Declaration. To the extent that Gibson, Dunn currently represents, or has represented within the last three years, any of the Interested Parties, the identities of such entities and, for current clients, a brief description of the type of work performed by Gibson, Dunn for the clients, are set forth in Exhibit D, attached to the Rosenthal Declaration. In determining whether a client is presently represented by Gibson, Dunn, Gibson, Dunn attorneys relied on the existence of an "active" notation on the report to reflect current representation. With respect to matters showing as "inactive", Gibson, Dunn relied on the "close date" to determine whether the representation occurred within the past three years. If an "inactive" matter opened prior to May 1, 2006 showed no "close date", Gibson, Dunn assumed for purposes of this disclosure that the matter was inactive during the past three years and did not include the client on Exhibit D attached to the Rosenthal Declaration. If an "inactive" matter opened on or about May 1, 2006 but showed no "close date," the client is included on Exhibit D, attached to the Rosenthal Declaration.

23. Gibson, Dunn is confident that its diligence has resulted, to the greatest extent possible, in the disclosure of all potential conflicts. However, despite the efforts described above to identify and disclose Gibson, Dunn's connections with parties in interest in these Chapter 11 Cases, as set forth in the Rosenthal Declaration, Gibson, Dunn is unable to state with absolute certainty that every client representation or other connection has been disclosed because Gibson, Dunn is an international law firm with approximately 1,000 attorneys in 15 offices. In this regard, if Gibson, Dunn discovers additional information that requires disclosure, Gibson, Dunn will file a supplemental disclosure with the Court. Additionally, to the extent that issues may arise which would cause the Debtors to be adverse to any of Gibson, Dunn's clients, Gibson, Dunn will obtain and disclose waivers or, to the extent that it would not be appropriate for

Gibson, Dunn to represent the Debtors with respect to such matters, the Debtors will seek to employ special counsel.

24. Based upon the foregoing, to the best of the Debtors' knowledge, information, and belief, Gibson, Dunn represents no interest adverse to the Debtors or their estates. Accordingly, the Debtors believe that Gibson, Dunn is a "disinterested person" pursuant to sections 101(14) and 1107 of the Bankruptcy Code and as required by section 327(a) of the Bankruptcy Code.

F. Disclosure of Intercompany Claims

25. Given the intertwined nature of the Debtors' businesses and the Debtors' corporate structure and cash management system, intercompany claims exist between certain of the various Debtors. The intercompany claims will be set forth in the Debtors' Schedules of Assets and Liabilities and Statement of Financial Affairs. At this point, the Debtors do not anticipate any dispute between the individual Debtors as to intercompany claims. However, in the event a dispute arises between the Debtors regarding intercompany claims, the Debtors will retain special counsel to handle the dispute on behalf of the applicable Debtors.

26. It is well established that intercompany claims are not sufficient in and of themselves to preclude joint representation by a single professional. Courts have repeatedly held that there is no per se rule against representation of multiple entities that may have claims against each other. *See In re BH & P, Inc.*, 949 F.2d 1300, 1315 (3d Cir. 1991) (holding that courts must take a "flexible" approach in considering employment of professionals and that "the existence of interdebtor claims is . . . no longer an automatic ground for disqualification of counsel . . ."); *In re Int'l Oil Co.*, 427 E.2d 186, 187 (2d Cir. 1970) (existence of intercompany claims was not "sufficient to saddle . . . estates [of four affiliated corporations] with the expense of separate [counsel]"); *In re Wheatfield Business Park LLC*, 286 B.R. 412, 423 (Bankr. C.D. Cal. 2002)

("[I]f a potential conflict of interest arises because of a transaction between two affiliated business entities that are both debtors in chapter 11 cases, the appointment of special counsel to deal with that transaction may be sufficient to permit a single attorney or law firm to represent the related entities as their general chapter 11 counsel."); *In re Global Marine, Inc.*, 108 B.R. 998, 1004 (Bankr. S.D. Tex. 1989); *In re Star Broadcasting*, 81 B.R. 835, 844 (Bankr. D.N.J. 1988).

G. Disclosure of Representation of Wells Fargo in Matters not Involving the Debtors

27. As described above, Gibson, Dunn has represented the Debtors in numerous matters over many years, including in connection with the representation of the Debtors in connection with their negotiations with the prepetition secured lenders (the "*BMHC Matters*"). Wells Fargo Bank, N.A. ("*Wells Fargo*") is the administrative agent under, and a lender pursuant to, that certain Second Amended and Restated Credit Agreement, dated as of November 10, 2006, as amended, and is also the administrative agent under, and a lender pursuant to, the Debtors' debtor in possession financing facility. Gibson, Dunn has represented and currently represents Wells Fargo in matters wholly unrelated to the BMHC Matters. Given the potential conflict of interest and in order for Gibson, Dunn to represent the Debtors in the BMHC Matters and simultaneously represent Wells Fargo in wholly unrelated matters, Gibson, Dunn has obtained written conflict waivers from both the Debtors and Wells Fargo. A copy of the written conflict waivers from Wells Fargo and the Debtors is attached to the Rosenthal Declaration as Exhibit F. The conflict waiver from Wells Fargo permits Gibson, Dunn to represent the Debtors in connection with all matters related to the Chapter 11 Cases but not to assert a claim against Wells Fargo in the Chapter 11 Cases or in any related litigation or to challenge the validity or priority of any amounts owed to Wells Fargo or the validity of Wells

Fargo's liens. In the event that any such action is necessary, the Debtors could be capably represented either by Gibson, Dunn's co-counsel in this case, Young Conaway Stargatt & Taylor, LLP, which has advised the Debtors and Gibson, Dunn that it could pursue any such actions, or by other special conflicts counsel engaged by the Debtors.⁵

H. Other Disclosure

28. Robert E. Mellor, Chairman of the Board of Directors and Chief Executive Officer Building Materials Holding Corporation, was Of Counsel with Gibson, Dunn from 1990 through 1997.

BASIS FOR RELIEF REQUESTED

29. Section 327(a) of the Bankruptcy Code provides that a debtor in possession may, with the court's approval, employ professionals that do not hold or represent an interest adverse to the estate and that are "disinterested persons," as defined by section 101(14) of the Bankruptcy Code, to represent or assist the debtor in possession in carrying out its duties under the Bankruptcy Code. *See* 11 U.S.C. §§ 101(14). Additionally, section 1107(b) of the Bankruptcy Code provides that a professional is not disqualified for employment by a chapter 11 debtor in possession under section 327(a) of the Bankruptcy Code solely because of its employment by or representation of the debtor before the commencement of the case. *See* 11 U.S.C. § 1107(b).

30. Gibson, Dunn's services will enable the Debtors to execute faithfully their duties as debtors in possession, and are necessary to the successful functioning of these Chapter 11 Cases. Based upon both its extensive experience and expertise, and its prior representation of

⁵ In connection with the DIP Facility, the Debtors have already stipulated as to the validity and priority of the amounts owed to Wells Fargo and the validity of Wells Fargo's liens.

the Debtors, Gibson, Dunn is both well-qualified and uniquely able to represent the Debtors during these Chapter 11 Cases in an efficient, cost-effective, and timely manner. As stated above, the Debtors do not believe that Gibson, Dunn holds or represents any interest adverse to the Debtors' estates, and they believe that Gibson, Dunn is a "disinterested person" under the Bankruptcy Code. Accordingly, the Debtors submit that the retention of Gibson, Dunn is in the best interests of the Debtors, their estates, and their creditors and should be approved by the Court.

31. In addition, Gibson, Dunn's retention of the Advance Deposit balance as an evergreen security retainer is appropriate for several reasons. *See In re Insilco Technologies, Inc.*, 291 B.R. 628, 634 (Bankr. D. Del. 2003) (Carey, J.) ("Factors to be considered, include...whether terms of an engagement agreement reflect normal business terms in the marketplace;...the relationship between the Debtor and the professionals, i.e., whether the parties involved are sophisticated business entities with equal bargaining power who engaged in an arms-length negotiation[] [and]...whether the retention, as proposed, is in the best interests of the estate[...]); *see also* Statements of Chief Bankruptcy Judge Peter J. Walsh, *In re CTC Communications Group, Inc.*, Case No. 02-12873 (PJW) (Bankr. D. Del. May 22, 2003), transcript of hearing held May 22, 2003, at 43 ("I agree and adopt wholeheartedly Judge Carey's decision in the Insilco case."). First, this type of retainer agreement reflects normal business terms in the marketplace. *See In re Insilco Technologies, Inc.*, 291 B.R. at 634 ("[I]t is not disputed that the taking of [security] retainers is a practice now common in the market place."). Second, both Gibson, Dunn and the Debtors are sophisticated business entities that have negotiated the Advance Deposit arrangement at arm's length. Third, the retention of Gibson, Dunn is in the best interests of the Debtors' estates for the reasons set forth above and the

Advance Deposit arrangement allows the Debtors to maintain their prepetition relationship established with Gibson, Dunn. Thus, under the standards articulated in *In re Insilco Technologies, Inc.*, and adopted in *In re CTC Communications Group, Inc.*, the facts and circumstances of this case support the approval of the Advance Deposit as a security retainer.

NOTICE

32. No trustee, examiner, or creditors' committee has been appointed in the Chapter 11 Cases. The Debtors have provided notice of filing of the Application to: (a) the U.S. Trustee; (b) the 50 largest unsecured creditors of the Debtors on a consolidated basis as identified in the Debtors' chapter 11 petitions; (c) counsel to Wells Fargo Bank, as agent under the Debtors' Prepetition Credit Agreement and DIP Facility (as defined in the Plan); and (d) any persons who have filed a request for notice in the Chapter 11 Cases pursuant to Bankruptcy Rule 2002. Due to the nature of the relief requested, the Debtors respectfully submit that no further notice of this Application is required.

NO PRIOR REQUEST

33. No prior request for the relief sought in this Application has been made to this or any other court.

CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially in the form annexed hereto as Exhibit 1, approving the employment of Gibson, Dunn as general bankruptcy and restructuring counsel for the Debtors in these Chapter 11 Cases, effective as of the Petition Date and subject to the terms and conditions described in the Engagement Letter, and that the Court grant such other and further relief as is just and proper.

Dated: June 26, 2009

BUILDING MATERIALS HOLDING
CORPORATION



By: Paul S. Street
Title: Senior Vice President,
Chief Administrative Officer,
General Counsel, and
Corporate Secretary

**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
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)	Objection Deadline: July 9, 2009 at 4:00 p.m. (ET)
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NOTICE OF APPLICATION

TO: (I) THE OFFICE OF THE UNITED STATES TRUSTEE; (II) THE DEBTORS' FIFTY LARGEST UNSECURED CREDITORS ON A CONSOLIDATED BASIS; (III) COUNSEL TO WELLS FARGO BANK, AS AGENT UNDER THE PREPETITION CREDIT FACILITY AND THE DIP FACILITY (AS DEFINED IN THE PLAN); AND (IV) ALL PARTIES ENTITLED TO NOTICE UNDER RULE 2002-1(b) OF THE LOCAL RULES OF BANKRUPTCY PRACTICE AND PROCEDURE FOR THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

PLEASE TAKE NOTICE that the above-captioned debtors and debtors in possession (collectively, the "Debtors") have filed the attached **Debtors' Application for an Order Approving the Employment of Gibson, Dunn & Crutcher LLP as Attorneys for the Debtors in Possession *Nunc Pro Tunc* to the Petition Date** (the "Application").

PLEASE TAKE FURTHER NOTICE that any objections to the Application must be filed on or before **July 9, 2009 at 4:00 p.m. (ET)** (the "Objection Deadline") with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801. At the same time, you must serve a copy of the objection upon the undersigned counsel to the Debtors so as to be received on or before the Objection Deadline.

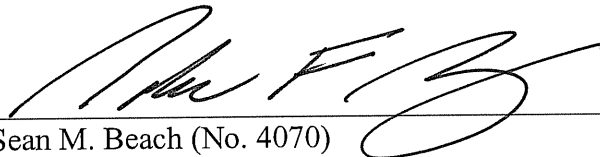
¹ The Debtors, along with the last four digits of each Debtor's tax identification number, are as follows: Building Materials Holding Corporation (4269), BMC West Corporation (0454), SelectBuild Construction, Inc. (1340), SelectBuild Northern California, Inc. (7579), Illinois Framing, Inc. (4451), C 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.

PLEASE TAKE FURTHER NOTICE THAT A HEARING TO CONSIDER THE APPLICATION WILL BE HELD ON **JULY 16, 2009 AT 4:30 P.M. (ET)** BEFORE THE HONORABLE KEVIN J. CAREY AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 MARKET STREET, 5TH FLOOR, COURTROOM NO. 5, WILMINGTON, DELAWARE 19801.

PLEASE TAKE FURTHER NOTICE that if you fail to respond in accordance with this notice, the Court may grant the relief requested in the Application without further notice or hearing.

Dated: Wilmington, Delaware
June 26, 2009

YOUNG CONAWAY STARGATT & TAYLOR, LLP



Sean M. Beach (No. 4070)
Donald J. Bowman, Jr. (No. 4383)
Robert F. Poppiti, Jr. (No. 5052)
The Brandywine Building
1000 West Street, 17th Floor
P.O. Box 391
Wilmington, Delaware 19899-0391
Telephone: (302) 571-6600
Facsimile: (302) 571-1253

----and----

GIBSON, DUNN & CRUTCHER LLP
Michael A. Rosenthal (admitted *pro hac vice*)
Matthew K. Kelsey (admitted *pro hac vice*)
Saeed M. Muzumdar (admitted *pro hac vice*)
200 Park Avenue, 47th Floor
New York, New York 10166-0193
Telephone: (212) 351-4000
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Aaron G. York (admitted *pro hac vice*)
Jeremy L. Graves (admitted *pro hac vice*)
2100 McKinney Avenue, Suite 1100
Dallas, Texas 75201-6911
Telephone: (214) 698-3100
Facsimile: (214) 571-2900

PROPOSED ATTORNEYS FOR DEBTORS
AND DEBTORS IN POSSESSION

EXHIBIT 1

Proposed Order

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
	)	Ref. Docket No.

