

1 **Albert N. Kennedy**, OSB No. 821429 (Lead Attorney)

Direct Dial: (503) 802-2013

2 Facsimile: (503) 972-3713

E-Mail: al.kennedy@tonkon.com

3 **Michael W. Fletcher**, OSB No. 010448

Direct Dial: (503) 802-2169

4 Facsimile: (503) 972-3869

E-Mail: michael.fletcher@tonkon.com

5 **TONKON TORP LLP**

1600 Pioneer Tower

6 888 S.W. Fifth Avenue

Portland, OR 97204

7 Attorneys for Debtor

8  
9  
10 UNITED STATES BANKRUPTCY COURT

11 DISTRICT OF OREGON

12 In re

13 Beall Corporation,

14 Debtor.

Case No. 12-37291-elp11

**DEBTOR'S ~~FIRST~~SECOND**  
**AMENDED DISCLOSURE**  
**STATEMENT (JULY ~~8~~,18, 2013)**

15  
16 **INTRODUCTION**

17 On September 24, 2012 (the "Petition Date"), Beall Corporation ("Debtor") filed a  
18 voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the  
19 "Bankruptcy Code").

20 On July ~~8~~,18, 2013 Debtor filed its ~~First~~Second Amended Plan of Liquidation (the  
21 "Plan") with the Bankruptcy Court. A copy of the Plan is attached hereto as **Exhibit 1**. Debtor  
22 is seeking acceptance of the Plan by its creditors.

23 The purpose of this Disclosure Statement is to provide you with adequate information  
24 to enable you to make an informed judgment concerning whether to vote for or against the  
25 Plan. You are urged to review the Plan and, if appropriate, consult with counsel about the Plan  
26 and its impact on your legal rights before voting on the Plan. Capitalized terms used but not

1 defined in this Disclosure Statement shall have the meanings assigned to such terms in the Plan  
2 or the Bankruptcy Code.

3 This Disclosure Statement has been approved by Order of the Bankruptcy Court as  
4 containing adequate information to permit parties in interest to make an informed judgment as  
5 to whether to vote to accept or reject the Plan. The Bankruptcy Court's approval of this  
6 Disclosure Statement, however, does not constitute a recommendation by the Bankruptcy  
7 Court either for or against the Plan.

8 This Disclosure Statement is submitted in accordance with Section 1125 of the  
9 Bankruptcy Code and Bankruptcy Rule 3016. The description of the Plan contained in this  
10 Disclosure Statement is intended as a summary only and is qualified in its entirety by reference  
11 to the Plan itself. This Disclosure Statement does not attempt to summarize or discuss each  
12 and every section of the Plan. If any inconsistency exists between the Plan and this Disclosure  
13 Statement, the terms of the Plan are controlling. This Disclosure Statement may not be relied  
14 on for any purpose other than to determine how to vote on the Plan.

15 This Disclosure Statement has been prepared by Debtor in good faith based upon  
16 information available to Debtor and information contained in Debtor's books and records. The  
17 information concerning the Plan has not been subject to a verified audit. The statements  
18 contained in this Disclosure Statement are made as of the date hereof unless another time is  
19 specified herein, and the delivery of this Disclosure Statement shall not imply there has been  
20 no change in the facts set forth herein since the date of this Disclosure Statement and the date  
21 the material relied on in preparation of this Disclosure Statement was compiled.

22 Nothing contained herein shall constitute an admission of any fact or liability by any  
23 party, or be admissible in any proceeding involving Debtor or any other party.  
24  
25  
26

1     **1.     BRIEF EXPLANATION OF CHAPTER 11**

2             Chapter 11 of the Bankruptcy Code is the principal reorganization provision of the  
3 Bankruptcy Code. A debtor may use Chapter 11 to facilitate an orderly liquidation of the  
4 debtor's assets and an efficient distribution to the debtor's creditors.

5             The formulation and confirmation of a plan is the principal purpose of a Chapter 11  
6 case. A plan sets forth a proposed method of compensating the debtor's creditors. Chapter 11  
7 does not require all holders of claims to vote in favor of a plan in order for the Bankruptcy  
8 Court to confirm the plan. However, the Bankruptcy Court must find that the plan meets a  
9 number of statutory tests before it may confirm, or approve, the plan. These tests are designed  
10 to protect the interests of holders of claims who do not vote to accept the plan, but who will  
11 nonetheless be bound by the plan's provisions if it is confirmed by the Bankruptcy Court.

12     **2.     BRIEF SUMMARY OF THE PLAN**

13             A copy of the Plan is attached as **Exhibit 1** to this Disclosure Statement. All  
14 descriptions of the Plan in this Disclosure Statement are qualified in their entirety by reference  
15 to the Plan. A more detailed summary of the Plan is set forth later in this Disclosure Statement.

16             The Plan is a liquidating plan. Nearly all of Debtor's assets have been sold by Debtor,  
17 and the proceeds from the sales have been distributed to its secured creditor, KeyBank  
18 National Association, or retained by Debtor.

19             The Plan provides that all Allowed Administrative Expense Claims, Priority Tax  
20 Claims and Other Priority Claims will be paid in full. Administrative Expense Claims and  
21 Other Priority Claims will be paid in full on the Effective Date, and Priority Tax Claims will be  
22 paid in full with interest no later than five years after the Effective Date.

23             The Plan further provides that holders of Allowed General Unsecured Claims will  
24 receive on account of such Claims one or more Pro Rata Distributions of Available Cash when  
25 the Plan Agent, after consultation with the Committee, determines sufficient funds are  
26

1 available for the Plan Agent to make meaningful distributions to holders of Allowed General  
2 Unsecured Claims.

3 All Equity Interests will be cancelled on the Effective Date.

4 Commencing on the Effective Date, Debtor will be managed by a Plan Agent who will  
5 be the sole shareholder, director, and officer of Debtor and who will have full power and  
6 authority to manage Debtor and carry out the provisions of the Plan, subject to oversight by the  
7 Committee.

8 The Plan is premised on the assumption that the KeyBank Settlement Agreement  
9 (attached hereto as **Exhibit 2**), which was approved by the Court at a hearing on July 17, 2013,  
10 has become effective. One condition to effectiveness of the KeyBank Settlement Agreement is  
11 that KeyBank and the Affiliates have executed a forbearance agreement. As of the date of this  
12 Disclosure Statement, KeyBank and the Affiliates have not yet executed a forbearance  
13 agreement.

### 14 **3. EVENTS LEADING TO CHAPTER 11 FILING**

15 Debtor is an Oregon corporation founded in 1905. Prior to the Petition Date, Debtor  
16 operated multiple factories and sales/service branches across the Western United States, and  
17 employed approximately 285 employees. Prior to filing the petition, Debtor owed KeyBank in  
18 excess of \$13.4 million on an expired line of credit. Absent a sale of all or substantially all of  
19 its assets, Debtor did not have the ability to repay the debt owing to KeyBank. Debtor  
20 attempted, but was unable, to sell its assets in the year preceding the filing and could not  
21 refinance the KeyBank debt. Debtor filed its Chapter 11 petition commencing this Case on  
22 September 24, 2012, shortly after the garnishment of its bank accounts by a judgment creditor,  
23 and the resulting offset of its bank accounts by KeyBank following the garnishment.

### 24 **4. SIGNIFICANT POST-PETITION EVENTS**

25 4.1 Appointment of Unsecured Creditors Committee. Early in the Case, the United  
26 States Trustee appointed a committee of unsecured creditors (the "Committee") pursuant to 11

1 U.S.C. § 1102(a) and 11 U.S.C. § 1102(b)(1). The Committee is represented by Ball Janik  
2 LLP.

3 4.2 Retention of Professionals. Pursuant to a series of applications and orders,  
4 Debtor obtained authorization from the court to employ various professionals in the Case.  
5 These professionals include, among others, Tonkon Torp LLP as Debtor's Chapter 11 counsel.

6 4.3 Use of Cash Collateral/Post-Petition Financing. Post-petition, Debtor operated  
7 and paid its expenses using post-petition financing provided by KeyBank, as well as cash  
8 collateral of KeyBank, pursuant to a series of stipulated orders entered into between Debtor  
9 and KeyBank and approved by the Court. The cash collateral orders provided for a cumulative  
10 "Carve Out" of up to \$1.5 million from KeyBank's collateral for the payment of allowed  
11 Administrative Expenses and U.S. Trustee fees. Approximately \$1.2 million of the Carve Out  
12 has been used to pay Court approved Administrative Expenses and U.S. Trustee fees.

13 4.4 Post-Petition Sales of Assets. Pursuant to a series of Court approved sales and  
14 subsequent sale and distribution orders, Debtor liquidated substantially all of its assets and  
15 distributed most of the net sale proceeds to KeyBank. Such distributions to KeyBank paid in  
16 full the post-petition financing provided by KeyBank, all of Debtor's direct (non-guarantor)  
17 obligations owing to KeyBank, and a portion of Debtor's guaranty obligations owing to  
18 KeyBank.

19 4.5 Settlement with KeyBank. Following the sale of substantially all of its assets,  
20 and distribution of most of the sale proceeds to KeyBank, Debtor held approximately  
21 \$2,000,000 in net sale proceeds (the "Remaining Sale Proceeds"). On March 12, 2013,  
22 KeyBank filed a motion with the Court seeking to compel Debtor to distribute all sale proceeds  
23 to KeyBank (the "Distribution Motion"). Both Debtor and the Committee objected to the  
24 Distribution Motion. On May 6, 2013, Debtor, KeyBank, the Committee and certain affiliates  
25 of Debtor (the "Affiliates") participated in a settlement conference with the Honorable Randall  
26 L. Dunn, and ultimately entered into a formal settlement agreement (the "KeyBank Settlement

Agreement") that, after notice to all creditors and a hearing, was approved by the Bankruptcy Court. A copy of the Court approved KeyBank Settlement Agreement is attached hereto as **Exhibit 2.**

Among other things, the Settlement Agreement resolved all disputes between Debtor and KeyBank and allowed Debtor to satisfy KeyBank's remaining secured claim against Debtor for significantly less than the amount owed by Debtor to KeyBank. The Settlement Agreement allowed Debtor to preserve significant cash (approximately \$700,000) for the benefit of Debtor's estate that KeyBank had asserted should be delivered to KeyBank.