**ORDER APPROVING THE EMPLOYMENT OF
GIBSON, DUNN & CRUTCHER LLP AS ATTORNEYS FOR
DEBTORS IN POSSESSION *NUNC PRO TUNC* TO THE PETITION DATE**

Upon consideration of the application (the "*Application*") of Building Materials Holding Corporation and its affiliates, as debtors and debtors in possession (collectively, the "*Debtors*"), for an order pursuant to section 327(a) of title 11 of the United States Code (the "*Bankruptcy Code*"), Rule 2014 of the Federal Rules of Bankruptcy Procedure (the "*Bankruptcy Rules*"), and Rule 2014-1 of the Local Rules for the United States Bankruptcy Court for the District of Delaware (the "*Local Rules*") approving their employment of Gibson, Dunn & Crutcher LLP ("*Gibson, Dunn*") as general bankruptcy and restructuring counsel, *nunc pro tunc* to June 16, 2009 (the "*Petition Date*"), for the Debtors in their Chapter 11 Cases;² upon the Declaration of Michael A. Rosenthal in support of the Application (the "*Rosenthal Declaration*"); and it appearing that this Court has jurisdiction to consider the Application; and it appearing that adequate notice has been given; and any objections to the Application having been overruled; and it appearing that Gibson, Dunn does not hold or represent

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.

² Capitalized terms used herein but not otherwise defined herein shall have the meanings ascribed to them in the Application.

an interest adverse to the Debtors' estates, and is a disinterested person under section 101(14) of the Bankruptcy Code; and the Court finding that the employment of Gibson, Dunn is necessary and in the best interest of the Debtors and their estates and creditors; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Application is granted in its entirety.
2. Pursuant to section 327(a) of the Bankruptcy Code, the Debtors' employment of Gibson, Dunn as their general bankruptcy and restructuring counsel *nunc pro tunc* to the Petition Date, in accordance with the terms and conditions of the Engagement Letter is hereby approved.
3. Gibson, Dunn shall file applications to be compensated in accordance with the terms of the Engagement Letter, the standards and procedures set forth in sections 330 and 331 of the Bankruptcy Code, all applicable Bankruptcy Rules, the Local Rules, any guidelines promulgated by the Office of the United States Trustee, and further orders of the Court.
4. Notwithstanding any terms of the Engagement Letter to the contrary, Section 12.4 of the Terms of Retention of Gibson, Dunn & Crutcher LLP, attached to the Engagement Letter shall be struck in its entirety.
5. Notwithstanding any terms of the Engagement Letter to the contrary, the Court shall have jurisdiction over any controversy arising from or related to the Application, the Engagement Letter, or Gibson, Dunn's retention in the Chapter 11 Cases.
6. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Application.

7. The Court shall retain jurisdiction with respect to all matters arising under or relating to the implementation and enforcement of this Order.

Dated: Wilmington, Delaware
July ____, 2009

Kevin J. Carey
Chief United States Bankruptcy Judge

EXHIBIT 2

Rosenthal Declaration

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
)	

**DECLARATION OF MICHAEL A. ROSENTHAL IN SUPPORT OF DEBTORS'
APPLICATION FOR AN ORDER APPROVING THE EMPLOYMENT OF
GIBSON, DUNN & CRUTCHER LLP AS ATTORNEYS FOR THE DEBTORS IN
POSSESSION *NUNC PRO TUNC* TO THE PETITION DATE, TOGETHER WITH
DISCLOSURE OF COMPENSATION PURSUANT TO BANKRUPTCY RULE 2016(b)**

I, Michael A. Rosenthal, declare and state as follows:

FOUNDATION

1. I am a partner in the law firm of Gibson, Dunn & Crutcher LLP ("***Gibson, Dunn***"). I am admitted to practice before the courts of the State of New York, the State of Texas, the State of Illinois, the United States District Court for the Northern District of Texas and the United States District Court for the Southern District of Texas. I submit this Declaration, pursuant to sections 327(a) and 329 of title 11 of the United States Code (the "***Bankruptcy Code***"), Rules 2014 and 2016(b) of the Federal Rules of Bankruptcy Procedure (the "***Bankruptcy Rules***"), and Rule 2014-1 of the Local Rules for the United States Bankruptcy Court for the District of Delaware (the "***Local Rules***"), in support of the Debtors' Application for an Order

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.

Approving the Employment of Gibson, Dunn & Crutcher LLP as Attorneys for Debtors in Possession *Nunc Pro Tunc* to the Petition Date (the "***Application***"). Unless otherwise stated in this Declaration, I have personal knowledge of the facts set forth herein.²

THE DEBTORS' RETENTION OF GIBSON, DUNN

A. Qualifications of Gibson, Dunn

2. Gibson, Dunn is an international law firm with approximately 1,000 attorneys. The firm maintains offices in New York City, Los Angeles, Orange County, San Francisco, Palo Alto, Dallas, Denver, and Washington, D.C., as well as in London, Paris, Munich, Brussels, Dubai, and Singapore. Gibson, Dunn has extensive expertise and experience in virtually all aspects of the law that may arise in this chapter 11 case. In particular, Gibson, Dunn has substantial bankruptcy and restructuring, corporate, employee benefits, environmental, finance, intellectual property, labor and employment, litigation, real estate, securities and tax expertise.

3. The numerous attorneys practicing in Gibson, Dunn's international Business Restructuring and Reorganization Practice Group have played significant roles in many large and complex cases under the Bankruptcy Code, including without limitation, representing the debtors in the chapter 11 cases of The FINOVA Group Inc., FLAG Telecom Holdings Limited, American Pad and Paper Company, House2Home, Inc., Convergent Communications, Inc., Medscape, Inc., Microage, Inc., Money's Foods, TBS Shipping Inc., CollegeClub.com, Asbestos Claims Management Services, Zales, Financial News Network, First Republic Bank

² Capitalized terms used but not defined herein shall have the meanings set forth in the Application.

Corporation, Resorts International, Solutia, Inc., Advanced Tissue Sciences, Inc., , Fleetwood Enterprises, Inc., and Scotia Pacific Company LLC.

4. I, and others at Gibson, Dunn, are intimately familiar with the Debtors' businesses and financial affairs. For approximately 17 years, Gibson, Dunn has acted as principal outside legal counsel to the Debtors. The scope of that representation has been very broad-based and, among other things, has included providing advice regarding: equity and debt financings; mergers, acquisitions, and divestitures; SEC reporting; corporate governance; corporate tax; labor; litigation; and more recently, chapter 11 planning.

5. On January 15, 2009, Paul S. Street, Senior Vice President, Chief Administrative Officer, General Counsel, and Corporate Secretary of Building Materials Holding Corporation, executed an engagement letter with Gibson, Dunn, a true and correct copy of which is attached hereto as *Exhibit A* (the "*Engagement Letter*"), concerning services to be provided to the Debtors by Gibson, Dunn after that date.³ As set forth in the Application, since then, I, and others at Gibson, Dunn, have continued to provide the Debtors with a wide array of legal services in connection with their business affairs and restructuring and reorganization efforts, including (a) chapter 11 planning and preparation; (b) advice regarding prepetition restructuring negotiations with various parties, and (c) counsel regarding the Debtors' litigation, corporate, corporate governance, SEC compliance, tax, and labor and employment needs. I and other Gibson, Dunn professionals have worked closely with the Debtors' management and other professionals with regard to these matters and, given both past representations and recent work, are well-acquainted with the Debtors' corporate history, debt structure and business operations.

³ Prior to that date, Gibson, Dunn provided legal services, either without a formal engagement letter or, from and after July 23, 2008, pursuant to the terms and conditions of a July 23, 2008 engagement letter executed by the Debtors.

As a result, I and other Gibson, Dunn professionals have developed relevant experience and expertise regarding the Debtors that will assist us in providing effective and efficient services in these Chapter 11 Cases.

B. Scope of Services to be Provided

6. The Debtors seek to employ Gibson, Dunn on an hourly basis to act as the Debtors' general bankruptcy and restructuring counsel in the Chapter 11 Cases and in any and all matters that arise with respect thereto or to the Debtors. As set forth more fully in the Application, these professional services include, but are not limited to (a) advising the Debtors of their rights, powers, and duties as debtors in possession under chapter 11 of the Bankruptcy Code; (b) preparing, on behalf of the Debtors, all necessary and appropriate applications, motions, proposed orders, other pleadings, notices, schedules, and other documents, and reviewing all financial and other reports to be filed in these Chapter 11 Cases; and (c) counseling the Debtors in connection with the formulation, negotiation, and promulgation of a plan of reorganization and related documents.

C. Prepetition Payments to Gibson, Dunn

7. As reflected above, since January 15, 2009, the Debtors have employed Gibson, Dunn under the terms and conditions of the Engagement Letter. The vast majority of the services provided by Gibson, Dunn to the Debtors since execution of the Engagement Letter have related either to the Debtors' prepetition reorganization and restructuring efforts or to planning for the possibility of these Chapter 11 Cases.

8. Upon execution of the Engagement Letter, the Debtors provided an advance deposit in the amount of \$250,000 to Gibson, Dunn on or about January 15, 2009. On or about April 8, 2009 the Debtors agreed to increase the advance deposit from \$250,000 to \$350,000 (the "*Advance Deposit*") and wired Gibson, Dunn the funds necessary to effectuate this

increase. A true and correct copy of the April 8, 2009 agreement relative to this increase is attached hereto as *Exhibit B*.

9. From the inception of the Advance Deposit arrangement in January 2009, Gibson, Dunn has placed the Advance Deposit on account and presented the Debtors with a statement for services rendered and expenses incurred at least twice per month. Upon the presentation of each statement, Gibson, Dunn immediately applied the Advance Deposit against the fees and disbursements reflected in the statement. In turn, as provided in the Engagement Letter, the Debtors would promptly replenish the Advance Deposit by wire transfer to the agreed upon level. At no point since execution of the Engagement Letter has the amount of Gibson, Dunn's outstanding unpaid fees and expenses with respect to the Debtors exceeded the amount of the Advance Deposit on account with Gibson, Dunn.

10. On or about June 11, 2009, Gibson, Dunn presented statements in the aggregate amount of \$303,333.16 to the Debtors for then accrued, unpaid fees for services performed and expenses incurred through June 10, 2009. Contemporaneously, Gibson, Dunn applied the Advance Deposit against the amounts due pursuant to such statements. Gibson, Dunn also requested that the Debtors provide Gibson, Dunn with an additional \$750,000 advance deposit in connection with the filing of the Chapter 11 Cases. On the same day, Gibson, Dunn received a payment from the Debtors in the amount of \$1,053,333.16. After receipt of this payment on June 11, 2009 the Advance Deposit then held by Gibson, Dunn, was \$1,099,438.81.⁴

⁴ Not all of the fees and expenses incurred by Gibson, Dunn prior to the Petition Date had been processed in Gibson, Dunn's accounting system as of the Petition Date. This required Gibson, Dunn to estimate the amount of certain of those fees and expenses. Gibson, Dunn is in the process of completing its reconciliation of fees for services rendered and expenses incurred through June 15, 2009. In the event that Gibson, Dunn's fees and expenses are less than the estimated amount that was billed to the Debtors, Gibson, Dunn will credit the differential to the unapplied Advance Deposit balance and will give notice of

[Footnote continued on next page]

From June 11, 2009, through June 15, 2009, Gibson, Dunn incurred additional fees and expenses on behalf of the Debtors in the approximate amount of \$388,676.22. Prior to commencement of the Chapter 11 Cases, these accrued, unpaid fees and expenses were applied against the Advance Deposit balance, leaving an unapplied Advance Deposit balance as of the Petition Date of \$710,762.59. All prepetition payments were remitted by Debtor Building Materials Holding Corporation. As of the Petition Date, Gibson, Dunn holds no (or, to the extent applicable, agrees to waive any) prepetition claim against the Debtors. In the 12 months prior to the filing of the Chapter 11 Cases, Gibson, Dunn billed, and received payments from, the Debtors in the aggregate amount of \$3,078,315.51 for professional services rendered and expenses incurred. In addition, as set forth above, Gibson, Dunn currently holds an unapplied Advance Deposit from the Debtors in excess of prepetition billings in the amount of approximately \$710,762.59. This Advance Deposit balance will be held by Gibson, Dunn as security for post-petition services and expenses.

D. Payment of Gibson, Dunn's Fees and Expenses

11. Pursuant to the terms and conditions of the Engagement Letter⁵ and subject to the Court's approval, Gibson, Dunn intends to (a) charge for its legal services on an hourly basis in accordance with its ordinary and customary hourly rates in effect on the date services are rendered, and (b) seek reimbursement of actual and necessary out-of-pocket

[Footnote continued from previous page]

this credit to the Debtors and to the United States Trustee for the District of Delaware. In the event that Gibson, Dunn's fees and expenses exceed the estimated amount that was billed to the Debtors, Gibson, Dunn has agreed to waive any claim that it has against the Debtors' estates on account of such prepetition fees and expenses.

- ⁵ The Engagement Letter contains an indemnification provision whereby the Debtors agreed to indemnify Gibson, Dunn for any liability arising in connection with Gibson, Dunn's representation of the Debtors. Gibson, Dunn has agreed to waive this provision of the Engagement Letter.

expenses.⁶ Gibson, Dunn's hourly rates may change from time to time in accordance with Gibson, Dunn's established billing practices and procedures.⁷ Gibson, Dunn will maintain detailed, contemporaneous records of time spent, as well as any actual and necessary expenses incurred, in connection with the rendering of the legal services described above by category and nature of the services rendered.

12. Gibson, Dunn intends to apply to the Court for payment of compensation and reimbursement of expenses in accordance with the procedures set forth in the applicable provisions of section 330 of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules, as those procedures may be modified or supplemented by order of this Court. Gibson, Dunn has agreed not to share with any person or firm the compensation to be paid for professional services rendered in connection with the Chapter 11 Cases, other than as permitted pursuant to section 504 of the Bankruptcy Code.