Pursuant to the Settlement Agreement Debtor distributed \$1,300,000 of the Remaining Sale Proceeds to KeyBank, which KeyBank applied to reduce the obligations owed by the Affiliates to KeyBank (which were guaranteed by Debtor) (the "Affiliate Obligations"). As a result of such payment, Debtor is subrogated to \$1,300,000 of the Affiliate Obligations. The Settlement Agreement requires the Affiliates to repay to Debtor within five years the \$1,300,000 paid by Debtor toward the Affiliate Obligations. Pursuant to the Settlement Agreement, any such Affiliate payments received by Debtor will be utilized by Debtor to fund amounts owing to holders of Allowed General Unsecured Claims, after paying (or reserving for) any then-outstanding or expected administrative expenses.

## **5. CLASSIFICATION AND TREATMENT OF CLAIMS UNDER THE PLAN**

Below is a general summary of the Plan's classification and treatment of Claims. It is intended as a general summary only and is qualified in its entirety by reference to the Plan. Please refer to the Plan for a more complete description of the classification and treatment of Claims under the Plan, and for the meaning of the Capitalized (defined) terms used below.

**5.1 Unclassified Claims.** Administrative Expense Claims and Priority Tax Claims are not classified under the Plan.

An Administrative Expense Claim is any Claim entitled to the priority afforded by Sections 503(b) and 507(a)(2) of the Bankruptcy Code.

1 The Plan provides that each holder of an Administrative Expense Claim will receive  
 2 payment of such Claim in full in Cash on the later of (a) the Effective Date or (b) the date on  
 3 which such Claim becomes an Allowed Claim, unless such holder agrees to a different  
 4 treatment of such Claim (including, without limitation, any different treatment that may be  
 5 provided for in any documentation, statute, or regulation governing such Claim); provided,  
 6 however, that Administrative Expense Claims representing obligations incurred in the  
 7 ordinary course of business by Debtor during the Chapter 11 Case shall be paid by Debtor in  
 8 the ordinary course of business and in accordance with any terms and conditions of the  
 9 particular transaction, and any agreements relating thereto.

10 The amount of remaining Administrative Expense Claims has not yet been determined.  
 11 However, Debtor estimates the remaining Administrative Expense Claims will not exceed  
 12 \$400,000 and that the remaining Carve Out of approximately \$304,000 will cover most of the  
 13 Administrative Expenses.

14 A Priority Tax Claim is a claim of a governmental unit of the kind entitled to priority  
 15 under Section 507(a)(8) of the Bankruptcy Code. Debtor estimates that Priority Tax Claims  
 16 are approximately \$1,000,000.

17 The Plan provides that each Allowed Priority Tax Claim will be paid in full, with  
 18 interest from and after the Effective Date at the Interest Rate, in Cash no later than five years  
 19 after the Petition Date. Until such Claims are paid in full, on each anniversary of the Effective  
 20 Date the Plan Agent will make regular Pro Rata installment payments to the holders of the  
 21 Allowed Priority Tax Claims out of Cash then available for distribution to holders of Allowed  
 22 Priority Tax Claims, after establishing such reserves against such Cash as the Plan Agent  
 23 deems necessary or appropriate.

24 5.2 Classified Claims. The Plan divides all Claims (other than Administrative  
 25 Expense Claims and Priority Tax Claims) into the following Classes.  
 26

5.2.1 Class 1 (Other Priority Claims). Class 1 consists of all Allowed Other Priority Claims. An Other Priority Claim means any Claim for an amount entitled to priority in right of payment pursuant to Section 507(a) of the Code, other than a Priority Tax Claim or an Administrative Expense Claim. Without limiting the preceding, Other Priority Claims include priority wage/compensation Claims under Section 507(a)(4). Debtor estimates that there are approximately \$300,000 of such priority wage/compensation claims.

The Plan provides that each Allowed Class 1 Claim will be paid in full in Cash on the later of (a) the Effective Date or (b) the date on which the Claim becomes an Allowed Claim.

Class 1 is not impaired by the Plan.

5.2.2 Class 2 (General Unsecured Claims). Class 2 consists of all General Unsecured Claims. A General Unsecured Claim is any Unsecured Claim not otherwise treated or classified under the Plan.

The Plan provides that Debtor will make one or more Pro Rata distributions of Available Cash to the holders of Allowed General Unsecured Claims.

At this time, Debtor cannot accurately estimate the percentage that holders of Allowed General Unsecured Claims can expect to receive on their Claims. Such percentage depends primarily on the eventual total amount of Allowed General Unsecured Claims, and the amount of "Available Cash" to distribute to holders of Allowed General Unsecured Claims.

At this time, Debtor cannot accurately estimate the total amount of Allowed General Unsecured Claims or the expected Available Cash.

Debtor is still analyzing the Claims filed in the Case. Based on Debtor's preliminary analysis, and Claims filed to date, Allowed General Unsecured Claims may range from approximately \$8,000,000 to over \$20,000,000. The total amount of Allowed General Unsecured Claims will not be known until the Plan Agent has finished auditing the Claims, filed any objections to Claims, and such Claim objections have been finally resolved.



1 The amount of Available Cash will depend primarily on how much Cash the Plan  
 2 Agent ultimately receives from the Affiliates or the Affiliate's collateral (see the KeyBank  
 3 Settlement Agreement). Debtor anticipates that it will receive the full \$1,300,000 from the  
 4 Affiliates.

5 Available Cash will also depend on, among other things, the amounts, if any, that the  
 6 Plan Agent will receive on Avoidance Actions or other causes of action (including potential  
 7 subrogation claims against its affiliates). Debtor has not completed an analysis of potential  
 8 Avoidance Actions or other causes of action.

9 Class 2 is impaired by the Plan.

10 5.2.3 Class 3 (Equity Interests). Class 3 consists of all Equity Interests and  
 11 any and all Claims arising from or relating to such Equity Interests that are or would be subject  
 12 to subordination under Section 510(b) of the Bankruptcy Code.

13 The Plan provides that on the Effective Date, all Equity Interests will be deemed  
 14 cancelled and that no holder of an Equity Interest will receive or retain on account of such  
 15 Equity Interest any distributions, money, or other consideration on account of such Equity  
 16 Interest under the Plan.

17 Class 3 is impaired by the Plan.

## 18 **6. DISPUTED CLAIMS; OBJECTIONS TO CLAIMS**

19 The Plan provides that only Claims that are Allowed Claims are entitled to distributions  
 20 under the Plan. No Cash or other property shall be distributed under the Plan on account of any  
 21 Disputed Claim, or a portion of any such Claim, unless and until such Disputed Claim becomes  
 22 an Allowed Claim.

## 23 **7. MEANS OF IMPLEMENTATION OF THE PLAN**

24 7.1 Funding Plan Obligations and Ongoing Expenses. Subject to any restrictions  
 25 imposed on Debtor in the Plan, Debtor will fund its Plan obligations and its ongoing expenses  
 26 and liabilities from its existing Cash, Cash generated from Avoidance Actions, and Cash

1 generated from further liquidation of its Assets. In addition, as discussed above, Debtor  
 2 anticipates that under the KeyBank Settlement Agreement Debtor will ultimately receive  
 3 \$1,300,000 from the Affiliates to be utilized by the Plan Agent for the benefit of Allowed  
 4 General Unsecured Claims (after paying, or reserving for) any then outstanding or expected  
 5 administrative expenses.

6       7.2     Continuation of Debtor; Winding Up Affairs; Dissolution. From and after the  
 7 Effective Date, Debtor shall continue in existence solely for purposes of (a) administering the  
 8 Plan and winding up its affairs as expeditiously as reasonably possible; (b) liquidating, by  
 9 conversion to Cash or other methods, the Assets as expeditiously as reasonably possible; (c)  
 10 enforcing and prosecuting all claims and causes of action, including Avoidance Actions, and  
 11 potential claims or causes of action against Debtor's Affiliates, and other rights, interests and  
 12 privileges respecting the Assets, and compromising and settling such claims, causes of action,  
 13 rights, interests, and privileges; (d) reconciling Claims and resolving Disputed Claims; (e)  
 14 filing appropriate tax returns; and (f) taking such other actions as may be necessary or  
 15 appropriate in connection with any of the above or to otherwise effectuate the Plan. Debtor  
 16 may incur and pay any and all reasonable and necessary expenses in performing the foregoing  
 17 functions, and may hire agents and professionals to assist with the foregoing functions. On the  
 18 Final Distribution Date, Debtor shall be deemed dissolved under applicable law without the  
 19 need for any corporate or other actions, consents, or approvals other than filing articles of  
 20 dissolution with the Oregon Secretary of State. In addition, on or promptly following the Final  
 21 Distribution Date, Debtor may, without the need for any further actions, consents, or  
 22 approvals, dispose of or destroy any and all records maintained by Debtor.

23       7.3     Post-Effective Date Management; Plan Agent

24             7.3.1   Plan Agent as Sole Shareholder, Director, and Officer. The Plan  
 25 provides that from and after the Effective Date, Debtor shall be managed by a one-person  
 26 Board of Directors (the "Plan Agent"). The Plan Agent shall be, without any required

1 corporate or other action, the sole shareholder, director, and officer of Debtor, and shall serve  
 2 in such capacity until the Plan has been fully effectuated and Debtor's affairs have been fully  
 3 wound up. The Plan provides that the initial Plan Agent shall be such person or entity that is  
 4 selected by Debtor and approved by the Committee. It is anticipated that the initial Plan Agent  
 5 will be Michael B. Batlan. Such initial Plan Agent shall continue to serve as the Plan Agent  
 6 until the earlier of (a) the date on which the Plan has been fully effectuated and Debtor's affairs  
 7 have been fully wound up, or (b) the date on which the Plan Agent is removed, resigns or is  
 8 unable to serve as Plan Agent. In the event the initial Plan Agent (or any future Plan Agent) is  
 9 removed, resigns or is unable to serve as Plan Agent, the Committee shall name the  
 10 replacement Plan Agent without the need for Court approval or any corporate action. The  
 11 Committee may at any time seek to remove and replace the Plan Agent for cause by filing a  
 12 motion with the Bankruptcy Court.

13           7.3.2 Duties and Rights of Plan Agent. The Plan provides that the Plan Agent  
 14 shall use its best efforts to cause Debtor to fulfill all of its duties and obligations under the Plan.  
 15 Without limiting any other rights of the Plan Agent, the Plan provides the Plan Agent with  
 16 broad and exclusive power to manage Debtor. The Plan Agent shall have full power, authority,  
 17 and responsibility to take any and all such actions as the Plan Agent in its good faith discretion  
 18 deems necessary or appropriate to cause Debtor to fulfill its duties and obligations under the  
 19 Plan. In addition to all rights and powers given to the Plan Agent under the Plan, the Plan  
 20 Agent shall have all of the rights and powers given to directors and officers under Oregon law  
 21 and shall have all rights and powers of a trustee appointed pursuant to Section 1104 of the  
 22 Bankruptcy Code. Without limiting any rights the Plan Agent may have pursuant to law or the  
 23 Plan, the Plan Agent is empowered, on behalf of Debtor, to (a) sell, hold, manage, administer,  
 24 and distribute the Assets in accordance with the Plan or any Orders entered by the Court, and  
 25 take such actions as may be necessary or appropriate to effect distributions to be made by  
 26 Debtor under the Plan or any Orders entered by the Court; (b) establish bank accounts; (c)

engage and pay professionals, including attorneys, accountants, actuaries, appraisers, brokers, and others, to assist Debtor in fulfilling its obligations under the Plan (such professionals may include, but are not limited to, any professionals engaged by Debtor or the Committee at any time prior to the Effective Date); (d) object to Claims and resolve Disputed Claims; (e) initiate and pursue all claims and causes of action retained by Debtor under the Plan (including any Avoidance Action), which include potential claims or causes of actions against Affiliates, and compromise and settle such claims and causes of action; (f) obtain and pay for directors' and officers' liability insurance in such amounts and with such carriers as determined by the Plan Agent in its good faith discretion; (g) obtain and pay for liability insurance policies, including policies providing errors and omissions coverage (including "tail" coverage) to the Plan Agent and any agents employed by the Plan Agent or Debtor; (h) exercise, post-Confirmation, any post-Confirmation duties or obligations imposed on Debtor pursuant to any agreements entered into by Debtor in connection with the Case or any Orders entered by this Court, including any orders approving settlements; (i) enter into and effectuate settlements with Creditors; (j) incur and repay debt; and (k) exercise such other powers and take such other actions as the Plan Agent, in its sole discretion, deems reasonably necessary or appropriate to effectuate the Plan or Orders entered by this Court.

7.3.3 Compensation of Plan Agent. The Plan provides that the Plan Agent shall receive, as compensation for its services, an amount equal to 3% of all monies disbursed by the Plan Agent to holders of Allowed Priority Tax Claims, Allowed Other Priority Claims, or Allowed General Unsecured Claims on account of such Allowed Claims. The fees, costs, and expenses of the Plan Agent shall be paid by on a monthly basis in arrears out of the Assets. Prior to making any payment to itself under the Plan, the Plan Agent will submit its invoice for such payment to the Committee, which shall have 10 days to object to the invoice (or any portion thereof). If no objection is made within such 10 day period, the Plan Agent may make

1 the payment. Any objections of the Committee which cannot be resolved by the Plan Agent  
2 and the Committee will be resolved by the Court.

3 7.3.4 Fees and Expenses of Agents and Professionals. From the Assets, the  
4 Plan Agent will pay the reasonable fees and expenses of all professional persons and agents  
5 employed by the Plan Agent in connection with the Plan, as well as the reasonable  
6 post-Confirmation fees and expenses of any attorney employed by the Committee in  
7 connection with the Plan. Any such professional person or agent seeking a payment from the  
8 Plan Agent shall submit an invoice to the Plan Agent, which (absent an objection by the Plan  
9 Agent), the Plan Agent shall promptly pay. Any objection that cannot be resolved by the Plan  
10 Agent and the party seeking such payment shall be resolved by the Court.

11 7.3.5 Standard of Care. The Plan Agent shall exercise the rights and powers  
12 granted to it by the Plan in the same manner, and use the same degree of care and skill in its  
13 exercise, as a prudent person would exercise and use under the circumstances in the conduct of  
14 his or her own affairs, having due regard for the purposes of the Plan. The Plan Agent shall not  
15 be liable or responsible for any misconduct or negligence of any attorney, accountant, or other  
16 professional employed or selected by the Plan Agent. The Plan Agent shall not be liable for  
17 any, and shall be discharged from all, liability to Debtor, all Creditors, and all Equity Interest  
18 holders for any and all acts or omissions of the Plan Agent, except for gross negligence or  
19 willful misconduct.

20 7.3.6 Reporting to Committee. The Plan provides that the Plan Agent shall  
21 provide such reports to the Committee from time to time as the Committee reasonably  
22 requests.

23 7.3.7 Bond. The Plan Agent is not required to post a fiduciary bond unless the  
24 Committee requests to the Plan Agent that the Plan Agent obtain such a bond. If such a request  
25 is made, then within 15 business days after such request the Plan Agent will obtain a fiduciary  
26 bond, and evidence of such bond will be filed with the Court. Unless the Committee agrees to

1 a lower amount, the face amount of the bond shall at all times be in an amount no less than  
 2 125% of the total amount of Cash under the Plan Agent's control. The cost of such bond shall  
 3 be paid out of the Assets.

4 7.4 Distributions by Plan Agent. The Plan includes some administrative provisions  
 5 governing Distributions. Those provisions are set forth below.

6 7.4.1 Form of Payments. Distributions to be made by the Plan Agent under  
 7 the Plan shall be made out of Available Cash by check drawn on a domestic bank or by wire  
 8 transfer from a domestic bank, at the sole election of the Plan Agent.

9 7.4.2 Delivery of Distributions. Except as otherwise agreed to by the Plan  
 10 Agent in writing, Distributions to be made pursuant to the Plan may be delivered by regular  
 11 mail, postage prepaid, in an envelope addressed as directed in a written request served on the  
 12 Plan Agent, but if no such request is made, to the address shown in Debtor's Schedules, as they  
 13 may from time to time be amended in accordance with Bankruptcy Rule 1009, or, if a different  
 14 address is stated in a proof of claim duly filed with the Court, to such address stated in the proof  
 15 of claim.

16 7.4.3 Unclaimed Property. During the Claiming Period applicable to any  
 17 particular Distribution made pursuant to the Plan, Unclaimed Property with respect to such  
 18 Distribution shall be distributed to the holders of Allowed Claims entitled thereto upon  
 19 presentment to the Plan Agent of satisfactory proof of entitlement. After the expiration of the  
 20 Claiming Period (subject to the right of the Plan Agent, in its sole discretion, to waive the  
 21 provisions of this sentence, in whole or in part): (a) holders of Allowed Claims previously  
 22 entitled to such Unclaimed Property shall no longer be entitled thereto; (b) such Claims shall  
 23 be deemed disallowed for all purposes; and (c) the then-remaining Cash constituting  
 24 Unclaimed Property with respect to such Distribution shall be redesignated as and become  
 25 Available Cash (but without impairing the right of the Plan Agent to use such redesignated  
 26 funds to satisfy the costs of administering the Plan).

7.4.4 Time Bar to Cash Payments. Checks issued in respect of Allowed Claims shall be null and void if not negotiated within 90 days after the date of issuance thereof. Any requests for reissuance of any check shall be made to the Plan Agent prior to the expiration of such 90-day period. After such date (subject to the right of the Plan Agent, in its sole discretion, to waive the provisions of this sentence, in whole or in part), (a) the holder of any such Claim who has failed to make a timely request for reissuance of such a voided check shall not be entitled to any other or further Distribution under the Plan on account of such voided check and (b) the Unclaimed Property held on account of such voided check shall be redesignated as and become Available Cash (but without impairing the right of Debtor to use such funds to satisfy the costs of administering the Plan).

7.4.5 Minimum Distributions. If any Distribution to be made to any holder of an Allowed Claim under the Plan (including any Pro Rata Distribution) is \$10 or less, then, notwithstanding any contrary provision in the Plan, the Plan Agent shall not be obligated to make such Distribution to such holder. Distributions withheld pursuant to this section shall become unrestricted Available Cash (but without impairing the right of the Plan Agent to use such funds to satisfy the costs of administering the Plan).

7.5 Continuation of Creditors' Committee. The Plan provides that notwithstanding the entry of the Confirmation Order, so long as any members of the Committee are willing to serve, the Committee will continue until it is dissolved by action of the members thereof or until the Final Distribution Date, whichever occurs first. The Plan further provides that neither the Committee nor any of its past, present, or future members (nor any of the respective past, present, or future officers, directors, employees, or agents of such members) shall have or incur any liability to any holder of a Claim or Equity Interest or to any other entity for any act or omission in connection with or arising out of the Chapter 11 Case, or the negotiation and pursuit of confirmation of the Plan, or the consummation of the Plan, or the administration of the Plan, or the property to be distributed under the Plan.