E. Gibson, Dunn's Disinterestedness

13. To the best of my knowledge, information, and belief, insofar as I have been able to ascertain after reasonable inquiry, neither I, nor Gibson, Dunn, nor any partner or associate thereof, has any connection with the Debtors, their creditors, the United States Trustee for the District of Delaware, any other party in interest, or their respective attorneys and accountants, except as set forth below:

⁶ The hourly rates charged by Gibson, Dunn professionals differ based on, among other things, the professional's level of experience.

⁷ The names, positions, resident offices, and current hourly rates of the Gibson, Dunn lawyers currently expected to have primary responsibility for providing services to the Debtors are listed in *Exhibit C*, which is attached hereto. Other attorneys may provide services as well, depending on the legal issues facing the Debtors.

- (a) Gibson, Dunn does not represent, and has not represented, any entity other than the Debtors in matters related to these Chapter 11 Cases;
- (b) Gibson, Dunn does not have any connection with, and has not represented in the past, the United States Trustee for the District of Delaware, or any person employed by the Office of the United States Trustee for the District of Delaware;
- (c) Prior to the Petition Date, Gibson, Dunn performed certain legal services for the Debtors, as described above. After Gibson, Dunn's reconciliation of the Prepetition Payments and the completion of any necessary adjustments to the amount and application of the Retainer, as described above, the Debtors do not owe Gibson, Dunn any amount for services performed or expenses incurred prior to the Petition Date;
- (d) Gibson, Dunn has approximately 1,000 attorneys and many other employees. It is possible that certain Gibson, Dunn attorneys or employees hold interests in mutual funds or other investment vehicles that may own Building Materials Holding Corporation's securities;
- (e) From time to time, Gibson, Dunn has referred matters to most or all of the Debtors' professionals to be retained in these Chapter 11 Cases. Likewise, certain of the Debtors' professionals have referred matters to Gibson, Dunn; and
- (f) From time to time, Gibson, Dunn likely has represented, and likely will continue to represent, certain creditors of the Debtors and other parties actually or potentially adverse to the Debtors in matters unrelated to the Debtors or these Chapter 11 Cases. As described below, Gibson, Dunn has undertaken a detailed search to determine whether it represents or has represented any significant creditors, equity security holders, insiders or other parties in interest in such unrelated matters, and all such known representations within the last three years are described in *Exhibit D*, which is attached hereto. Due to the breadth of Gibson, Dunn's client base, the firm is not subject to undue influence of any single client.

14. To check and clear conflicts, and in preparing this Declaration, Gibson, Dunn used a set of procedures that it has developed to ensure compliance with the requirements of the Bankruptcy Code and the Bankruptcy Rules regarding the retention of professionals in chapter 11 cases. Pursuant to these procedures, at my direction during the weeks of June 1, 2009, and June 8, 2009, Gibson, Dunn performed the following actions to determine whether Gibson, Dunn or any of its attorneys has any connections with, has in the past represented, or is currently representing potential parties in interest in these Chapter 11 cases:

- (a) A list of Interested Parties was created using information provided by the Debtors and additional information identified by Gibson, Dunn. The list of Interested

Parties is comprised of the following entities, whose identities are set forth in ***Exhibit E***, which is attached hereto:

- (i) the Debtors;
 - (ii) the Debtors' prepetition and postpetition secured bank lenders;
 - (iii) those holders of more than five percent of the Debtors' equity securities;
 - (iv) current officers and directors of the Debtors and individuals who have served as officers or directors of the Debtors in the past two years;
 - (v) parties to significant litigation with the Debtors;
 - (vi) the Debtors' 50 largest unsecured creditors on a consolidated basis as identified in their chapter 11 petitions;
 - (vii) the unions with whom the Debtors have collective bargaining agreements;
 - (viii) the Debtors' landlords;
 - (ix) the Debtors' utility providers;
 - (x) the Debtors' insurers and insurance brokers;
 - (xi) the Debtors' 50 largest customers;
 - (xii) the Debtors' 50 largest vendors;
 - (xiii) professionals to be employed by the Debtors in these Chapter 11 cases;
and
 - (xiv) other significant parties.
- (b) Gibson, Dunn compared each of the Interested Parties to the names that Gibson, Dunn maintains in its master client database created from its conflict clearance and billing records. Gibson, Dunn's client database includes: (i) the name of each current or former client; (ii) the names of any entities materially related to, or materially adverse to, such current or former client; and (iii) the names of the Gibson, Dunn attorneys responsible for such current or former clients; (iv) the status of the matter as either "active" or "inactive"; and (v) the dates on which the matter was opened and/or closed; and
- (c) Any matches between the Interested Parties and the entities in Gibson, Dunn's client database were identified, reviewed by an attorney and compiled for purposes of this Declaration. To the extent that Gibson, Dunn currently represents, or has represented within the last three years, any of the Interested Parties, the identities of such entities and, for current clients, a brief description of the type of work performed by Gibson, Dunn for the clients, are set forth in Exhibit D, which is attached hereto. In determining whether a client is presently represented by Gibson, Dunn, Gibson, Dunn attorneys relied on the existence of an "active" notation on the report to reflect current representation. With respect to matters showing as "inactive", Gibson, Dunn relied on the "close date" to determine whether the representation occurred within the past three years. If an "inactive" matter opened prior to May 1, 2006 showed no "close date", Gibson, Dunn assumed for purposes of this disclosure that the matter was inactive during the past three years and did not include the client on Exhibit D. If an "inactive" matter opened on or about May 1, 2006 but showed no "close date," the client is

included on Exhibit D.

15. Gibson, Dunn is confident that its diligence has resulted, to the greatest extent possible, in the disclosure of all potential conflicts. However, despite the efforts described above to identify and disclose Gibson, Dunn's connections with parties in interest in these cases, Gibson, Dunn is unable to state with absolute certainty that every client representation or other connection has been disclosed because Gibson, Dunn is an international law firm with approximately 1,000 attorneys in 15 offices. In this regard, if Gibson, Dunn discovers additional information that requires disclosure, Gibson, Dunn will file a supplemental disclosure with the Court. Additionally, to the extent that issues may arise which would cause the Debtors to be adverse to any of Gibson, Dunn's clients, Gibson, Dunn will obtain and disclose waivers, or, to the extent that it would not be appropriate for Gibson, Dunn to represent the Debtors with respect to such matters, the Debtors will seek to employ special counsel.

16. Based upon information available to me at this time, I believe that Gibson, Dunn is a "disinterested person" pursuant to section 101(14) of the Bankruptcy Code, and that Gibson, Dunn holds no interest adverse to the Debtors as required by section 327(a) of the Bankruptcy Code. Specifically, I do not believe that the connections between Gibson, Dunn and the entities listed herein and in Exhibit C will impair Gibson, Dunn's ability to represent the Debtors in these Chapter 11 Cases.

17. No promises have been received by Gibson, Dunn or any member or associate thereof as to payment or compensation in connection with this case other than in accordance with the provisions of the Bankruptcy Code and the Bankruptcy Rules. Other than with members and regular associates of the firm, Gibson, Dunn has no agreement with any other entity to share with such entity any compensation received by Gibson, Dunn.

F. Intercompany Claims

18. Given the nature of the Debtors' businesses and the Debtors' corporate structure and cash management system, Gibson, Dunn has learned that intercompany claims exist between certain of the various Debtors. The intercompany claims will be set forth in the Debtors' Schedules of Assets and Liabilities and Statement of Financial Affairs. In the event a dispute arises between the Debtors regarding intercompany claims, the Debtors will retain special counsel to handle the dispute on behalf of the applicable Debtors in coordination with counsel for the Official Committee of Unsecured Creditors.

G. Disclosure of Representation of Wells Fargo in Matters not Involving the Debtors

19. As described above, Gibson, Dunn has represented the Debtors in numerous matters over many years, including in connection with the representation of the Debtors in connection with their negotiations with the prepetition secured lenders (the "**BMHC Matters**"). Wells Fargo Bank, N.A. ("**Wells Fargo**") is the administrative agent under, and a lender pursuant to, that certain Second Amended and Restated Credit Agreement, dated as of November 10, 2006, as amended, and is also the administrative agent under, and a lender pursuant to, the Debtors' debtor in possession financing facility. Gibson, Dunn has represented and currently represents Wells Fargo in matters wholly unrelated to the BMHC Matters. Given the potential conflict of interest and in order for Gibson, Dunn to represent the Debtors in the BMHC Matters and simultaneously represent Wells Fargo in wholly unrelated matters, Gibson, Dunn has obtained written conflict waivers from both the Debtors and Wells Fargo. A copy of the written conflict waivers from Wells Fargo and the Debtors is attached hereto as **Exhibit F**. The conflict waiver from Wells Fargo permits Gibson, Dunn to represent the Debtors in connection with all matters related to the Chapter 11 Cases but not to assert a claim against Wells Fargo in the Chapter 11 Cases or in any related litigation or to challenge the validity or

priority of any amounts owed to Wells Fargo or the validity of Wells Fargo's liens. In the event that any such action is necessary, the Debtors could be capably represented either by Gibson, Dunn's co-counsel in this case, Young Conaway Stargatt & Taylor, LLP, which has advised the Debtors and Gibson, Dunn that it could pursue any such actions, or by other special conflicts counsel engaged by the Debtors.⁸

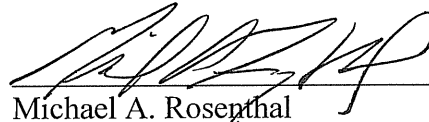
H. Other Disclosure

20. Robert E. Mellor, Chairman of the Board of Directors and Chief Executive Officer of Building Materials Holding Corporation was Of Counsel with Gibson, Dunn from 1990 through 1997.

21. The foregoing constitutes the statement of Gibson, Dunn pursuant to sections 327(a), 329 and 504 of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016(b).

⁸ In connection with the DIP Facility, the Debtors have already stipulated as to the validity and priority of the amounts owed to Wells Fargo and the validity of Wells Fargo's liens.

Pursuant to 28 U.S.C. section 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief. Executed on June 26, 2009.



Michael A. Rosenthal

Exhibit A

Engagement Letter

GIBSON, DUNN & CRUTCHER LLP

LAWYERS

A REGISTERED LIMITED LIABILITY PARTNERSHIP
INCLUDING PROFESSIONAL CORPORATIONS

200 Park Avenue New York, New York 10166-0193

(212) 351-4000

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SFinley@gibsondunn.com

January 14, 2009

Direct Dial
(212) 351-3920

Fax No.
(212) 351-5226

Client No.
C 08299-00085

Paul S. Street, Esq., General Counsel
Building Materials Holding Corporation
720 Park Boulevard
Suite 200
Boise, Idaho 83712-7714

Re: *Representation of Building Materials Holding Corporation and Its
Subsidiaries (collectively, "BMHC" or "You")*

Dear Paul:

As you know, Gibson, Dunn & Crutcher LLP ("Gibson Dunn" or the "Firm") has had the privilege of representing BMHC in various pending matters (the "Pending Matters"). Most recently, you have asked us to represent you in connection with planning and preparation with respect to the possible filing by BMHC of a case under the Bankruptcy Code and representation of BMHC in any such case (the "Restructuring" and, together with the Pending Matters, the "Current Representations"). This letter and the attached Terms of Retention set forth the terms of our engagement in the Current Representations.

We will endeavor to keep you informed of the progress of your matters and respond to your inquiries. You acknowledge the need to provide us with accurate and complete information and the need to cooperate and keep us informed of any developments related to our representation of you. Unless otherwise agreed in writing, the terms of this letter and the attached Terms of Retention will also apply to any additional matters that we handle on behalf of BMHC, including any of its subsidiaries to which we also provide legal services, as to which you represent that you have the authority to bind such subsidiaries to the terms of this letter.

Fees and Billing

We will bill you for our services and reimbursable expenses in accordance with the provisions of the following paragraph. While our practice is to charge for our legal services

LOS ANGELES NEW YORK WASHINGTON, D.C. SAN FRANCISCO PALO ALTO LONDON
PARIS MUNICH BRUSSELS DUBAI SINGAPORE ORANGE COUNTY CENTURY CITY DALLAS DENVER

GIBSON, DUNN & CRUTCHER LLP

Paul S. Street, Esq.
January 14, 2009
Page 2

based primarily on the amount of time devoted to a matter at hourly rates for the particular professionals involved, a variety of other factors, identified in the attached Terms of Retention, may also be considered. Michael A. Rosenthal and I will be primarily responsible for the Restructuring. The partners who have typically been responsible for the Pending Matters will continue to be responsible for those matters. Other attorneys and paralegals may also perform services during the course of this engagement. For more information, please refer to the section on Professional Fees in the Terms of Retention.

For services and reimbursable expenses incurred prior to the date of receipt of the Advance Payment (as defined below), you will pay us in accordance with the normal payment practices that have governed our relationship. For services and reimbursable expenses from and after the date of receipt of the Advance Payment, we will bill you and you will pay us in accordance with the Advance Deposit Arrangement (as defined below).

We will not charge BMHC for certain ancillary services, such as word processing and standard secretarial time. We will invoice you for the cost of other services incurred on your behalf. Please refer to the section on Costs and Ancillary Services in the Terms of Retention for additional information.

Advance Deposit Arrangement

We have requested, and you have agreed to, an advance deposit arrangement for services and reimbursable expenses from and after the date of receipt of the Advance Payment (the "Advance Deposit Arrangement"). Pursuant to the Advance Deposit Arrangement, you have agreed to advance the sum of \$250,000 (the "Advance Payment") to GD&C to ensure the payment by you of legal fees and expenses incurred in connection with GD&C's representation of you. The Advance Payment will be placed on account and upon our presentation to you of a statement for services rendered and disbursements incurred, we will apply the Advance Payment against our fees and disbursements, which will be deemed to have been earned immediately upon our presentation to you of such statement. On or about the 5th and 20th of each month, commencing February 5, 2009, GD&C will bill you for fees and expenses incurred from the end of the last billing period through the date that is approximately two (2) business days before such bill is issued (the period from the date of receipt of the Advance Payment through January 31, 2009, in the case of the first such billing on February 5, 2009), and will apply the Advance Payment to pay such outstanding fees and expenses. You agree that no later than five (5) business days after issuance of each such bill, you will (a) pay GD&C any amount by which the bill exceeds the Advance Payment and (b) fully replenish the Advance Payment to the \$250,000 level. In addition to applying the Advance Payment to pay each semi-monthly bill, GD&C will be entitled to apply the Advance Payment: (1) prior to the filing of a bankruptcy or chapter 11 case by or against you, in payment of any then outstanding fees and expenses incurred through the day immediately preceding the filing of any such bankruptcy or chapter 11 case by or against you, or (2) after the filing of a bankruptcy or chapter 11 case by or against you, in payment of

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fees and expenses incurred by GD&C in connection with such case to the extent authorized by the Bankruptcy Code. GD&C reserves the right to request an additional advance payment if it appears that the original Advance Payment provided for herein will not be sufficient to ensure the payment by you of anticipated fees and expenses, including but not limited to fees and expenses incurred in connection with, or in contemplation of, the filing of a bankruptcy case or chapter 11 case by or against you.