1     **8.     ASSETS AND LIABILITIES**

2             8.1     Assets. As discussed above, nearly all of Debtor's current assets have been  
3 liquidated and distributed to KeyBank. Debtor does possess approximately \$1,000,000 in  
4 cash, including the Carve Out. In addition to such cash, Debtor's assets include any potential  
5 Avoidance Actions and other claims and causes of action of Debtor. As discussed above,  
6 Debtor also has the potential to recover \$1,300,000 from the Affiliates pursuant to the  
7 KeyBank Settlement Agreement. Debtor has not completed an analysis of Avoidance Actions  
8 or other claims or causes of action. The Plan Agent will pursue such Avoidance Actions or  
9 other claims and causes of action as appropriate. The Plan expressly provides that Debtor  
10 retains all potential Avoidance Actions and other claims and causes of action, including, but  
11 not limited to, a receivable from Sector Corporation in the amount of approximately \$6.2  
12 million. The Plan Agent will be vested with all rights of Debtor and the Estate and will have  
13 the discretion to pursue or not to pursue any of such Avoidance Actions or other claims or  
14 causes of action.

15             8.2     Liabilities. Debtor's liabilities consist primarily of Administrative Expenses  
16 (which, as of Plan confirmation Debtor estimates will be approximately \$300,000 to  
17 \$400,000), Other Priority Claims (which Debtor estimates to be approximately \$300,000),  
18 Priority Tax Claims (which Debtor estimates to be approximately \$1,000,000), and General  
19 Unsecured Claims (which Debtor cannot accurately estimate at this time).

20     **9.     EXECUTORY CONTRACTS**

21             9.1     General Rejection of Executory Contracts. The Plan provides that, except as  
22 otherwise specifically provided in the Plan or the Confirmation Order, effective as of the  
23 Effective Date, all executory contracts of Debtor not previously rejected by operation of law or  
24 by Court order (excluding only those that are assumed pursuant to Court order entered prior to  
25 the Confirmation Date and those that are the subject of a motion to assume filed prior to the  
26



1 Confirmation Date) will be deemed to be automatically rejected by Debtor as of the  
 2 Confirmation Date.

3 9.2 Claims for Rejection Damages. The Plan provides that a Claim for damages  
 4 arising by reason of the rejection of an executory contract shall be classified and treated as  
 5 General Unsecured Claims; provided, however, that any such Claim shall be deemed  
 6 disallowed, barred forever, and not enforceable against Debtor or any property of the Estate  
 7 unless a proof of claim therefor is filed with the Court and served on Debtor within 30 days  
 8 after the Effective Date.

## 9 **10. VOTING PROCEDURES**

10 10.1 Ballots and Voting Deadline. A ballot has been enclosed with this Disclosure  
 11 Statement for use in voting on the Plan. After carefully reviewing the Plan and this Disclosure  
 12 Statement, and if you are entitled to vote on the Plan (see below), please indicate your  
 13 acceptance or rejection of the Plan by voting for or against the Plan on the enclosed ballot as  
 14 directed below.

15 To be counted for voting purposes, ballots must be received no later than 4 p.m. Pacific  
 16 Time, on August 29, 2013 by Debtor at the following address:

17 Tonkon Torp LLP  
 18 Attention: Spencer Fisher  
 1600 Pioneer Tower  
 888 SW Fifth Avenue  
 19 Portland, OR 97204-2099

20 Any ballots received after 4 p.m. Pacific Time on August 29, 2013  
 21 will not be included in any calculation to determine whether the parties entitled to vote on the  
 22 Plan have voted to accept or reject the Plan.

23 If you do not receive a ballot, or if a ballot is damaged or lost, please contact Spencer  
 24 Fisher at the address above, by telephone at 503-802-2167, or at spencer.fisher@tonkon.com.

25 When a ballot is signed and returned without further instruction regarding acceptance  
 26 or rejection of the Plan, the signed ballot shall be counted as a vote accepting the Plan. When a

1 ballot is returned indicating acceptance or rejection of the Plan but is unsigned, the unsigned  
 2 ballot will not be included in any calculation to determine whether parties entitled to vote on  
 3 the Plan have voted to accept or reject the Plan. When a ballot is returned without indicating  
 4 the amount of the Claim, the amount shall be as set forth on Debtor's Schedules or any Proof of  
 5 Claim filed with respect to such Claim.

6 If a proof of claim has been filed with respect to such impaired Claim, then the vote will  
 7 be based on the amount of the proof of claim. If no proof of claim has been filed, then the vote  
 8 will be based on the amount scheduled by Debtor in its Schedules. Holders of disputed Claims  
 9 who have settled their dispute with Debtor are entitled to vote the settled amount of their  
 10 Claim. The Bankruptcy Code provides that such votes will be counted unless the Claim has  
 11 been disputed, disallowed, disqualified, or suspended prior to computation of the vote on the  
 12 Plan. The Claim to which an objection has been filed is not allowed to vote unless and until the  
 13 Bankruptcy Court rules on the objection. The Bankruptcy Code provides that the Bankruptcy  
 14 Court may, if requested to do so by the holder of such Claim, estimate or temporarily allow a  
 15 Disputed Claim for the purposes of voting on the Plan.

16 10.2 Parties Entitled to Vote. Pursuant to Section 1126 of the Bankruptcy Code, any  
 17 holder of an Allowed Claim that is in an impaired Class under the Plan, and whose Class is not  
 18 deemed to reject the Plan, is entitled to vote. A Class is "impaired" unless the legal, equitable  
 19 and contractual rights of the holders of claims in that Class are left unaltered by the Plan or if  
 20 the Plan reinstates the Claims held by Members of such Class by (a) curing any defaults, (b)  
 21 reinstating the maturity of such claim, (c) compensating the holder of such claim for damages  
 22 that result from the reasonable reliance on any contractual provision of law that allows  
 23 acceleration of such claim, and (d) otherwise leaving unaltered any legal, equitable, or  
 24 contractual right of which the Claim entitles the holder of such Claim. Because of their  
 25 favorable treatment, Classes that are not impaired are conclusively presumed to accept the  
 26 Plan. Accordingly, it is not necessary to solicit votes from the holders of Claims in Classes that

1 are not impaired. Class 1 (Other Priority Claims) is not impaired by the Plan and is  
 2 conclusively presumed to have accepted the Plan.

3 Classes of Claims or interests that will not receive or retain any money or property  
 4 under a Plan on account of such Claims or interests are deemed, as a matter of law under  
 5 Section 1126(g) of the Bankruptcy Code, to have rejected the Plan and are likewise not entitled  
 6 to vote on the Plan. Class 3 (Equity Interests) will not receive or retain any money or property  
 7 on account of such Equity Interests, and are deemed to have rejected the Plan.

8 Class 2 (General Unsecured Claims) is impaired under the Plan and is entitled to vote to  
 9 accept or reject the Plan.

10 10.3 Votes Required for Class Acceptance of the Plan. For a Class of Claims to  
 11 accept the Plan, Section 1126 of the Bankruptcy Code requires acceptance by Creditors that  
 12 hold at least two-thirds in dollar amount and a majority in number of the Allowed Claims of  
 13 such Class, in both cases counting only those claims actually voting to accept or reject the Plan.  
 14 The holders of Claims who fail to vote are not counted as either accepting or rejecting the Plan.  
 15 If the Plan is confirmed, the Plan will be binding with respect to all holders of Claims in each  
 16 Class, including Classes and members of Classes that did not vote or that voted to reject the  
 17 Plan.

## 18 **11. CONFIRMATION OF THE PLAN**

19 11.1 Confirmation Hearing. The Bankruptcy Court has scheduled a hearing on  
 20 confirmation of the Plan on                     September 5                    , 2013 at                     1:30 p.m.                      
 21 Pacific time. The hearing will be held at the United States Bankruptcy Court for the District of  
 22 Oregon, Courtroom No. 1, 1001 SW Fifth Avenue, Portland, Oregon 97204, before the  
 23 Honorable Elizabeth L. Perris, United States Bankruptcy Judge. At that hearing, the  
 24 Bankruptcy Court will consider whether the Plan satisfies the various requirements of the  
 25 Bankruptcy Code, including whether it is feasible and whether it is in the best interests of  
 26 creditors of Debtor. Debtor will submit a report to the Bankruptcy Court at that time

1 concerning the votes for acceptance or rejection of the Plan by the parties entitled to vote  
2 thereon.

3 Section 1128(b) of the Bankruptcy Code provides that any party in interest may object  
4 to confirmation of the Plan. Any objections to confirmation of the Plan must be made in  
5 writing and filed with the Bankruptcy Court and received by counsel for Debtor no later than  
6 August 29, 2013, by 4 p.m. Pacific time. Unless an objection to  
7 confirmation is timely filed and received, it may not be considered by the Bankruptcy Court.

8 11.2 Requirements of Confirmation. At the hearing on confirmation, the  
9 Bankruptcy Court will determine whether the provisions of Section 1129 of the Bankruptcy  
10 Code have been satisfied. If all the provisions of Section 1129 are met, the Bankruptcy Court  
11 may enter an order confirming the Plan. Debtor believes the Plan satisfies all the requirements  
12 of Chapter 11 of the Bankruptcy Code, that it has complied or will have complied with all the  
13 requirements of Chapter 11, and that the Plan has been proposed and is made in good faith.

14 Among other requirements for confirmation, to confirm the Plan the Bankruptcy Court  
15 must determine that the Plan meets the requirements of Section 1129(a)(7) of the Bankruptcy  
16 Code; that is, that the Plan is in the best interests of each holder of a Claim in an impaired Class  
17 that has not voted to accept the Plan. Accordingly, if an impaired Class does not unanimously  
18 accept the Plan, the "best interests" test requires that the Bankruptcy Court find that the Plan  
19 provides to each holder of a Claim in such impaired Class a recovery on account of the holder's  
20 Claim that has a value at least equal to the value of the distribution each such holder would  
21 receive if Debtor was liquidated under Chapter 7 of the Bankruptcy Code.

22 The Plan is a liquidating Plan, and all or nearly all of Debtor's assets have been  
23 liquidated and converted to cash. The only impaired Class is Class 2 (General Unsecured  
24 Claims). Debtor believes that the Plan provides to each holder of a General Unsecured Claim a  
25 recovery on account of the holder's Claim that has a value at least equal to the value of the  
26

1 distribution such holder would receive if Debtor was liquidated under Chapter 7 of the  
2 Bankruptcy Code.

3 Debtor believes a Chapter 7 liquidation would be substantially similar to the Plan, but  
4 that General Unsecured Creditors would receive less on account of their claims under a  
5 Chapter 7 liquidation than they are likely to receive under the Plan. Debtor believes the  
6 liquidation and distribution to creditors will be more efficient under the Plan than under a  
7 Chapter 7.

8 In a Chapter 7 case, additional time will be required for a Chapter 7 trustee to become  
9 familiar with Debtor's affairs and assets. Conversion to Chapter 7 is likely to delay the  
10 wind-down of the estate and the distribution of monies to Creditors. Further, the compensation  
11 to be paid to the Plan Agent (3% of monies disbursed to certain Creditors) will likely be less  
12 than the compensation a Chapter 7 Trustee would be entitled to receive under Section 326 of  
13 the Bankruptcy Code. For these reasons, among others, Debtor believes that conversion to a  
14 case under Chapter 7 would result in (a) additional costs being borne by the estate above those  
15 the estate would incur under the Plan; (b) lower distributions being received by Creditors; and  
16 (c) significant delays in distributions to Creditors.

## 17 12. RETENTION OF CAUSES OF ACTION

18 12.1 General. The Plan provides that Debtor shall retain any and all claims and  
19 causes of action whatsoever (whether known, unknown, liquidated, unliquidated, fixed,  
20 contingent, matured, unmatured, disputed, or undisputed, and whether asserted or assertable  
21 directly, indirectly, or derivatively, at law, in equity, or otherwise), including, but not limited  
22 to, all Avoidance Actions. The Plan further provides that the Plan Agent shall be vested with  
23 all rights of Debtor and the Estate to pursue such claims, causes of action and rights.

24 12.2 Reservation of Rights/Claims Against Affiliates. The Plan expressly reserves  
25 all claims, causes of action and rights of Debtor and the Estate against Affiliates, including, but  
26 not limited to, a receivable from Sector Corporation in the amount of approximately \$6.2

million. The Plan provides that the Plan Agent shall be vested with all rights of Debtor and the Estate to pursue such claims, causes of action and rights, and that neither the Plan nor the Disclosure Statement shall have any res judicata or collateral estoppel effect upon Debtor and the Estate's claims against Affiliates, including, but not limited to, the \$6.2 million Sector receivable.

### 13. ~~12.~~ MISCELLANEOUS PROVISIONS

In addition to the provisions discussed above, the Plan contains a number of administrative and miscellaneous provisions. See Section 8 (Effect of Confirmation); Section 9 (Retention of Jurisdiction); Section 10 (Administrative Provisions); and Section 11 (Miscellaneous Provisions) of the Plan. Those provisions are not restated or summarized in this Disclosure Statement. Please review the Plan carefully and contact your legal or tax adviser if you have any questions regarding the Plan.

### 14. ~~13.~~ TAX CONSEQUENCES TO DEBTOR OF THE PLAN

Although Debtor has not concluded its tax analysis, Debtor believes confirmation of the Plan is not expected to generate substantial tax consequences to Debtor. In addition, Debtor has significant net operating loss carry-forwards from past years, and there is also basis in many of the assets that were liquidated, such that Debtor believes it will have no federal tax obligations resulting from the liquidation of its assets, and any tax obligations at the state level are expected to be de minimis.

CIRCULAR 230 DISCLAIMER: TO ENSURE COMPLIANCE WITH REQUIREMENTS IMPOSED BY THE INTERNAL REVENUE SERVICE, HOLDERS OF CLAIMS ARE HEREBY NOTIFIED THAT (A) ANY DISCUSSION OF FEDERAL TAX ISSUES IN THIS DISCLOSURE STATEMENT (INCLUDING ANY ATTACHMENTS) IS NOT INTENDED OR WRITTEN TO BE USED OR RELIED UPON, AND CANNOT BE USED OR RELIED UPON, FOR THE PURPOSE OF (1) AVOIDING TAX-RELATED PENALTIES UNDER THE INTERNAL REVENUE CODE OF 1986, AS AMENDED, OR

(2) PROMOTING, MARKETING OR RECOMMENDING TO ANOTHER PARTY ANY TRANSACTION OR TAX MATTER(S) ADDRESSED HEREIN, AND (B) ANY DISCUSSION OF FEDERAL TAX ISSUES IN THIS DISCLOSURE STATEMENT (INCLUDING ANY ATTACHMENTS) ARE WRITTEN IN CONNECTION WITH DEBTOR SOLICITING ACCEPTANCES OF THE PLAN THROUGH THIS DISCLOSURE STATEMENT.

YOU ARE URGED TO CONSULT YOUR OWN TAX ADVISOR ABOUT ANY FEDERAL, STATE, LOCAL, AND APPLICABLE FOREIGN, INCOME AND OTHER TAX CONSEQUENCES OF THE PLAN.

**15. ~~14.~~ RECOMMENDATION AND CONCLUSION**

Please read this Disclosure Statement and the Plan carefully. After reviewing all the information and making an informed decision, please vote by using the enclosed ballot.

Debtor strongly urges you to vote in support of the Plan.

DATED this ~~8~~18th day of July, 2013.

BEALL CORPORATION

By /s/ James Beall  
James Beall, President

Presented by:

TONKON TORP LLP

By /s/ Michael W. Fletcher  
Albert N. Kennedy, OSB No. 82142  
Michael W. Fletcher, OSB No. 010448  
Of Attorneys for Debtor

1 **Albert N. Kennedy**, OSB No. 821429 (Lead Attorney)

Direct Dial: (503) 802-2013

2 Facsimile: (503) 972-3713

E-Mail: al.kennedy@tonkon.com

3 **Michael W. Fletcher**, OSB No. 010448

Direct Dial: (503) 802-2169

4 Facsimile: (503) 972-3869

E-Mail: michael.fletcher@tonkon.com

5 **TONKON TORP LLP**

1600 Pioneer Tower

6 888 S.W. Fifth Avenue

Portland, OR 97204

7 Attorneys for Debtor

8  
9  
10 UNITED STATES BANKRUPTCY COURT

11 DISTRICT OF OREGON

12 In re

13 Beall Corporation,

14 Debtor.

Case No. 12-37291-elp11

**DEBTOR'S SECOND AMENDED  
DISCLOSURE STATEMENT  
(JULY 18, 2013)**

15  
16 **INTRODUCTION**

17 On September 24, 2012 (the "Petition Date"), Beall Corporation ("Debtor") filed a  
18 voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the  
19 "Bankruptcy Code").

20 On July 18, 2013 Debtor filed its Second Amended Plan of Liquidation (the "Plan")  
21 with the Bankruptcy Court. A copy of the Plan is attached hereto as **Exhibit 1**. Debtor is  
22 seeking acceptance of the Plan by its creditors.

23 The purpose of this Disclosure Statement is to provide you with adequate information  
24 to enable you to make an informed judgment concerning whether to vote for or against the  
25 Plan. You are urged to review the Plan and, if appropriate, consult with counsel about the  
26 Plan and its impact on your legal rights before voting on the Plan. Capitalized terms used but



1 not defined in this Disclosure Statement shall have the meanings assigned to such terms in  
2 the Plan or the Bankruptcy Code.

3 This Disclosure Statement has been approved by Order of the Bankruptcy Court as  
4 containing adequate information to permit parties in interest to make an informed judgment  
5 as to whether to vote to accept or reject the Plan. The Bankruptcy Court's approval of this  
6 Disclosure Statement, however, does not constitute a recommendation by the Bankruptcy  
7 Court either for or against the Plan.

8 This Disclosure Statement is submitted in accordance with Section 1125 of the  
9 Bankruptcy Code and Bankruptcy Rule 3016. The description of the Plan contained in this  
10 Disclosure Statement is intended as a summary only and is qualified in its entirety by  
11 reference to the Plan itself. This Disclosure Statement does not attempt to summarize or  
12 discuss each and every section of the Plan. If any inconsistency exists between the Plan and  
13 this Disclosure Statement, the terms of the Plan are controlling. This Disclosure Statement  
14 may not be relied on for any purpose other than to determine how to vote on the Plan.

15 This Disclosure Statement has been prepared by Debtor in good faith based upon  
16 information available to Debtor and information contained in Debtor's books and records.  
17 The information concerning the Plan has not been subject to a verified audit. The statements  
18 contained in this Disclosure Statement are made as of the date hereof unless another time is  
19 specified herein, and the delivery of this Disclosure Statement shall not imply there has been  
20 no change in the facts set forth herein since the date of this Disclosure Statement and the date  
21 the material relied on in preparation of this Disclosure Statement was compiled.

22 Nothing contained herein shall constitute an admission of any fact or liability by any  
23 party, or be admissible in any proceeding involving Debtor or any other party.  
24  
25  
26

1     **1.     BRIEF EXPLANATION OF CHAPTER 11**

2             Chapter 11 of the Bankruptcy Code is the principal reorganization provision of the  
3 Bankruptcy Code. A debtor may use Chapter 11 to facilitate an orderly liquidation of the  
4 debtor's assets and an efficient distribution to the debtor's creditors.