Waiver of Prospective Conflicts on Unrelated Matters

We represent many other clients. It is possible that during or after the time we represent BMHC, or other present or future clients will ask us to represent them in disputes or transactions with or involving BMHC (which includes any related persons or entities) as to legal matters not substantially related to our representation of BMHC. In such a situation, the Firm could be tempted to balance the interests between its clients rather than vigorously assert a single client's interest on an issue. We do not believe, however, that our simultaneous representation of you in the present matter, and our representation of another client in an unrelated matter adverse to you will compromise our ability to adequately represent you.

We wish to clarify our mutual understanding with BMHC as to the extent to which our present representation both will affect, and will not affect, our ability to represent other existing or future clients in other legal matters, whether or not BMHC (including related persons or entities) are adverse or otherwise involved in those matters. As a condition of our undertaking this matter, BMHC agrees that:

- we can continue to represent, or can in the future represent, existing or new clients in any matter, including litigation or other adversarial proceedings (which includes bankruptcy or insolvency proceedings, including instances where BMHC is a creditor or equity holder in such a proceeding) ("Other Matters"), so long as the Other Matters are not substantially related to our work for BMHC on the Current Representations, even if those other clients' interests are adverse to BMHC's interests in the Other Matters;
- we might obtain confidential information of interest to BMHC in these Other Matters that we cannot share with BMHC; and
- BMHC waives any conflict of interest that might arise from the Firm's engagement in the Other Matters, and will not seek to disqualify the Firm or any of the Firm's lawyers in, or assert a conflict with respect to, the Firm's engagement in the Other Matters.

If for any reason, BMHC's consent and waiver of potential conflicts is not effective in the circumstances, BMHC consents to our resignation from our representation of BMHC, and agrees

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to support a motion, if filed by the Firm, to withdraw from our representation of BMHC if resignation at that time is otherwise permissible under applicable professional rules. In that case, BMHC would need to engage, at BMHC's expense, separate counsel to represent BMHC's interests.

Of course, without BMHC's further prior written consent, we cannot and will not represent another client in a matter adverse to BMHC if we have obtained confidential information of a nonpublic nature from BMHC, as a result of our representation of BMHC, that, if known to the other client, could be used in the Other Matters by the other client to BMHC's material disadvantage unless we have imposed in advance of that subsequent engagement an ethical screen that assures the preservation of BMHC's confidences.

Arbitration

We appreciate the opportunity to serve as your attorneys and look forward to a productive and mutually rewarding relationship. If you become dissatisfied with our charges or services, we encourage you to bring that to our attention immediately. We believe that most problems of this nature can be resolved through good faith discussion. In the event that we cannot resolve a dispute through discussion, we believe that binding arbitration offers a more expeditious and less expensive alternative than court action.

By signing this engagement letter agreement, you agree to binding arbitration in New York City of any dispute, claim or controversy regarding our services as described in the attached Terms of Retention, including any dispute as to the fees for our services, which you might otherwise have the right to arbitrate under Part 137 of the Rules of the Chief Administrator of the Courts. You are also agreeing that BMHC is waiving its right to a jury or court trial, and is waiving any right BMHC might have to collect punitive damages. This waiver of punitive damages applies only to the maximum extent permitted by law. If you do not wish to agree to arbitration, you should advise us before signing this letter. If you have any questions or concerns regarding the advisability of arbitration, we encourage you to discuss them with us, independent counsel, or your other advisors.

Confirmation of Agreement

You should review and familiarize yourself with the attached Terms of Retention, which are incorporated into this engagement letter agreement. If this letter and the Terms of Retention accurately reflect your understanding of our agreement, please acknowledge your approval and acceptance of these terms by signing and returning to me the enclosed copy of this letter, along with the requested Advance Payment. I would be pleased to answer any questions you might have.

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On behalf of Gibson, Dunn & Crutcher LLP, I look forward to a mutually rewarding relationship.

Very truly yours,


Steven R. Finley
of GIBSON, DUNN & CRUTCHER LLP

Agreed to this 15th day of JAN., 2009

BUILDING MATERIALS HOLDING
CORPORATION, ON ITS OWN BEHALF AND
ON BEHALF OF EACH OF ITS
SUBSIDIARIES

By: 
Paul S. Street, General Counsel and
Authorized Representative

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**TERMS OF RETENTION
OF
GIBSON, DUNN & CRUTCHER LLP**

Except as modified in writing, the following provisions will apply to the relationship between Gibson, Dunn & Crutcher LLP (the "Firm" or "we") and the client ("you"), as identified in the accompanying letter agreement:

1. Professional Fees. The Firm will bill you for the services it provides based on a variety of factors, including: the time expended; the complexity of the matter; time limitations imposed; the novelty and difficulty of the issues posed; the amount involved and the results obtained; and the experience, reputation, and ability of the attorney or attorneys performing services on your behalf. The billing rates of our attorneys and paralegals vary, depending generally upon the experience and capabilities of the attorney or paralegal involved, and we adjust these rates from time to time. Unless otherwise agreed in writing, we will charge you for their services at their assigned rates. The current assigned rates of the attorneys assigned to the Restructuring are: Steven R. Finley (\$995 per hour); Michael A. Rosenthal (\$985 per hour); Janet Weiss (\$940 per hour); Aaron G. York (\$635 per hour); and Eric Waters (\$585 per hour). Upon any adjustment in our assigned rates, we will charge you the adjusted rates. Other attorneys and paralegals may also perform services during the course of this engagement.

2. Costs and Ancillary Services. The Firm will invoice you for the cost of certain ancillary services incurred on your behalf. Generally, we will not charge you for certain services, such as word processing and regular secretarial time. Whenever practicable, discounts obtained from vendors will be passed on to you. Under certain circumstances, we may ask you to advance anticipated costs or to pay outside vendors directly for their services. The primary ancillary services and our specific policies regarding billing are set forth below. Other services may be rendered during the course of our engagement, and will also be billed to you. Our charges for these costs and ancillary services are subject to change from time to time.

2.1. Word Processing. Most of the Firm's offices have advanced word processing capabilities and our offices are linked by a network which facilitates efficiency and service to clients. The Firm does not charge for equipment usage or word processing time.

2.2. Secretarial Time. The Firm will not charge you for regular secretarial time. We bill for secretarial overtime services only if your specific demands require late night work or in other unusual circumstances (typically a large case or transaction with dedicated secretaries). The standard fee for overtime secretarial services is \$40 per hour.

2.3. Duplicating/Copying. The Firm has a substantial investment in duplicating equipment which is located not only in our service centers but also at several locations on each floor to provide quick turn-around when needed. In-house copying is billed to the client at a flat rate of \$.10 per page. If you instruct us to do so, we will use outside copying services to the extent possible. Outside duplicating services are charged to the client at the Firm's actual cost with no mark-up.

2.4. Telephone. The Firm will not charge you for local telephone service. Long distance calls are charged at a fixed rate per minute equal to the allocated actual cost as revised from time-to-time.

2.5. Telecopy. The Firm provides in-house FAX services at numerous locations for convenience and confidentiality in serving clients. There is no charge for incoming FAX documents.

Charges for outgoing documents are strictly limited to the associated long distance telephone charges. There is not a per page charge.

2.6. Legal Research. Computerized research (such as Lexis and Westlaw) is available at the attorney's desk or in a central library location. Certain vendors bill the Firm based on an annual flat rate. The Firm charges for on-line computer research time based on an allocation of the overall annual cost to provide and manage those services. The rates clients pay factor in the benefit of any discounts the Firm is able to negotiate with vendors of such services.

2.7. Overnight And Local Deliveries. We will charge you for overnight deliveries and local deliveries by outside messenger services at the Firm's actual cost. We will pass on negotiated discounts to you.

2.8. Postage. The Firm will not charge you for postage, except for large volume mailings, which are billed at the Firm's actual cost.

2.9. File Storage. The Firm will not charge you for file storage except in extraordinary circumstances and only after consultation with you and your agreement. The Firm may, at its own discretion, choose to store files electronically rather than hardcopy.

2.10. Office Supplies. We will not charge you for routine quantities of office supplies. You may incur a charge, equal to the Firm's actual cost, for substantial and unusual orders of office supplies required for a particular matter.

2.11. Travel and Subsistence. Our attorneys are instructed to incur transportation, lodging, meal and other travel costs at reasonable rates. The Firm instructs its attorneys to comply with the policies of individual clients regarding airline usage and to obtain the lowest fare available consistent with those policies. We will bill you for all travel costs at the Firm's actual cost, including passing along the direct discount offered by airline carriers. From time to time additional travel benefits from certain carriers based on volume are received by the Firm; all such benefits are generally retained by the Firm.

2.12. Employee Transportation. Under certain circumstances, the Firm provides transportation for its employees, especially when public transportation is not available or safe. In those situations where the Firm provides transportation to or from the office for an employee as part of that particular employee's regular schedule, such costs will not be billed to you. In those situations where employees are working overtime for you because of the time demands of a particular matter, the actual transportation costs may be billed at the discretion of the billing attorney.

2.13. Meetings/Meals (Other Than Travel Related). When a client or third party is present and the meeting is for the benefit of the client, the client may be billed for actual meal-related costs at the discretion of the billing attorney. Meals or beverages ordered where the client or a third party is not present will not be billed to the client, even if the meeting is for the client's benefit.

2.14. Storage Fees. The Firm charges a small monthly fee for storing images (tiff files) of discovery documents which are typically linked to databases. The cost is \$.003/file for the first 500,000 files and \$.001/file thereafter.

2.15. Other Costs and Third Party Vendors. Other costs that we incur for your benefit (such as expert witness fees; filing fees; etc.) will be billed at the Firm's actual cost. In addition, the services provided to you may involve services provided by third parties outside the Firm. You will be required to pay for these outside services directly, or to reimburse us if we make payment for these services on your behalf. When there are substantial expenditures involving outside vendors or substantial out of pocket expenditures, we will require either that you pay those sums to us before we expend them or that you directly contract with and pay the outside vendor. You agree that you will

indemnify the Firm for any claim made against the Firm from an outside vendor for services rendered in connection with the Firm's representation of you.

3. Estimates Not Binding. It is often impractical to determine in advance the amount of effort that will be needed to complete all the necessary work on a matter or the total amount of fees and costs which may be incurred. Obviously, any estimates or budgets may need to be adjusted upwards or downwards as changes occur. Moreover, these estimates and budgets are not intended to be binding, are subject to unforeseen circumstances; and by their nature are inexact.

4. Billing and Payment. Except to the extent otherwise provided in the engagement letter to which these Terms of Retention is attached, fees and expenses will generally be billed monthly and are payable upon presentation, but in no event to exceed 30 days from presentation of our statement. We expect prompt payment, and our experience indicates that prompt billing and prompt payment enhances the working relationship. We reserve the right to postpone or defer providing additional services or to discontinue our representation, to the extent legally permissible, if billed amounts are not paid when due. We also reserve the right to charge a late fee of 1% per month on all sums that are not paid within 30 days of presentation of our statement. You also agree that you will promptly review our statements and raise any questions regarding the amounts and items billed within 30 days of presentation. If you object to only a portion of the charges on a statement, then you agree to pay the remainder of the charges, which will not constitute a waiver of your objection.

5. Advance Payments. The Firm may have required an advance payment before working on this matter. All advance payments shall be deemed to be advances for attorneys' fees and for costs and expenses. Where permitted, the Firm will maintain such advance fee payments in a general account. The amount of this advance payment does not represent our estimate of the total charges which may be incurred, but is only a partial advance payment. Of course, the amount of work which we are called upon to perform may subsequently exceed our prior expectations. The Firm reserves its right, as a condition to the provision of further services, to require an advance payment, if none has previously been provided, and/or an increase in any advance payment. Any charge for services or expenditures not covered by the advance payment is due and payable directly by you upon receipt of each monthly statement. At the conclusion of our representation, any portion of any advance payment which has not been used up by services rendered or payment to third parties made or incurred will be refunded to you.

With respect to litigation matters, such matters may proceed to trial or hearing. Preparing for and conducting the trial or hearing is often time consuming and expensive. Thus, if the matter appears headed for trial, we may require an additional advance payment prior to our commencement of preparation for the trial or hearing. The amount of the advance payment will be determined once the trial or hearing appears inevitable and as soon as possible prior to the date the matter is set for trial or hearing, based upon an estimate of the magnitude of service and expenditures included. If you fail to provide this additional advance payment within 15 days after it is requested by us, you agree that we have the right to discontinue our representation to the extent legally permissible.

6. Termination of Representation.

6.1. Termination By You. You have the right to terminate our services at any time. If you decide to terminate our services, you agree to give us prompt written notice of such termination. Upon our termination, you will remain obligated to pay for all services rendered and costs or expenses paid or incurred on your behalf prior to the date of such termination or which are reasonably necessary thereafter. If we are attorneys of record in any proceeding, you agree to execute and return to us a Substitution of Attorney promptly upon receipt from us.