5             The formulation and confirmation of a plan is the principal purpose of a Chapter 11  
6 case. A plan sets forth a proposed method of compensating the debtor's creditors.

7 Chapter 11 does not require all holders of claims to vote in favor of a plan in order for the  
8 Bankruptcy Court to confirm the plan. However, the Bankruptcy Court must find that the  
9 plan meets a number of statutory tests before it may confirm, or approve, the plan. These  
10 tests are designed to protect the interests of holders of claims who do not vote to accept the  
11 plan, but who will nonetheless be bound by the plan's provisions if it is confirmed by the  
12 Bankruptcy Court.

13     **2.     BRIEF SUMMARY OF THE PLAN**

14             A copy of the Plan is attached as **Exhibit 1** to this Disclosure Statement. All  
15 descriptions of the Plan in this Disclosure Statement are qualified in their entirety by  
16 reference to the Plan. A more detailed summary of the Plan is set forth later in this  
17 Disclosure Statement.

18             The Plan is a liquidating plan. Nearly all of Debtor's assets have been sold by Debtor,  
19 and the proceeds from the sales have been distributed to its secured creditor, KeyBank  
20 National Association, or retained by Debtor.

21             The Plan provides that all Allowed Administrative Expense Claims, Priority Tax  
22 Claims and Other Priority Claims will be paid in full. Administrative Expense Claims and  
23 Other Priority Claims will be paid in full on the Effective Date, and Priority Tax Claims will  
24 be paid in full with interest no later than five years after the Effective Date.

25             The Plan further provides that holders of Allowed General Unsecured Claims will  
26 receive on account of such Claims one or more Pro Rata Distributions of Available Cash

1 when the Plan Agent, after consultation with the Committee, determines sufficient funds are  
2 available for the Plan Agent to make meaningful distributions to holders of Allowed General  
3 Unsecured Claims.

4 All Equity Interests will be cancelled on the Effective Date.

5 Commencing on the Effective Date, Debtor will be managed by a Plan Agent who  
6 will be the sole shareholder, director, and officer of Debtor and who will have full power and  
7 authority to manage Debtor and carry out the provisions of the Plan, subject to oversight by  
8 the Committee.

9 The Plan is premised on the assumption that the KeyBank Settlement Agreement  
10 (attached hereto as **Exhibit 2**), which was approved by the Court at a hearing on July 17,  
11 2013, has become effective. One condition to effectiveness of the KeyBank Settlement  
12 Agreement is that KeyBank and the Affiliates have executed a forbearance agreement. As of  
13 the date of this Disclosure Statement, KeyBank and the Affiliates have not yet executed a  
14 forbearance agreement.

### 15 **3. EVENTS LEADING TO CHAPTER 11 FILING**

16 Debtor is an Oregon corporation founded in 1905. Prior to the Petition Date, Debtor  
17 operated multiple factories and sales/service branches across the Western United States, and  
18 employed approximately 285 employees. Prior to filing the petition, Debtor owed KeyBank  
19 in excess of \$13.4 million on an expired line of credit. Absent a sale of all or substantially all  
20 of its assets, Debtor did not have the ability to repay the debt owing to KeyBank. Debtor  
21 attempted, but was unable, to sell its assets in the year preceding the filing and could not  
22 refinance the KeyBank debt. Debtor filed its Chapter 11 petition commencing this Case on  
23 September 24, 2012, shortly after the garnishment of its bank accounts by a judgment  
24 creditor, and the resulting offset of its bank accounts by KeyBank following the garnishment.  
25  
26

1     **4.     SIGNIFICANT POST-PETITION EVENTS**

2             4.1     Appointment of Unsecured Creditors Committee. Early in the Case, the  
 3     United States Trustee appointed a committee of unsecured creditors (the "Committee")  
 4     pursuant to 11 U.S.C. § 1102(a) and 11 U.S.C. § 1102(b)(1). The Committee is represented  
 5     by Ball Janik LLP.

6             4.2     Retention of Professionals. Pursuant to a series of applications and orders,  
 7     Debtor obtained authorization from the court to employ various professionals in the Case.  
 8     These professionals include, among others, Tonkon Torp LLP as Debtor's Chapter 11  
 9     counsel.

10            4.3     Use of Cash Collateral/Post-Petition Financing. Post-petition, Debtor  
 11    operated and paid its expenses using post-petition financing provided by KeyBank, as well as  
 12    cash collateral of KeyBank, pursuant to a series of stipulated orders entered into between  
 13    Debtor and KeyBank and approved by the Court. The cash collateral orders provided for a  
 14    cumulative "Carve Out" of up to \$1.5 million from KeyBank's collateral for the payment of  
 15    allowed Administrative Expenses and U.S. Trustee fees. Approximately \$1.2 million of the  
 16    Carve Out has been used to pay Court approved Administrative Expenses and U.S. Trustee  
 17    fess.

18            4.4     Post-Petition Sales of Assets. Pursuant to a series of Court approved sales and  
 19    subsequent sale and distribution orders, Debtor liquidated substantially all of its assets and  
 20    distributed most of the net sale proceeds to KeyBank. Such distributions to KeyBank paid in  
 21    full the post-petition financing provided by KeyBank, all of Debtor's direct (non-guarantor)  
 22    obligations owing to KeyBank, and a portion of Debtor's guaranty obligations owing to  
 23    KeyBank.

24            4.5     Settlement with KeyBank. Following the sale of substantially all of its assets,  
 25    and distribution of most of the sale proceeds to KeyBank, Debtor held approximately  
 26    \$2,000,000 in net sale proceeds (the "Remaining Sale Proceeds"). On March 12, 2013,

1 KeyBank filed a motion with the Court seeking to compel Debtor to distribute all sale  
 2 proceeds to KeyBank (the "Distribution Motion"). Both Debtor and the Committee objected  
 3 to the Distribution Motion. On May 6, 2013, Debtor, KeyBank, the Committee and certain  
 4 affiliates of Debtor (the "Affiliates") participated in a settlement conference with the  
 5 Honorable Randall L. Dunn, and ultimately entered into a formal settlement agreement (the  
 6 "KeyBank Settlement Agreement") that, after notice to all creditors and a hearing, was  
 7 approved by the Bankruptcy Court. A copy of the Court approved KeyBank Settlement  
 8 Agreement is attached hereto as **Exhibit 2**.

9 Among other things, the Settlement Agreement resolved all disputes between Debtor  
 10 and KeyBank and allowed Debtor to satisfy KeyBank's remaining secured claim against  
 11 Debtor for significantly less than the amount owed by Debtor to KeyBank. The Settlement  
 12 Agreement allowed Debtor to preserve significant cash (approximately \$700,000) for the  
 13 benefit of Debtor's estate that KeyBank had asserted should be delivered to KeyBank.

14 Pursuant to the Settlement Agreement Debtor distributed \$1,300,000 of the  
 15 Remaining Sale Proceeds to KeyBank, which KeyBank applied to reduce the obligations  
 16 owed by the Affiliates to KeyBank (which were guaranteed by Debtor) (the "Affiliate  
 17 Obligations"). As a result of such payment, Debtor is subrogated to \$1,300,000 of the  
 18 Affiliate Obligations. The Settlement Agreement requires the Affiliates to repay to Debtor  
 19 within five years the \$1,300,000 paid by Debtor toward the Affiliate Obligations. Pursuant  
 20 to the Settlement Agreement, any such Affiliate payments received by Debtor will be utilized  
 21 by Debtor to fund amounts owing to holders of Allowed General Unsecured Claims, after  
 22 paying (or reserving for) any then-outstanding or expected administrative expenses.

## 23 **5. CLASSIFICATION AND TREATMENT OF CLAIMS UNDER THE PLAN**

24 Below is a general summary of the Plan's classification and treatment of Claims. It is  
 25 intended as a general summary only and is qualified in its entirety by reference to the Plan.  
 26

1 Please refer to the Plan for a more complete description of the classification and treatment of  
2 Claims under the Plan, and for the meaning of the Capitalized (defined) terms used below.

3 5.1 Unclassified Claims. Administrative Expense Claims and Priority Tax Claims  
4 are not classified under the Plan.

5 An Administrative Expense Claim is any Claim entitled to the priority afforded by  
6 Sections 503(b) and 507(a)(2) of the Bankruptcy Code.

7 The Plan provides that each holder of an Administrative Expense Claim will receive  
8 payment of such Claim in full in Cash on the later of (a) the Effective Date or (b) the date on  
9 which such Claim becomes an Allowed Claim, unless such holder agrees to a different  
10 treatment of such Claim (including, without limitation, any different treatment that may be  
11 provided for in any documentation, statute, or regulation governing such Claim); provided,  
12 however, that Administrative Expense Claims representing obligations incurred in the  
13 ordinary course of business by Debtor during the Chapter 11 Case shall be paid by Debtor in  
14 the ordinary course of business and in accordance with any terms and conditions of the  
15 particular transaction, and any agreements relating thereto.

16 The amount of remaining Administrative Expense Claims has not yet been  
17 determined. However, Debtor estimates the remaining Administrative Expense Claims will  
18 not exceed \$400,000 and that the remaining Carve Out of approximately \$304,000 will cover  
19 most of the Administrative Expenses.

20 A Priority Tax Claim is a claim of a governmental unit of the kind entitled to priority  
21 under Section 507(a)(8) of the Bankruptcy Code. Debtor estimates that Priority Tax Claims  
22 are approximately \$1,000,000.