6.2. Termination By Us. We also have the right to withdraw from this representation if, among other things, you fail to honor the terms of our engagement letter and these Terms of Retention, you fail to make payment of any of our statements in a timely manner, you fail to cooperate or to follow

our advice on a material matter, or any fact or circumstance occurs that would, in our view, render our continuing representation unlawful or unethical, and we determine that we are permitted to withdraw our representation. If we elect to withdraw, you will take all steps necessary to free us of any obligation to perform further services, including the execution of any documents necessary to complete our withdrawal. Notwithstanding such termination, you will remain obligated to pay us for all services provided and to reimburse us for all costs and expenses paid or incurred on your behalf.

6.3. Date of Termination. Our representation of you will be considered terminated at the earlier of (a) your termination of our representation, (b) our withdrawal from our representation of you or (c) the substantial completion of our work for you. In the event there has been no work performed by our attorneys on your behalf for a period of six consecutive months, we agree that our attorney-client relationship will have been terminated.

6.4 Duties Upon Termination. Upon termination of our involvement in a particular matter for which we were engaged, we will have no further duty to inform you of future developments or changes in law which may be relevant to such matter. Further, unless you and the Firm agree in writing to the contrary, we will have no obligation to monitor renewal or notice duties or similar deadlines which may arise from the matters for which we had been engaged. If your matter involves obtaining a judgment and such judgment is obtained, we will only be responsible for those post-judgment services (such as recording abstracts, filing judgment liens, and calendaring renewals of judgments) as are expressly agreed to by you and the Firm in writing, and for which you will be obliged to pay.

7. Arbitration.

7.1. ARBITRATION OF ALL DISPUTES, CLAIMS OR CONTROVERSIES. PART 137 OF THE RULES OF THE CHIEF ADMINISTRATOR OF THE COURTS GIVES YOU THE RIGHT, IN CERTAIN CIRCUMSTANCES, TO SUBMIT A DISPUTE ABOUT THE FEES FOR OUR SERVICES TO ARBITRATION. A COPY OF THE WRITTEN INSTRUCTIONS AND PROCEDURES FOR PART 137 IS ATTACHED. BY SIGNING THIS AGREEMENT, YOU ACKNOWLEDGE: 1) THAT YOU HAVE READ THESE WRITTEN INSTRUCTIONS AND PROCEDURES, 2) THAT YOU HAVE BEEN ADVISED OF YOUR RIGHT TO USE THE FEE ARBITRATION PROCEDURES OF PART 137, AND 3) THAT YOU ARE NOT REQUIRED TO AGREE TO ARBITRATE ANY FEE DISPUTE IN AN ARBITRAL FORUM OUTSIDE PART 137. NOTWITHSTANDING WHATEVER RIGHTS YOU MAY HAVE UNDER PART 137, BY SIGNING THIS AGREEMENT, YOU HEREBY AGREE TO RESOLVE ALL FEE DISPUTES BY ARBITRATION BEFORE AN ARBITRAL FORUM OUTSIDE PART 137. YOU THEREBY AGREE TO WAIVE YOUR RIGHTS WITH REGARD TO ARBITRATION PURSUANT TO PART 137, WHICH INCLUDES THE RIGHT TO REJECT THE ARBITRATOR(S) AWARD BY COMMENCING AN ACTION ON THE MERITS IN A COURT OF LAW.

AS A MATERIAL PART OF OUR AGREEMENT, YOU AND THE FIRM AGREE THAT ANY AND ALL DISPUTES, CLAIMS OR CONTROVERSIES ARISING OUT OF OR RELATING TO THIS AGREEMENT, OUR RELATIONSHIP, OR THE SERVICES PERFORMED OR ANY OTHER MATTER OR THING, SHALL BE DETERMINED EXCLUSIVELY BY CONFIDENTIAL, FINAL AND BINDING ARBITRATION AS FOLLOWS:

(A) THE MATTERS SUBMITTED TO ARBITRATION SHALL BE HEARD AND DETERMINED BY A SINGLE ARBITRATOR IN THE PRINCIPAL CITY OF THE FEDERAL JURISDICTION IN WHICH THIS AGREEMENT IS ENTERED INTO, IN ACCORDANCE WITH THE THEN EXISTING RULES FOR COMMERCIAL ARBITRATION OF THE JUDICIAL ARBITRATION AND MEDIATION SERVICES ("JAMS").

(B) ANY PARTY TO THE ARBITRATION MAY REQUEST JAMS TO IDENTIFY PANELS OF RETIRED OR FORMER JURISTS QUALIFIED AND ABLE TO

SIT AS ARBITRATORS OF THE MATTERS SUBMITTED FOR ARBITRATION, AND THE ARBITRATOR DETERMINING THE SUBMITTED MATTERS SHALL BE SELECTED FROM SUCH PANELS PURSUANT TO JAMS RULES.

(C) DISPUTES, CLAIMS AND CONTROVERSIES SUBJECT TO FINAL AND BINDING ARBITRATION UNDER THIS AGREEMENT INCLUDE, WITHOUT LIMITATION, ALL THOSE THAT OTHERWISE COULD BE TRIED IN COURT TO A JUDGE OR JURY IN THE ABSENCE OF THIS AGREEMENT. SUCH DISPUTES, CLAIMS AND CONTROVERSIES INCLUDE, WITHOUT LIMITATION, CLAIMS FOR PROFESSIONAL MALPRACTICE, DISPUTES OVER OUR FEES AND EXPENSES, ANY DISPUTES OVER THE QUALITY OF SERVICES WHICH WE RENDER, ANY CLAIMS RELATING TO OR ARISING OUT OF YOUR OR OUR PERFORMANCE UNDER THIS AGREEMENT, AND ANY OTHER CLAIMS ARISING OUT OF ANY ALLEGED ACT OR OMISSION BY YOU OR US.

(D) EXCEPT AS OTHERWISE DETERMINED BY THE ARBITRATOR, THE FEES OF THE ARBITRATION INITIALLY WILL BE PAID EQUALLY BY BOTH THE FIRM AND YOU. HOWEVER, THE ARBITRATOR SHALL HAVE THE RIGHT TO ORDER EITHER PARTY TO PAY ALL FEES AND COSTS AS PART OF THE AWARD.

(E) BY AGREEING TO SUBMIT ALL DISPUTES, CLAIMS AND CONTROVERSIES TO BINDING ARBITRATION, YOU AND THE FIRM EXPRESSLY WAIVE ANY RIGHTS TO HAVE SUCH MATTERS HEARD OR TRIED IN COURT BEFORE A JUDGE OR JURY OR IN ANOTHER TRIBUNAL. YOU AND THE FIRM FURTHER AGREE, TO THE MAXIMUM EXTENT PERMITTED BY LAW, TO WAIVE ANY RIGHT YOU OR THE FIRM MAY HAVE TO PUNITIVE DAMAGES.

(F) THE ARBITRATOR SHALL BE AUTHORIZED TO DETERMINE ALL ISSUES IN ARBITRATION AS IF THE ARBITRATOR WERE SITTING AS A JUDGE WITHOUT A JURY, AND THE ARBITRATOR SHALL RENDER A WRITTEN REASONED AWARD WITH FINDINGS OF FACT AND CONCLUSIONS OF LAW SUFFICIENT TO SUPPORT SUCH JUDICIAL REVIEW AS IS PROVIDED BY APPLICABLE STATUTES GOVERNING ARBITRATIONS.

(G) ANY ARBITRATION AWARD SHALL BE FINAL, BINDING AND CONCLUSIVE UPON THE PARTIES, SUBJECT ONLY TO JUDICIAL REVIEW PROVIDED BY STATUTES GOVERNING ARBITRATIONS, AND A JUDGMENT RENDERED ON THE ARBITRATION AWARD MAY BE ENTERED IN ANY STATE OR FEDERAL COURT HAVING JURISDICTION THEREOF.

7.2. WAIVER OF RIGHT TO JURY OR COURT TRIAL. YOU UNDERSTAND THAT BY ENTERING INTO THIS AGREEMENT YOU AND THE FIRM ARE WAIVING ANY RIGHT TO A JURY OR COURT TRIAL, AND YOU ARE WAIVING YOUR RIGHT TO ARBITRATE FEE DISPUTES UNDER PART 137 OF THE RULES OF THE CHIEF ADMINISTRATOR OF THE COURTS (22 N.Y.C.R.R.).

7.3 WAIVER OF RIGHT TO RECEIVE PUNITIVE DAMAGES. YOU UNDERSTAND THAT BY ENTERING INTO THIS AGREEMENT, YOU AND THE FIRM ARE WAIVING, TO THE MAXIMUM EXTENT PERMITTED BY LAW, ANY RIGHT YOU OR THE FIRM HAVE TO AN AWARD OF PUNITIVE DAMAGES.

7.4 OTHER ARBITRATION SERVICE PROVIDERS. NOTHING HEREIN SHALL LIMIT THE RIGHT OF THE PARTIES TO STIPULATE AND AGREE TO CONDUCT THE ARBITRATION BEFORE AND PURSUANT TO THE THEN EXISTING RULES OF ANY OTHER AGREED-UPON ARBITRATION SERVICES PROVIDER.

8. Identity of the Client. The Firm's client for purposes of this engagement is only the person(s), entity or entities identified in the accompanying letter agreement. Unless expressly agreed, we are not undertaking the representation of any related or affiliated person or entity, nor any family member, parent corporation or entity, subsidiary, or affiliated corporation or entity, nor any of your or their officers, directors, agents, partners or employees.

9. Conflicts of Interest. To assist in avoiding representation of parties with conflicts of interest, we maintain a computerized conflict of interest index. The Firm will not represent any party with an interest that may be adverse to that of a person or entity included in the index without an examination to determine whether a conflict of interest would actually be created. To allow us to conduct a conflicts check, you represent that you have identified for us all persons and entities that are or may become involved in this matter, including all persons and entities that are affiliated with you and the other involved or potentially involved parties (such as parent corporations, subsidiaries and other affiliates, officers, directors and principals). You also agree that you will promptly notify us if you become aware of any other persons or entities that are or may become involved in this matter.

10. Consent to Electronic Communications. In order to maximize our efficiency, we intend to use state of the art communication devices to the fullest extent possible (e.g., e-mail, document transfer by computer, cellular telephones, facsimile transfers and such other devices which may develop in the future). The use of such devices under current technology may place your confidences and privileges at risk. However, we believe the efficiencies involved in the use of these devices outweighs the risk of accidental disclosure. By agreeing to these terms you consent to the use of these electronic communication devices.

11. Related Proceedings and Activities. If any claim is brought against the Firm or any of its personnel based on your negligence or misconduct, if we are asked to testify as a result of our representation of you, or if we must defend the confidentiality of your communications in any proceeding, you agree to pay us for any resulting costs, including for our time, calculated at the hourly rate for the particular individuals involved, even if our representation of you has ended.

12. Limitations on Liability.

12.1. General Limitation on Liability. You agree that the Firm shall not have any liability to you in connection with our representation of you except for liability for losses, claims, damages, liabilities or expenses incurred by you that result from our professional malpractice, gross negligence or willful misconduct.

12.2. Registered Limited Liability Partnership. Gibson, Dunn & Crutcher LLP is a California registered limited liability partnership. As a result, with certain possible limited exceptions, none of which may be applicable, the partners of the Firm are not liable or accountable, directly or indirectly, including by way of indemnification, contribution, assessment, or otherwise, for debts, obligations, or liabilities of or chargeable to the Firm or another partner in the Firm, whether arising in tort, contract, or otherwise, that are incurred, created, or assumed by the Firm, by reason of being a partner or acting in the conduct of the business or activities of the Firm.

12.3. Additional Rights. The provisions of this Section 12 are in addition to any rights that we may have at common law or otherwise, including but not limited to any right of contribution.

12.4. Indemnification. You agree to indemnify and hold harmless the Firm and each current, former and future partner, associate and employee of the Firm, to the full extent permitted by law, from and against all claims, actions, liabilities or damages related to or arising out of our representation of you and you will reimburse us for all expenses as they are incurred by us in connection with investigating, preparing to defend or defending against such claims or actions (including attorneys' fees, experts' fees, disbursements and compensation for the time expended by attorneys of the Firm in connection with any

such action or claim, calculated at the hourly rate for the particular individuals involved), whether or not in connection with pending or threatened litigation in which we are a party or potential party; provided, however, that you will not be responsible for any claims, actions, liabilities, damages, losses or expenses which are finally judicially determined to have resulted from our professional malpractice, gross negligence or willful misconduct.

13. No Guarantee of Outcome. We do not and cannot guarantee the outcome in any matter. Our comments about the outcome of your matter are expressions of opinion only.

14. Document Retention and Destruction. In the course of our representation of you, we are likely to come into possession of copies or originals of documents or other materials belonging to you or others (collectively, "materials"). Once the particular matter to which those materials relate has been concluded, we will make arrangements either to return the documents to you, retain them in our storage facilities or to dispose of the materials. In the absence of any other arrangements made with you, the Firm's records retention policy provides that upon the expiration of seven years after a matter has been closed, all materials in the file may be destroyed or discarded without notice to you. Accordingly, if there are any documents or other materials you wish to have retrieved from your file at the conclusion of a matter, it will be necessary for you to advise us of that request to insure that they are not destroyed.

The Firm's files pertaining to the matter will not be delivered to you. You agree that the Firm's files include, for example, Firm administrative records, time and expense reports, personnel and staffing materials, and credit and accounting records, as well as internal lawyer's work product (such as drafts, notes, internal memoranda, and legal and factual research, including investigative reports and mental impressions prepared by us for our internal use). You agree that the Firm's files remain our property and for various reasons, including the minimization of unnecessary storage expenses, or for no reason, we may destroy or otherwise dispose of the Firm's files within a reasonable time after the conclusion of the matter.

15. Application to Subsequent Matters. The agreement reflected in these Terms of Retention, and in the accompanying letter, applies to our present representation of you and to any subsequent matters which we agree to undertake on your behalf, unless we agree in writing to some different arrangement.

You also agree to pay the Firm on the same basis as set forth above, the Firm's fees, charges and expenses incurred in responding to subpoenas, in testifying (and preparing testimony) by deposition or otherwise, and otherwise responding with respect to claims or demands relating to or arising out of the matters in which we have represented or are representing you, whether or not related to our services and whether or not we are then representing you.

16. Entire Agreement. These Terms of Retention and the accompanying letter agreement supersede all other prior and contemporaneous written and oral agreements and understandings between us and contain the entire agreement between the parties. This agreement may be modified only by subsequent written agreement of the parties. You acknowledge that no promises have been made to you other than those stated in this agreement.

17. Partial Invalidity. If any provision or portion 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.

18. Applicable Law. This agreement shall be governed by the internal law, and not the law pertaining to choice or conflict of laws, of the State of New York.

19. Compliance With Section 307 of the Rules of the Securities and Exchange Commission.
The Firm has adopted policies relating to compliance with the rules adopted pursuant to the Sarbanes-Oxley Act, and will provide a copy of these policies to you upon request.

20. Severability. If any section or portion of these terms are determined by any court or arbitrator to be illegal or invalid, the validity of the remaining terms shall not be affected therein and said illegal or invalid term shall be deemed not to be a part of this Agreement.

100485391

**STANDARD WRITTEN INSTRUCTIONS AND PROCEDURES
TO CLIENTS FOR THE RESOLUTION OF FEE DISPUTES PURSUANT
TO PART 137 OF THE RULES OF THE CHIEF ADMINISTRATOR**

Part 137 of the Rules of the Chief Administrator of the Courts provides a procedure for the arbitration (and in some cases mediation) of fee disputes between attorneys and clients in civil matters. Your attorney can provide you with a copy of Part 137 upon request or you can download a copy at <http://www.nycourts.gov/admin/feedispute> . Fee disputes may involve both fees that you have already paid to your attorney and fees that your attorney claims are owed by you. If you elect to resolve your dispute by arbitration, your attorney is required to participate. Furthermore, the arbitration will be final and binding on both your attorney and you, unless either of you seeks a trial *de novo* within 30 days, which means either of you reject the arbitrator's decision by commencing an action on the merits of the fee dispute in a court of law within 30 days after the arbitrator's decision has been mailed. Fees disputes which may not be resolved under this procedure are described in Part 137.1 of the Rules of Chief Administrator of the Courts: representation in criminal matters; amounts in dispute involving a sum of less than \$1000 or more than \$50,000 unless the parties consent; and claims involving substantial legal questions, including professional malpractice or misconduct. Please consult Part 137.1 for additional exclusions.

Your attorney may not bring an action in court to obtain payment of a fee unless he or she first has provided written notice to you of your right to elect to resolve the dispute by arbitration under Part 137. If your attorney provides you with this notice, he or she must provide you with a copy of the written instructions and procedures of the approved local bar association-sponsored

fee dispute resolution program ("Local Program") having jurisdiction over your dispute. Your attorney must also provide you with the "Request for Fee Arbitration" form and advise that you must file the Request for Fee Arbitration with the local program within 30 days of the receipt of the notice. If you do not file the Request within those 30 days, you will not be permitted to compel your attorney to resolve the dispute by arbitration, and your attorney will be free to bring a lawsuit in court to seek to obtain payment of the fee.

In order to elect to resolve a fee dispute by arbitration, you must file the attached "Request for Fee Arbitration" with the approved local program. An updated list of local programs is available at <http://www.nycourts.gov/admin/feedispute> or by calling 877-FEES 137 (877- 333-7137).

Filing of the Request for Fee Arbitration must be made with the appropriate local program for the county in which the majority of legal services were performed. Once you file the Request for Fee Arbitration, the local program will mail a copy of the request to your attorney, who must provide a response within 15 days of the mailing. You will receive at least 15 days notice in writing of the time and place of the hearing and of the identity of the arbitrator(s). The arbitrator(s) decision will be issued no later than 30 days after the date of the hearing. You may represent yourself at the hearing, or you may appear with an attorney if you wish.

Some local programs may offer mediation services in addition to arbitration. Mediation is a process by which those who have a fee dispute meet with the assistance of a trained mediator to clarify issues and explore options for a mutually acceptable resolution. Mediation provides the opportunity for your attorney and you to discuss your concerns without relinquishing control over the outcome and of achieving a result satisfactory to both of you. Participation in mediation is voluntary for your attorney and you, and it does not waive any of your rights to arbitration

under these rules. If you wish to attempt to resolve your dispute through mediation, you may indicate your wish on the Request for Fee Arbitration form.

More information, including an updated list of local programs, is available at:
<http://www.nycourts.gov/admin/feedispute> or by calling (877) FEES 137.

100485391

Exhibit B

Retainer Letter

GIBSON, DUNN & CRUTCHER LLP

LAWYERS

A REGISTERED LIMITED LIABILITY PARTNERSHIP
INCLUDING PROFESSIONAL CORPORATIONS

200 Park Avenue New York, New York 10166-0193

(212) 351-4000

www.gibsondunn.com

MRosenthal@gibsondunn.com

April 8, 2009

Direct Dial

(212) 351-3969
Fax No.

(212) 351-6258

Client No.

C 08299-00087

Paul S. Street, Esq., General Counsel
Building Materials Holding Corporation
720 Park Boulevard
Suite 200
Boise, Idaho 83712-7714

Re: *Representation of Building Materials Holding Corporation and Its
Subsidiaries (collectively, "BMHC" or "You")*

Dear Paul:

Reference is made to our engagement letter, dated January 14, 2009 (the "Engagement Letter"), with BMHC related to the Current Representations, as defined in the Engagement Letter.

We appreciate the opportunity to represent BMHC in the Current Representations. Given the recent increase in the workload undertaken by Gibson, Dunn in connection with the Current Representations, particularly the Restructuring, we believe it necessary, as permitted by the "Advance Deposit Arrangement" provisions of the Engagement Letter, to request that the Advance Payment be immediately increased from \$250,000 to \$350,000. In our recent telephone conversation, you approved this increase.

Please acknowledge your agreement to increase the Advance Payment by signing and returning to me the enclosed copy of this letter. Please also send us a wire transfer for \$100,000 to effectuate this increase.

Except as provided herein, all of the terms and provisions of the Engagement Letter shall remain in full force and effect.

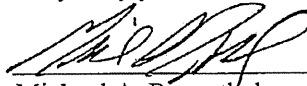
LOS ANGELES NEW YORK WASHINGTON, D.C. SAN FRANCISCO PALO ALTO LONDON
PARIS MUNICH BRUSSELS DUBAI SINGAPORE ORANGE COUNTY CENTURY CITY DALLAS DENVER

GIBSON, DUNN & CRUTCHER LLP

Paul S. Street, Esq.
April 8, 2009
Page 2

Thank you very much for your attention to this matter.

Very truly yours,



Michael A. Rosenthal
of GIBSON, DUNN & CRUTCHER LLP

Agreed to this 8 day of April, 2009

BUILDING MATERIALS HOLDING
CORPORATION, ON ITS OWN BEHALF AND
ON BEHALF OF EACH OF ITS
SUBSIDIARIES

By:



Paul S. Street, General Counsel and
Authorized Representative

cc: Steven R. Finley

100634200_1.DOC

Exhibit C

List of Gibson, Dunn Professionals

Exhibit C - List of Professionals and Rates

<u>Professional</u>	<u>Hourly Rate</u>
Steven Finley	\$995
Michael A. Rosenthal	\$985
Mitchell A. Karlan	\$990
Stephen L. Tolles	\$860
Matthew K. Kelsey	\$710
Olga Sandler	\$710
Cromwell Montgomery	\$635
Aaron G. York	\$635
Nancy Hart	\$635
Josh Weisser	\$585
Nicholas D. Greenwood	\$495
Andrew Kreisburg	\$470
Saeed Muzumdar	\$420
Jeremy L. Graves	\$400
Travis S. Souza	\$345
Jennifer Contreras	\$290

Exhibit D

Disclosure of Representation

EXHIBIT D – DISCLOSURE OF REPRESENTATION

Set forth below are the Interested Parties (other than the Debtors and the Debtors' affiliated entities) who Gibson, Dunn currently represents or has represented within the past three years. Several Interested Parties fall into multiple categories of Interested Parties; however, each Interested Party has been listed only once below.

The Debtors' prepetition and postpetition secured bank lenders

1. Wells Fargo Bank, N.A.: Gibson, Dunn has represented and currently represents Wells Fargo Bank, N.A. and its affiliated entities on corporate and litigation matters which are unrelated to the Debtors' matters. Because Wells Fargo Bank, N.A. is the administrative agent, and a lender under, the Prepetition Credit Agreement and the DIP Facility, Gibson, Dunn has obtained a conflict waiver from Wells Fargo Bank, N.A. and the Debtors in connection with its representation of the Debtors in the Chapter 11 Cases and of Wells Fargo Bank, N.A. in matters unrelated to the Debtors.
2. BNP Paribas: Gibson, Dunn has represented and currently represents BNP Paribas and its affiliated entities on corporate and litigation matters unrelated to the Debtors.
3. JPMorgan Chase & Co.: Gibson, Dunn has represented and currently represents JPMorgan Chase & Co. and its affiliated entities on corporate and litigation matters unrelated to the Debtors.
4. U.S. Bank, N.A.: Gibson, Dunn currently represents U.S. Bank, N.A. on corporate and litigation matters unrelated to the Debtors. In addition, Gibson, Dunn currently represents its affiliated entity U.S. Bancorp on a corporate matter unrelated to the Debtors and its affiliated entity Piper Jaffray, Inc. on corporate matters unrelated to the Debtors.
5. Raymond James Financial, Inc.: Gibson, Dunn currently represents Raymond James Financial, Inc. in one corporate matter unrelated to the Debtors.
6. Union Bank of California, N.A.: Gibson, Dunn has represented and currently represents Union Bank of California, N.A. in corporate and litigation matters unrelated to the Debtors.
7. DiMaio Ahmad Capital: Gibson, Dunn currently represents DiMaio Ahmad Capital in one corporate matter unrelated to the Debtors.
8. HSBC Bank USA, N.A.: Gibson, Dunn does not currently represent HSBC Bank USA, N.A. However, Gibson, Dunn has represented HSBC Bank USA, N.A. in the past three years in corporate matters unrelated to the Debtors. In addition, Gibson, Dunn has represented and currently represents affiliated entities of HSBC Bank USA, N.A. in corporate and litigation matters unrelated to the Debtors.
9. Commerzbank A.G.: Gibson, Dunn does not currently represent Commerzbank A.G. However, Gibson, Dunn has represented Commerzbank A.G. within the past three years on matters unrelated to the Debtors.
10. Bank of New York: Gibson, Dunn has represented Bank of New York within the past three years on matters unrelated to the Debtors. In addition, Gibson, Dunn currently represents Bank of New York Mellon Corp., BNY Capital Markets, Inc., and BNY ConverEx Group, LLC in connection with corporate and litigation matters unrelated to the Debtors.

11. D.E. Shaw Laminar Portfolios, LLC: Gibson, Dunn currently represents D.E. Shaw Laminar Portfolios, LLC in one litigation matter unrelated to the Debtors. In addition, Gibson, Dunn currently represents D.E. Shaw & Co., LP and D.E. Shaw Securities, LLC in real estate and corporate matters unrelated to the Debtors.

12. Bank of America: Gibson, Dunn has represented and currently represents Bank of America and its affiliates in corporate and litigation matters unrelated to the Debtors.

13. Morgan Stanley & Co.: Gibson, Dunn has represented and currently represents Morgan Stanley & Co. and its affiliates in corporate and litigation matters unrelated to the Debtors.

14. State Street Corp.: Gibson, Dunn currently represents State Street Bank & Trust Company, a subsidiary of State Street Corp., in two litigation matters unrelated to the Debtors.

15. MFS Investment Management (formerly Massachusetts Financial Services): Gibson, Dunn does not currently represent MFS Investment Management. However, Gibson, Dunn has represented Massachusetts Financial Services within the past three years in matters unrelated to the Debtors.

16. Lehman Commercial Paper: Gibson, Dunn does not represent Lehman Commercial Paper. However, Gibson, Dunn has represented and currently represents Lehman Commercial Paper's affiliated entities on corporate and litigation matters unrelated to the Debtors.

Holders of more than 5% of the Debtors' equity securities

1. Howard H. Leach: Gibson, Dunn has represented and currently represents Howard H. Leach in corporate matters unrelated to the Debtors.

Debtors' largest 50 unsecured creditors

1. Cemex: Gibson, Dunn has represented and currently represents Cemex in matters unrelated to the Debtors.

2. Masco Corp.: Gibson, Dunn currently represents Masco Corp. in one matter unrelated to the Debtors.

The Debtors' landlords

1. Union Pacific Corporation: Gibson, Dunn has represented and currently represents Union Pacific Corporation and its affiliates in corporate and litigation matters unrelated to the Debtors.

2. Chase Merritt, LP: Gibson, Dunn has represented and currently represents Chase Merritt, LP and its affiliates in corporate matters unrelated to the Debtors.

The Debtors' utility providers

1. Atmos Energy Corp.: Gibson, Dunn has represented and currently represents Atmos Energy Corp. in corporate matters unrelated to the Debtors.

2. Harris County: Gibson, Dunn currently represents Harris County in two litigation matters unrelated to the Debtors.

3. PG&E Corporation: Gibson, Dunn has represented and currently represents PG&E Corporation in corporate and litigation matters unrelated to the Debtors.

4. San Diego Gas & Electric Company: Gibson, Dunn has represented and currently represents San Diego Gas & Electric Company in corporate and litigation matters unrelated to the Debtors.

5. Southwestern Electric Power Company: Gibson, Dunn does not represent Southwestern Electric Power Company. However, Gibson, Dunn currently represents American Electric Power Company, Inc., an affiliate of Southwestern Electric Power Company, in a matter unrelated to the Debtors.

6. AT&T Inc.: Gibson, Dunn has represented and currently represents AT&T Inc. and its affiliates in corporate and litigation matters unrelated to the Debtors.

7. Level 3 Communications Corp.: Gibson, Dunn does not represent Level 3 Communications Corp. However, Gibson, Dunn currently represents L-3 Communications Vertex Aerospace, LLC, an affiliate of Level 3 Communications Corp., in a litigation matter unrelated to the Debtors.

8. Qwest Communications International, Inc.: Gibson, Dunn has represented and currently represents Qwest Communications International, Inc. in corporate and litigation matters unrelated to the Debtors.