23 The Plan provides that each Allowed Priority Tax Claim will be paid in full, with  
24 interest from and after the Effective Date at the Interest Rate, in Cash no later than five years  
25 after the Petition Date. Until such Claims are paid in full, on each anniversary of the  
26 Effective Date the Plan Agent will make regular Pro Rata installment payments to the holders

of the Allowed Priority Tax Claims out of Cash then available for distribution to holders of Allowed Priority Tax Claims, after establishing such reserves against such Cash as the Plan Agent deems necessary or appropriate.

5.2 Classified Claims. The Plan divides all Claims (other than Administrative Expense Claims and Priority Tax Claims) into the following Classes.

5.2.1 Class 1 (Other Priority Claims). Class 1 consists of all Allowed Other Priority Claims. An Other Priority Claim means any Claim for an amount entitled to priority in right of payment pursuant to Section 507(a) of the Code, other than a Priority Tax Claim or an Administrative Expense Claim. Without limiting the preceding, Other Priority Claims include priority wage/compensation Claims under Section 507(a)(4). Debtor estimates that there are approximately \$300,000 of such priority wage/compensation claims.

The Plan provides that each Allowed Class 1 Claim will be paid in full in Cash on the later of (a) the Effective Date or (b) the date on which the Claim becomes an Allowed Claim.

Class 1 is not impaired by the Plan.

5.2.2 Class 2 (General Unsecured Claims). Class 2 consists of all General Unsecured Claims. A General Unsecured Claim is any Unsecured Claim not otherwise treated or classified under the Plan.

The Plan provides that Debtor will make one or more Pro Rata distributions of Available Cash to the holders of Allowed General Unsecured Claims.

At this time, Debtor cannot accurately estimate the percentage that holders of Allowed General Unsecured Claims can expect to receive on their Claims. Such percentage depends primarily on the eventual total amount of Allowed General Unsecured Claims, and the amount of "Available Cash" to distribute to holders of Allowed General Unsecured Claims.

At this time, Debtor cannot accurately estimate the total amount of Allowed General Unsecured Claims or the expected Available Cash.

Debtor is still analyzing the Claims filed in the Case. Based on Debtor's preliminary analysis, and Claims filed to date, Allowed General Unsecured Claims may range from approximately \$8,000,000 to over \$20,000,000. The total amount of Allowed General Unsecured Claims will not be known until the Plan Agent has finished auditing the Claims, filed any objections to Claims, and such Claim objections have been finally resolved.

The amount of Available Cash will depend primarily on how much Cash the Plan Agent ultimately receives from the Affiliates or the Affiliate's collateral (see the KeyBank Settlement Agreement). Debtor anticipates that it will receive the full \$1,300,000 from the Affiliates.

Available Cash will also depend on, among other things, the amounts, if any, that the Plan Agent will receive on Avoidance Actions or other causes of action (including potential subrogation claims against its affiliates). Debtor has not completed an analysis of potential Avoidance Actions or other causes of action.

Class 2 is impaired by the Plan.

5.2.3 Class 3 (Equity Interests). Class 3 consists of all Equity Interests and any and all Claims arising from or relating to such Equity Interests that are or would be subject to subordination under Section 510(b) of the Bankruptcy Code.

The Plan provides that on the Effective Date, all Equity Interests will be deemed cancelled and that no holder of an Equity Interest will receive or retain on account of such Equity Interest any distributions, money, or other consideration on account of such Equity Interest under the Plan.

Class 3 is impaired by the Plan.

## **6. DISPUTED CLAIMS; OBJECTIONS TO CLAIMS**

The Plan provides that only Claims that are Allowed Claims are entitled to distributions under the Plan. No Cash or other property shall be distributed under the Plan on



1 account of any Disputed Claim, or a portion of any such Claim, unless and until such  
2 Disputed Claim becomes an Allowed Claim.

### 3 **7. MEANS OF IMPLEMENTATION OF THE PLAN**

4 7.1 Funding Plan Obligations and Ongoing Expenses. Subject to any restrictions  
5 imposed on Debtor in the Plan, Debtor will fund its Plan obligations and its ongoing  
6 expenses and liabilities from its existing Cash, Cash generated from Avoidance Actions, and  
7 Cash generated from further liquidation of its Assets. In addition, as discussed above, Debtor  
8 anticipates that under the KeyBank Settlement Agreement Debtor will ultimately receive  
9 \$1,300,000 from the Affiliates to be utilized by the Plan Agent for the benefit of Allowed  
10 General Unsecured Claims (after paying, or reserving for) any then outstanding or expected  
11 administrative expenses.

12 7.2 Continuation of Debtor; Winding Up Affairs; Dissolution. From and after the  
13 Effective Date, Debtor shall continue in existence solely for purposes of (a) administering the  
14 Plan and winding up its affairs as expeditiously as reasonably possible; (b) liquidating, by  
15 conversion to Cash or other methods, the Assets as expeditiously as reasonably possible;  
16 (c) enforcing and prosecuting all claims and causes of action, including Avoidance Actions,  
17 and potential claims or causes of action against Debtor's Affiliates, and other rights, interests  
18 and privileges respecting the Assets, and compromising and settling such claims, causes of  
19 action, rights, interests, and privileges; (d) reconciling Claims and resolving Disputed  
20 Claims; (e) filing appropriate tax returns; and (f) taking such other actions as may be  
21 necessary or appropriate in connection with any of the above or to otherwise effectuate the  
22 Plan. Debtor may incur and pay any and all reasonable and necessary expenses in  
23 performing the foregoing functions, and may hire agents and professionals to assist with the  
24 foregoing functions. On the Final Distribution Date, Debtor shall be deemed dissolved under  
25 applicable law without the need for any corporate or other actions, consents, or approvals  
26 other than filing articles of dissolution with the Oregon Secretary of State. In addition, on or

1 promptly following the Final Distribution Date, Debtor may, without the need for any further  
 2 actions, consents, or approvals, dispose of or destroy any and all records maintained by  
 3 Debtor.

4 7.3 Post-Effective Date Management; Plan Agent

5 7.3.1 Plan Agent as Sole Shareholder, Director, and Officer. The Plan  
 6 provides that from and after the Effective Date, Debtor shall be managed by a one-person  
 7 Board of Directors (the "Plan Agent"). The Plan Agent shall be, without any required  
 8 corporate or other action, the sole shareholder, director, and officer of Debtor, and shall serve  
 9 in such capacity until the Plan has been fully effectuated and Debtor's affairs have been fully  
 10 wound up. The Plan provides that the initial Plan Agent shall be such person or entity that is  
 11 selected by Debtor and approved by the Committee. It is anticipated that the initial Plan  
 12 Agent will be Michael B. Batlan. Such initial Plan Agent shall continue to serve as the Plan  
 13 Agent until the earlier of (a) the date on which the Plan has been fully effectuated and  
 14 Debtor's affairs have been fully wound up, or (b) the date on which the Plan Agent is  
 15 removed, resigns or is unable to serve as Plan Agent. In the event the initial Plan Agent (or  
 16 any future Plan Agent) is removed, resigns or is unable to serve as Plan Agent, the  
 17 Committee shall name the replacement Plan Agent without the need for Court approval or  
 18 any corporate action. The Committee may at any time seek to remove and replace the Plan  
 19 Agent for cause by filing a motion with the Bankruptcy Court.

20 7.3.2 Duties and Rights of Plan Agent. The Plan provides that the Plan  
 21 Agent shall use its best efforts to cause Debtor to fulfill all of its duties and obligations under  
 22 the Plan. Without limiting any other rights of the Plan Agent, the Plan provides the Plan  
 23 Agent with broad and exclusive power to manage Debtor. The Plan Agent shall have full  
 24 power, authority, and responsibility to take any and all such actions as the Plan Agent in its  
 25 good faith discretion deems necessary or appropriate to cause Debtor to fulfill its duties and  
 26 obligations under the Plan. In addition to all rights and powers given to the Plan Agent under

1 the Plan, the Plan Agent shall have all of the rights and powers given to directors and officers  
2 under Oregon law and shall have all rights and powers of a trustee appointed pursuant to  
3 Section 1104 of the Bankruptcy Code. Without limiting any rights the Plan Agent may have  
4 pursuant to law or the Plan, the Plan Agent is empowered, on behalf of Debtor, to (a) sell,  
5 hold, manage, administer, and distribute the Assets in accordance with the Plan or any Orders  
6 entered by the Court, and take such actions as may be necessary or appropriate to effect  
7 distributions to be made by Debtor under the Plan or any Orders entered by the Court;  
8 (b) establish bank accounts; (c) engage and pay professionals, including attorneys,  
9 accountants, actuaries, appraisers, brokers, and others, to assist Debtor in fulfilling its  
10 obligations under the Plan (such professionals may include, but are not limited to, any  
11 professionals engaged by Debtor or the Committee at any time prior to the Effective Date);  
12 (d) object to Claims and resolve Disputed Claims; (e) initiate and pursue all claims and  
13 causes of action retained by Debtor under the Plan (including any Avoidance Action), which  
14 include potential claims or causes of actions against Affiliates, and compromise and settle  
15 such claims and causes of action; (f) obtain and pay for directors' and officers' liability  
16 insurance in such amounts and with such carriers as determined by the Plan Agent in its good  
17 faith discretion; (g) obtain and pay for liability insurance policies, including policies  
18 providing errors and omissions coverage (including "tail" coverage) to the Plan Agent and  
19 any agents employed by the Plan Agent or Debtor; (h) exercise, post-Confirmation, any post-  
20 Confirmation duties or obligations imposed on Debtor pursuant to any agreements entered  
21 into by Debtor in connection with the Case or any Orders entered by this Court, including  
22 any orders approving settlements; (i) enter into and effectuate settlements with Creditors;  
23 (j) incur and repay debt; and (k) exercise such other powers and take such other actions as the  
24 Plan Agent, in its sole discretion, deems reasonably necessary or appropriate to effectuate the  
25 Plan or Orders entered by this Court.  
26

1                   7.3.3 Compensation of Plan Agent. The Plan provides that the Plan Agent  
2 shall receive, as compensation for its services, an amount equal to 3% of all monies  
3 disbursed by the Plan Agent to holders of Allowed Priority Tax Claims, Allowed Other  
4 Priority Claims, or Allowed General Unsecured Claims on account of such Allowed Claims.  
5 The fees, costs, and expenses of the Plan Agent shall be paid by on a monthly basis in arrears  
6 out of the Assets. Prior to making any payment to itself under the Plan, the Plan Agent will  
7 submit its invoice for such payment to the Committee, which shall have 10 days to object to  
8 the invoice (or any portion thereof). If no objection is made within such 10 day period, the  
9 Plan Agent may make the payment. Any objections of the Committee which cannot be  
10 resolved by the Plan Agent and the Committee will be resolved by the Court.