9. Sprint Nextel Corporation: Gibson, Dunn has represented and currently represents Sprint Nextel Corporation in corporate and litigation matters unrelated to the Debtors.

10. TelePacific Communications: Gibson, Dunn does not currently represent TelePacific Communications. However, Gibson, Dunn has represented TelePacific Communications within the past three years on one matter unrelated to the Debtors.

11. Verizon Communications, Inc.: Gibson, Dunn has represented and currently represents Verizon Communications, Inc. and its affiliates in corporate and litigation matters unrelated to the Debtors.

The Debtors' insurers and insurance brokers

1. Lexington Insurance Company: Gibson, Dunn has represented and currently represents Lexington Insurance Company in corporate and litigation matters unrelated to the Debtors.

2. SR International Business Insurance Company, Ltd.: Gibson, Dunn does not currently represent SR International Business Insurance Company, Ltd. However, Gibson, Dunn has represented SR International Business Insurance Company, Ltd. within the past three years on one matter unrelated to the Debtors.

3. American International Group (AIG): Gibson, Dunn has represented and currently represents American International Group and its affiliates in corporate and litigation matters unrelated to the Debtors.

4. Zurich American Insurance Company: Gibson, Dunn has represented and currently represents Zurich American Insurance Company and its affiliates in corporate and litigation matters unrelated to the Debtors.

5. Swiss Re: Gibson, Dunn has represented and currently represents Swiss Re and its affiliates in corporate and litigation matters unrelated to the Debtors.

The Debtors' 50 largest customers

1. J.F. Shea Co., Inc.: Gibson, Dunn currently represents J.F. Shea Co., Inc. in corporate matters unrelated to the Debtors.

2. WL Homes LLC: Gibson, Dunn does not currently represent WL Homes LLC. However, Gibson, Dunn has represented WL Homes LLC within the past three years on one matter unrelated to the Debtors.

3. ColRich Construction, Inc.: Gibson, Dunn does not represent ColRich Construction, Inc. However, Gibson, Dunn currently represents ColRich Investments, LLC, an affiliate of ColRich Construction, Inc., in a real estate matter unrelated to the Debtors.

4. Standard Pacific Corp.: Gibson, Dunn has represented and currently represents Standard Pacific Corp. in corporate and litigation matters unrelated to the Debtors.

5. Signature Properties, Inc.: Gibson, Dunn currently represents Signature Properties, Inc. in two real estate and corporate matters unrelated to the Debtors.

6. D.R. Horton, Inc.: Gibson, Dunn has represented and currently represents D.R. Horton, Inc. in corporate matters unrelated to the Debtors.

The Debtors' 50 largest vendors

1. Weyerhaeuser Co.: Gibson, Dunn does not currently represent Weyerhaeuser Co. However, Gibson, Dunn has represented Weyerhaeuser Co. within the past three years on a litigation matter unrelated to the Debtors.

2. General Electric Co.: Gibson, Dunn has represented and currently represents General Electric Co. and its affiliates in corporate and litigation matters unrelated to the Debtors.

3. James Hardie Building Products: Gibson, Dunn does not currently represent James Hardie Building Products. However, Gibson, Dunn currently represents and has represented James Hardie Industries N.V., an affiliate of James Hardie Building Products, in corporate and litigation matters unrelated to the Debtors.

4. White Cap Construction Supply: Gibson, Dunn does not currently represent White Cap Construction Supply. However, Gibson, Dunn has represented White Cap Industries, Inc., an affiliate of White Cap Construction Supply, within the past three years on matters unrelated to the Debtors.

5. West Fraser Mills, Ltd.: Gibson, Dunn does not represent West Fraser Mills, Ltd. However, Gibson, Dunn has represented and currently represents West Fraser Timber Co., Ltd., an affiliate of West Fraser Mills, Ltd., in corporate and litigation matters unrelated to the Debtors.

Professionals to be employed by the Debtors

1. PricewaterhouseCoopers LLP: Gibson, Dunn has represented and currently represents PricewaterhouseCoopers LLP and its affiliates in corporate and litigation matters unrelated to the Debtors.

2. KPMG LLP: Gibson, Dunn has represented and currently represents KPMG LLP and its affiliates in corporate and litigation matters unrelated to the Debtors.

Other Significant Parties

1. Prudential Financial, Inc.: Gibson, Dunn does not represent Prudential Financial, Inc. However, Gibson, Dunn currently represents, and has represented within the past three years, affiliates of Prudential Financial, Inc. in corporate matters unrelated to the Debtors.

2. General Electric Capital Corp.: Gibson, Dunn has represented and currently represents General Electric Capital Corp. and its affiliates in corporate and litigation matters unrelated to the Debtors.

3. Microsoft Corp.: Gibson, Dunn has represented and currently represents Microsoft Corp. in corporate and litigation matters unrelated to the Debtors.

Exhibit E

Interested Parties

EXHIBIT E – LIST OF INTERESTED PARTIES

(i) Debtor entities:

- Building Materials Holding Corporation
- BMC West Corporation
- SelectBuild Construction, Inc.
- SelectBuild Nevada, Inc.
- C Construction, Inc.
- TWF Construction, Inc.
- H.N.R. Framing Systems, Inc.
- SelectBuild Arizona, LLC
- SelectBuild Northern California, Inc.
- SelectBuild Southern California, Inc.
- SelectBuild Illinois, LLC
- Illinois Framing, Inc.

(ii) Debtors' prepetition and postpetition secured bank lenders:

- Wells Fargo Bank
- BNP Paribas
- SunTrust Bank
- American AgCredit
- J.P. Morgan Chase
- U.S. Bank
- LaSalle Bank
- Rabobank
- Raymond James
- Union Bank of California
- Dimaio Ahmad Capital (Duane Street)
- HSBC
- PNC Bank
- Commerzbank
- Guaranty Federal Bank
- Van Kampen American
- Bank of New York (OWS)
- Bank of New York (Blue Mountain)
- Bank of New York (Jersey Street)
- Bank Leumi
- D. E. Shaw Laminar Portfolios
- West Coast Bank
- Whitebox Hedged HY Partnership
- Grandview Capital (Vinacasa, Waterfront)
- Whitney Bank
- Aladdin Capital Mgmt. (Landmark)
- Fraser Sullivan
- Denali Capital
- Phoenix
- PPM American
- Bank of America
- ACA Management
- Gulf Stream Asset Mgmt.
- Alliance Bernstein LP
- AIB Debt Management
- PHL Variable Insurance
- Morgan Stanley
- State Street (Qualcomm)
- Columbus Nova
- Third Avenue Spec. Sit. Fund
- Edwards Angell Palmer & Dodge (Marlborough St.)
- MFS
- The Hartford
- GPX LIX LLC
- Lehman Commercial Paper
- Bayside Capital (Grace Bay Holdings)

(iii) Holders of more than 5% of the Debtors' equity securities:

- Schneider Capital Management Corporation
- Daniel T. Shelly Trust
- Howard H. Leach

(iv) **Current officers and directors of the Debtors and individuals who have served as officers or directors of the Debtors in the past two years:**

- Robert E. Mellor
- William M. Smartt
- Stanley M. Wilson
- Paul S. Street
- Mark R. Kailer
- Michael D. Mahre
- Jeffrey F. Lucchesi
- Steven H. Pearson
- John D. Fa
- Danny McQuary
- Randy Folts
- Randall Shipp
- Doug Richards
- Ward Cole
- Michael Kearney
- Mike Landgren
- Robert Garcia
- John Volkman
- Steve Webster
- Alan Bruce Willard
- Jon Stone
- John Herring
- Tony Spagnola
- Robert Blose
- Edward Levato
- Keith Kotche
- Gerald Riggs
- Rick Jepson
- Sean Cavanaugh
- Jim Clevan
- Gary Burleson
- Robert R. Thomas
- Henry F. Rice
- Lawrence Calof
- Sara L. Beckman
- Eric S. Belsky
- James K. Jennings, Jr.
- Norman J. Metcalfe
- David M. Moffett
- R. Scott Morrison, Jr.
- Peter S. O'Neill
- Richard G. Reiten
- Norman R. Walker

(v) **Parties to significant litigation with the Debtors:**

- DR Horton
- Brett Laso
- Merrill Bauchert
- Campbell Companies
- Weis Builders, Inc.
- Chanen Construction
- Fifth Third Bank

(vi) **The Debtors' 50 largest unsecured creditors on a consolidated basis as identified in their chapter 11 petitions:**

- Weyerhaeuser Company
- Robert Garcia
- Boise Cascade
- CalPortland
- Ellis C. Goebel
- Steven H. Pearson
- Simpson Strong Tie, Inc.
- James Hardie Building Products
- Michael D. Mahre
- Milgard Manufacturing
- Sauder Mouldings
- Masonite
- Marvin Windows & Doors
- Michael D. Badgley
- White Cap
- Barr Lumber Co., Inc.

- Ready Mix, Inc.
- David G. Ondrasek
- Joseph James Zuendel
- Cemex Inc.
- Jimmy D. Pask
- Coffman Stairs LLC
- Douglas Alan Davidson
- Daniel McQuary
- ProBuild
- James A. Lee
- Roy E. Gardner
- Mark D. Whaley
- Leroy D. Custer
- Louisiana Pacific Corp.
- Dakeryn Industries Ltd.
- Columbia Forest Products
- David B. Bello
- Lumber Products
- Atrium Companies, Inc.
- Jack D. LaRock
- True Value
- Professional Building Solutions – Scott Axelrod
- Logan D. Bailor
- Grove Lumber
- John M. Volkman
- Mitek Industries, Inc.
- Robert L. Becci
- ODL, Inc.
- Neil B. Watterson
- Jerry Baird
- Exterior Wood, Inc.
- Cedar Creek Lumber, Inc.
- Hardwood Specialty Products
- Primesource

(vii) The unions with whom the Debtors have collective bargaining agreements:

- Chicago Regional Council of Carpenters
- General Teamsters
- Lumber, Production & Industrial Workers Union
- U.B.C. Industrial
- Western Council of Industrial Workers

(viii) The Debtors' landlords:

- 3 Boulders, LLC
- Ralph Road LLC
- Gregg Street LLC
- ER Management/Federal Blvd Properties LP
- SRC Oates LLC
- Space Center Mira Loma, Inc.
- Hawley Family Trust
- MW LLC
- 2930 Marco St, LLC
- Northpark, LLC
- Eugene MonKarsh
- David Eckenrode
- JH Associates LLC
- Greenwood & McKenzie Real Estate Investments
- Darryl Crow
- Opus West Corporation
- Cactus Bloom LLC
- Scottsdale Ridge Prop Off LLC
- Condos LLC
- Walter Sargent
- John David Gillis
- Boston Properties
- Price Lakeshore LLC
- Sundance Investments L.P.
- Wooten Properties LLP
- WS Properties
- Union Pacific Railroad
- Massie & Co
- Houston Distributing Company, Inc.
- The Home Emporium

- Steve & Becky Studebaker
- Waycon Development
- SRC Polaris LLC
- VEPA III, LLC
- SRC Pellisier, LLC
- Leaman Building Materials, L.P.
- Thunderhead Holdings
- Westland Enterprises
- The Gateway
- David & Patricia Kubich
- Randolph Davis, Sandra Davis,
George Davis & Jody Davis
- 3 Boulders, LLC
- Boulders West, LLC
- San Marcos Plaza /JVP LLC
- SSS Properties LLC
- SRC Spencer LLC
- Southwest Land Development
- RAMI Enterprises
- Lone Butte Industrial Park
- Beck Properties
- ViaWest
- Dependable Sheet Metal
- B&T LLC
- MK Plaza Trust
- Nyle Tanner
- The Outfitters Building
- Stutzman Properties, LLC
- Modern Building Systems, Inc.

- Intermountain Design & Display
Center, LLC
- Dan Treinen
- Resun Leasing Inc.
- Youngquist Investments, Ltd.
- Elwood HA, LLC
- Hillcrest Partners Joint Venture
- NWV Center LTD
- Douglas C Moore
- Tivydale Business Park
- Sam Golden
- RUMA, Ltd.
- Railroad Management Company
LLC
- Braker Center LP
- Chase Merritt/PW Plaza Phase I,
Ltd.
- Kevin Mendenhall
- Steel Yards LLC
- Your Daily Home Show LLC
- Union Pacific Railroad
- Aramark-Wahweap Marina
- San Joaquin Valley RR Co
- CRP Holdings B.L.P
- LF Limited LP
- Cedar Mill Lumber & Hardware Co.,
Inc.
- RRW LLC

(ix) **The Debtors' utility providers:**

- AHA Macav Power Service
- Allied Waste Services # 538
- APS
- Black Hills Energy
- Araphahoe County
- Atmos Energy
- Bermuda Water Company
- Board of Water Works
- Bona Vista Water District
- CenterPoint Energy
- Central Texas Electric
- City Of Abilene
- City of Austin
- City of Boise
- City of Burlington
- City of Cedar Park
(Whitestone)
(Brushy Creek)
- City of Charlotte
- County of Mecklenburg
- City of Coppell
- City of Fort Collins
- City of Fresno
- City of Frisco
- City of Helena
- City of Houston

- City of Hurst
- City of Issaquah
- City of Kent
- City of Killeen
- City of Missoula
- City of Modesto
- City of North Las Vegas
- City of Orem
- City of Poway
- City of Rexburg
- City of Rosenberg
- City of Shelley
- City of Sparks
- City of Terrell
- City of Thornton
- City of West Jordan
- City Waste Paper, Inc
- Clark Public Utilities
- Clark Regional Waste Water
- Colorado Springs Utilities
- CPS Energy
- Douglas County
- Duke Energy
- Duncan Disposal
- EDCO Waste & Recycling Service
- El Paso Electric Company
- El Paso Water
- Evergreen Disposal
- Evergreen Metro District
- Flathead County Water
- Flathead Electric Cooperative, Inc.
- Gas Company
- Hargus Disposal
- Harris County Mud 366
- Idaho Power
- Imperial Irrigation District
- Indio Water Authority
- Intermountain Gas
- Intermountain Rural Electric Association
- Lakeview Light & Power
- Lakewood Refuse Service
- Las Vegas Valley Water District
- Modesto Irrigation District
- Mountain Water Co.
- New Braunfels Utilities
- NorthWestern Energy
- NW Harris Co. Mud # 6
- NW Natural
- Pedernales Electric
- PG & E
- PGE Portland General Electric
- Piedmont Natural Gas
- Pierce County
- Pride Disposal Company
- Puget Sound Energy
- Questar Gas
- Riverside Public Utilities
- Rocky Mountain Power
- Rubatino Refuse Removal Inc
- Sammamish Plateau
- San Diego Gas & Electric
- Sierra Pacific Power Co.
- Snohomish County
- Southern California Edison
- Southwestern Electric Power (American Electric Inc)
- Strategic Energy
- Texas Gas Service
- Truckee Meadows Water
- Tualatin Valley Water District
- United Power
- United Water
- Utility Services
- Waste Connections - Vancouver District 210
- Waste Management
- West Haven Special District
- WTU Retail Energy
- Xcel Energy
- ADG Communications
- AllTel
- Arkadin Global
- ATT
- ATT Mobility
- Broadwing/L3 Communications
- CCI Network Services
- Cellular One

- CenturyTel
- eFax Corporate
- Embarq
- Excel
- Frontier
- Gila River Telecom
- Granite
- Integra Telecom
- InteCall
- Matrix Telecom Inc

- MetTel
- NTS Communications Inc
- PAETEC Communications
- Qwest
- Sprint-Nextel
- TelePacific Communications
- TW Telecom
- UCN Inc
- Verizon
- Westel Fiber

(x) The Debtors' insurers and insurance brokers:

- Marsh USA, Inc.
- Integro USA, Inc.
- Aon, Inc.
- ACE American Insurance Co.
- Westchester Surplus Lines Ins. Co.
- All Risks Ltd.
- AXIS Surplus Insurance Company
- Max Specialty Insurance Company
- Aspen Insurance UK Limited
- Marsh Global Markets (Dublin) Limited
- Lexington Insurance Company UKB
- Marsh Ltd.
- Tower Place
- London, N/A EC3R 5 BU
- XL Europe Limited
- Catlin Insurance Company (UK) Ltd.
- Max Re Ltd.
- SR International Business Insurance
- Marsh AG
- AIG Excess Liability Insurance Company Ltd.
- American Int'l Specialty Lines Ins. Co.
- Western Risk Specialists Inc.
- XL Specialty Ins. Co.
- W Brown & Associates Insurance Service
- Federal Ins. Co.
- National Union Fire Insurance Co. of Pittsburgh PA
- Arch Ins. Company
- XL Insurance Ltd.
- Starr Excess Liab Ins Co Ltd.
- Old Republic Insurance Company
- Zurich American Ins. Co.
- Swiss Re
- AIGCEL
- Midwest Employers Casualty Co.
- AIG Environmental
- Chubb Group of Insurance Companies
- AIG Cat Excess
- Indemnity Ins. Co. of N.A. (ACE)

(xi) The Debtors' 50 largest customers:

- Western National Contractors
- D.R. Horton, Inc.
- K B Home
- The Chanen Corporation
- The Ryland Group Inc.
- Barratt American Incorporated
- Mel-Re Construction, Inc.
- Wilshire Homes Of Texas Ltd.
- The Astoria Corporation
- Woodrow Taylor Homes Inc.
- Pulte Homes, Inc.
- Woodside Group Inc.
- Ff Development L.P.
- Van Guard Construction, LLC

- Phi Holding Inc.
- Ashton Woods USA L.L.C.
- J.F. Shea Construction, Inc.
- Nevis Homes, LLC
- Ducati Development Group, LLC
- Framemax, Inc.
- Weekley Homes, L.P.
- David Powers Homes L.E., Ltd.
- Prime Investors & Developers Inc.
- Ivory Homes, Ltd.
- Weyerhaeuser Company
- WI Homes LLC
- Storybook Homes LLC
- Toll Brothers, Inc.
- Main Street Ltd.
- Mansions Custom Homes Iv LLC
- Borm Associates Inc.
- Olson Urban Housing LP
- Highway One Construction, Inc.

- M.D.C. Holdings, Inc.
- Bonadelle Development Corp.
- Core Construction Svcs Nev Inc.
- Lyle Homes, Inc.
- Prescott Homes Inc.
- Fantasy Construction Inc.
- Colrich Construction, Inc
- Mhi Mortgage
- Highland Homes, Ltd.
- Meritage Homes Corporation
- Davidson Communities LLC
- Standard Pacific Corp.
- Pannunzio, Inc.
- Greystone Multi-Family Builders, Inc.
- Summit Companies Of Jacksonville, Inc.
- Centex Corporation
- Signature Properties, Inc.

(xii) **The Debtors' 50 largest vendors:**¹

- Weyerhaeuser NR Company
- Boise Cascade BMDD
- General Electric Co.
- Marvin Windows & Doors
- JP Morgan Chase Bank
- Masonite
- Hampton Distribution Companies
- James Hardie Building Products
- Guardian Building Products
- Bluelinx Corporation
- Louisiana Pacific Corp.
- DW Distribution
- SB Mira Loma Reload
- Columbia Forest Products
- Ainsworth Lumber Co Ltd.
- Mitek Industries Inc.
- Huttig Building Products
- Jeld Wen Windows & Doors
- American Intl. Forest Products
- Swanson Group
- Milgard Manufacturing Inc.
- SB Dist Nevada LBM
- Silver State Materials Corp.
- JM Thomas Forest Products
- Lumber Products
- Potlatch Land & Lumber LLC
- Orepac Bldg Products
- White Cap
- True Value
- Sauder Mouldings
- Therma Tru Corp.
- West Fraser Mills Ltd.
- All Coast Forest Products

¹ The Debtors' 50 largest vendors were determined by reference to the amount paid to vendors during the one-year period from April 2008 to March 2009.

- Taiga Forest Products Ltd.
- Woodgrain
- Sun Mountain Lumber Company
- Sierra Pacific Industries
- Db Constructors Inc.
- Capital Lumber Company
- Martco Partnership
- Coffman Stairs LLC
- Atrium Companies Inc.
- Riley Creek Co.
- Aristokraft
- Masonite Entry Systems
- Cedar Creek Lumber Inc.
- Lifetime Doors Inc.
- Ferguson Enterprises Inc.
- Lumber Yard Supply Co.
- Ready Mix Inc.

(xiii) Professionals to be employed by the Debtors in these Chapter 11 Cases:

- Gibson, Dunn & Crutcher, LLP
- Young Conaway Stargatt & Taylor, LLP
- The Garden City Group, Inc.
- Alvarez and Marsal North America, LLC
- Peter J. Solomon Company
- PricewaterhouseCoopers LLP
- KPMG LLP
- Kekst and Company, Inc.

(xiv) Other significant parties:

- GE Capital Corp.
- Penske
- Prudential
- Microsoft
- CIT Technology Financing Services, Inc.

Exhibit F

Waivers

Exhibit F – Conflicts Waivers

From: Paul Street [mailto:street@bmhc.com]
Sent: Wednesday, June 24, 2009 2:56 PM
To: Rosenthal, Michael A.
Cc: Graves, Jeremy L.
Subject: RE: Building Materials Holding Corporation - Conflicts Waiver

Michael,

This is to confirm waiver by BMHC and its subsidiaries of any conflict.

Paul

Paul S. Street, Senior Vice President
Chief Administrative Officer, General Counsel
and Corporate Secretary

BMHC

720 Park Blvd., Suite 200 4 Embarcadero Center, Suite 3200
Boise, ID 83712 San Francisco, CA 94111
Tel: 208-331-4381 Tel: 415-627-9104
Fax: 208-331-4477 Fax: 415-627-9119
Cell: 208-863-8212

From: Rosenthal, Michael A. [mailto:MRosenthal@gibsondunn.com]
Sent: Wednesday, June 24, 2009 1:47 PM
To: Paul Street
Cc: Graves, Jeremy L.
Subject: FW: Building Materials Holding Corporation - Conflicts Waiver
Importance: High

Paul, in connection with preparation of GDC's application to be employed, will you please confirm again for me the willingness of Building Materials Holding Corporation and its subsidiaries (the "Debtors") to waive conflicts associated with GDC's representation of Wells Fargo Bank, N.A. in matters unrelated to the chapter 11 proceedings of the Debtors pursuant to the terms and conditions of the conflicts waiver from Joyce Jaber attached below. You had previously agreed to this conflicts waiver by email, dated April 29, 2009.

As was noted in my April 29th email exchange with you, and as is reflected below, the conflicts waiver from Wells prevents GDC from representing the Debtors to (i) assert a claim on behalf of an Adverse Party against Wells Fargo in any case commenced under the Bankruptcy Code involving any Adverse Party or in any related litigation or (ii) represent an Adverse Party in any challenge to the validity or priority of indebtedness owed to Wells Fargo or the validity of Wells Fargo's lien, if any. We do not believe that any such claim exists, but if it does, the Debtors could be represented by our co-counsel, Young Conaway, or another conflicts counsel.

Please confirm that this arrangement is acceptable to the Debtors and that the Debtors agree to waive any conflicts of interest that may arise as a result of Gibson, Dunn's simultaneous representation of the Debtors in connection with their chapter 11 cases and Wells Fargo, in wholly unrelated matters.

Thank you.

Michael

Michael A. Rosenthal
Gibson, Dunn & Crutcher LLP

New York Office:
200 Park Avenue
New York, New York 10166-1093
Telephone: (212) 351-3969
Telecopy: (212) 351-6258
mrosenthal@gibsondunn.com

From: jaberjs@wellsfargo.com [mailto:jaberjs@wellsfargo.com]
Sent: Thursday, April 30, 2009 11:49 AM
To: Rosenthal, Michael A.; kevinfisher@paulhastings.com
Cc: conflictresolution@wellsfargo.com
Subject: FW: Building Materials Holding Corporation - Conflicts Waiver
Importance: High

Subject to the terms and conditions set forth below; I hereby consent to the waiver of the conflict.

Joyce S. Jaber
Senior Counsel
Wells Fargo Bank
45 Fremont Street, 26th Floor
San Francisco, CA 94105
(415) 396-3815
(415) 975-7863 Fax

This message may contain confidential and/or privileged information. If you are not the addressee or authorized to receive this for the addressee, you must not use, copy, disclose, or take any action based on this message or any information herein. If you have received this message in error, please advise the sender immediately by reply e-mail and delete this message. Thank you for your cooperation.

From: Rosenthal, Michael A. [mailto:MRosenthal@gibsondunn.com]
Sent: Thursday, April 30, 2009 6:43 AM
To: Jaber, Joyce S.
Cc: kevinfisher@paulhastings.com; Finley, Steven R.; Montgomery, Cromwell R.; Kelsey, Matthew
Subject: Building Materials Holding Corporation - Conflicts Waiver
Importance: High

Joyce,
I appreciate your agreement communicated through Kevin Fisher at Paul Hastings to waive conflicts so that we can continue our representation of Building Materials Holding Corporation through a chapter 11 case. Set forth below is the formal request. Please send me email confirmation that this is acceptable to Wells Fargo.

I look forward to meeting you. If you have any questions, please give me a call at 212/351-3969.

Thank you very much.

Michael

Dear Ms. Jaber:

I am writing to respectfully request your specific consent to Gibson, Dunn & Crutcher LLP's representation of a party in a matter which would result in a Conflict of Interest that is not covered by any of the general consents contained in the current *Wells Fargo & Company Policy Regarding Legal Conflicts of Interest*.

Building Materials Holding Corporation and its respective subsidiaries and affiliates (collectively, the "Adverse Party") have asked Gibson, Dunn & Crutcher LLP (the "Firm") to represent each of them in connection with the restructuring (including any restructuring effectuated through the filing of a case commenced under the Bankruptcy Code) of, and any potential Disputes arising in respect of, an existing Transaction encompassing various existing credit facilities of the Adverse Party that are either agented by and/or held, in whole or in part, directly by Wells Fargo. We understand that Wells Fargo's relationship with the Adverse Party is managed through your Loan Adjustment Group and that Seth Moldoff and Tom Ferrari are the principal relationship managers assigned to the Adverse Party. We expect the following attorneys of the Firm will maintain principal responsibility for representing the Adverse Party in connection with these matters: Michael A. Rosenthal, Steven R. Finley, Cromwell Montgomery and Matthew Kelsey.

If you consent to our representation of the Adverse Party in this matter, we acknowledge and agree that, subject to giving effect to your consent, the representation will be subject to all applicable rules of professional conduct and that the Firm will not (1) disclose to an Adverse Party any confidential information concerning Wells Fargo or its businesses (including, without limitation, trade secrets, matters covered by the attorney-client privilege and matters covered by the attorney work product privilege), (2) use such information in any matter or proceeding without Wells Fargo's consent, or (3) represent the Adverse Party in any subsequent and unrelated Dispute with Wells Fargo or in any subsequent and unrelated Transaction with Wells Fargo for which a general or specific consent has been given by Wells Fargo, as applicable.

In addition, pursuant to your request, this letter will confirm that if you consent to our representation of the Adverse Party in this matter, the Firm shall not (i) assert a claim on behalf of an Adverse Party against Wells Fargo in any case commenced under the Bankruptcy Code involving any Adverse Party or in any related litigation nor (ii) represent an Adverse Party in any challenge to the validity or priority of indebtedness owed to Wells Fargo or the validity of Wells Fargo's lien, if any.

Please note that the terms "Transaction" and "Dispute" are used herein as defined in the *Wells Fargo & Company Policy Regarding Legal Conflicts of Interest*.

If you agree that the Firm may represent the Adverse Party in the referenced matter subject to these conditions, please send me a confirmation by e-mail.

Thank you very much for your help in this matter.

Sincerely,

Michael A. Rosenthal

Michael A. Rosenthal
Gibson, Dunn & Crutcher LLP

New York Office:

200 Park Avenue

New York, New York 10166-1093

Telephone: (212) 351-3969

Telecopy: (212) 351-6258

mrosenthal@gibsondunn.com

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