11                   7.3.4 Fees and Expenses of Agents and Professionals. From the Assets, the  
12 Plan Agent will pay the reasonable fees and expenses of all professional persons and agents  
13 employed by the Plan Agent in connection with the Plan, as well as the reasonable post-  
14 Confirmation fees and expenses of any attorney employed by the Committee in connection  
15 with the Plan. Any such professional person or agent seeking a payment from the Plan Agent  
16 shall submit an invoice to the Plan Agent, which (absent an objection by the Plan Agent), the  
17 Plan Agent shall promptly pay. Any objection that cannot be resolved by the Plan Agent and  
18 the party seeking such payment shall be resolved by the Court.

19                   7.3.5 Standard of Care. The Plan Agent shall exercise the rights and powers  
20 granted to it by the Plan in the same manner, and use the same degree of care and skill in its  
21 exercise, as a prudent person would exercise and use under the circumstances in the conduct  
22 of his or her own affairs, having due regard for the purposes of the Plan. The Plan Agent  
23 shall not be liable or responsible for any misconduct or negligence of any attorney,  
24 accountant, or other professional employed or selected by the Plan Agent. The Plan Agent  
25 shall not be liable for any, and shall be discharged from all, liability to Debtor, all Creditors,  
26

1 and all Equity Interest holders for any and all acts or omissions of the Plan Agent, except for  
2 gross negligence or willful misconduct.

3 7.3.6 Reporting to Committee. The Plan provides that the Plan Agent shall  
4 provide such reports to the Committee from time to time as the Committee reasonably  
5 requests.

6 7.3.7 Bond. The Plan Agent is not required to post a fiduciary bond unless  
7 the Committee requests to the Plan Agent that the Plan Agent obtain such a bond. If such a  
8 request is made, then within 15 business days after such request the Plan Agent will obtain a  
9 fiduciary bond, and evidence of such bond will be filed with the Court. Unless the  
10 Committee agrees to a lower amount, the face amount of the bond shall at all times be in an  
11 amount no less than 125% of the total amount of Cash under the Plan Agent's control. The  
12 cost of such bond shall be paid out of the Assets.

13 7.4 Distributions by Plan Agent. The Plan includes some administrative  
14 provisions governing Distributions. Those provisions are set forth below.

15 7.4.1 Form of Payments. Distributions to be made by the Plan Agent under  
16 the Plan shall be made out of Available Cash by check drawn on a domestic bank or by wire  
17 transfer from a domestic bank, at the sole election of the Plan Agent.

18 7.4.2 Delivery of Distributions. Except as otherwise agreed to by the Plan  
19 Agent in writing, Distributions to be made pursuant to the Plan may be delivered by regular  
20 mail, postage prepaid, in an envelope addressed as directed in a written request served on the  
21 Plan Agent, but if no such request is made, to the address shown in Debtor's Schedules, as  
22 they may from time to time be amended in accordance with Bankruptcy Rule 1009, or, if a  
23 different address is stated in a proof of claim duly filed with the Court, to such address stated  
24 in the proof of claim.

25 7.4.3 Unclaimed Property. During the Claiming Period applicable to any  
26 particular Distribution made pursuant to the Plan, Unclaimed Property with respect to such

1 Distribution shall be distributed to the holders of Allowed Claims entitled thereto upon  
 2 presentment to the Plan Agent of satisfactory proof of entitlement. After the expiration of the  
 3 Claiming Period (subject to the right of the Plan Agent, in its sole discretion, to waive the  
 4 provisions of this sentence, in whole or in part): (a) holders of Allowed Claims previously  
 5 entitled to such Unclaimed Property shall no longer be entitled thereto; (b) such Claims shall  
 6 be deemed disallowed for all purposes; and (c) the then-remaining Cash constituting  
 7 Unclaimed Property with respect to such Distribution shall be redesignated as and become  
 8 Available Cash (but without impairing the right of the Plan Agent to use such redesignated  
 9 funds to satisfy the costs of administering the Plan).

10 7.4.4 Time Bar to Cash Payments. Checks issued in respect of Allowed  
 11 Claims shall be null and void if not negotiated within 90 days after the date of issuance  
 12 thereof. Any requests for reissuance of any check shall be made to the Plan Agent prior to  
 13 the expiration of such 90-day period. After such date (subject to the right of the Plan Agent,  
 14 in its sole discretion, to waive the provisions of this sentence, in whole or in part), (a) the  
 15 holder of any such Claim who has failed to make a timely request for reissuance of such a  
 16 voided check shall not be entitled to any other or further Distribution under the Plan on  
 17 account of such voided check and (b) the Unclaimed Property held on account of such voided  
 18 check shall be redesignated as and become Available Cash (but without impairing the right of  
 19 Debtor to use such funds to satisfy the costs of administering the Plan).

20 7.4.5 Minimum Distributions. If any Distribution to be made to any holder  
 21 of an Allowed Claim under the Plan (including any Pro Rata Distribution) is \$10 or less,  
 22 then, notwithstanding any contrary provision in the Plan, the Plan Agent shall not be  
 23 obligated to make such Distribution to such holder. Distributions withheld pursuant to this  
 24 section shall become unrestricted Available Cash (but without impairing the right of the Plan  
 25 Agent to use such funds to satisfy the costs of administering the Plan).  
 26

7.5 Continuation of Creditors' Committee. The Plan provides that notwithstanding the entry of the Confirmation Order, so long as any members of the Committee are willing to serve, the Committee will continue until it is dissolved by action of the members thereof or until the Final Distribution Date, whichever occurs first. The Plan further provides that neither the Committee nor any of its past, present, or future members (nor any of the respective past, present, or future officers, directors, employees, or agents of such members) shall have or incur any liability to any holder of a Claim or Equity Interest or to any other entity for any act or omission in connection with or arising out of the Chapter 11 Case, or the negotiation and pursuit of confirmation of the Plan, or the consummation of the Plan, or the administration of the Plan, or the property to be distributed under the Plan.

## 8. ASSETS AND LIABILITIES

8.1 Assets. As discussed above, nearly all of Debtor's current assets have been liquidated and distributed to KeyBank. Debtor does possess approximately \$1,000,000 in cash, including the Carve Out. In addition to such cash, Debtor's assets include any potential Avoidance Actions and other claims and causes of action of Debtor. As discussed above, Debtor also has the potential to recover \$1,300,000 from the Affiliates pursuant to the KeyBank Settlement Agreement. Debtor has not completed an analysis of Avoidance Actions or other claims or causes of action. The Plan Agent will pursue such Avoidance Actions or other claims and causes of action as appropriate. The Plan expressly provides that Debtor retains all potential Avoidance Actions and other claims and causes of action, including, but not limited to, a receivable from Sector Corporation in the amount of approximately \$6.2 million. The Plan Agent will be vested with all rights of Debtor and the Estate and will have the discretion to pursue or not to pursue any of such Avoidance Actions or other claims or causes of action.

8.2 Liabilities. Debtor's liabilities consist primarily of Administrative Expenses (which, as of Plan confirmation Debtor estimates will be approximately \$300,000 to

1 \$400,000), Other Priority Claims (which Debtor estimates to be approximately \$300,000),  
 2 Priority Tax Claims (which Debtor estimates to be approximately \$1,000,000), and General  
 3 Unsecured Claims (which Debtor cannot accurately estimate at this time).

## 4 **9. EXECUTORY CONTRACTS**

5 9.1 General Rejection of Executory Contracts. The Plan provides that, except as  
 6 otherwise specifically provided in the Plan or the Confirmation Order, effective as of the  
 7 Effective Date, all executory contracts of Debtor not previously rejected by operation of law  
 8 or by Court order (excluding only those that are assumed pursuant to Court order entered  
 9 prior to the Confirmation Date and those that are the subject of a motion to assume filed prior  
 10 to the Confirmation Date) will be deemed to be automatically rejected by Debtor as of the  
 11 Confirmation Date.

12 9.2 Claims for Rejection Damages. The Plan provides that a Claim for damages  
 13 arising by reason of the rejection of an executory contract shall be classified and treated as  
 14 General Unsecured Claims; provided, however, that any such Claim shall be deemed  
 15 disallowed, barred forever, and not enforceable against Debtor or any property of the Estate  
 16 unless a proof of claim therefor is filed with the Court and served on Debtor within 30 days  
 17 after the Effective Date.

## 18 **10. VOTING PROCEDURES**

19 10.1 Ballots and Voting Deadline. A ballot has been enclosed with this Disclosure  
 20 Statement for use in voting on the Plan. After carefully reviewing the Plan and this  
 21 Disclosure Statement, and if you are entitled to vote on the Plan (see below), please indicate  
 22 your acceptance or rejection of the Plan by voting for or against the Plan on the enclosed  
 23 ballot as directed below.

24 To be counted for voting purposes, ballots must be received no later than 4 p.m.  
 25 Pacific Time, on August 29, 2013 by Debtor at the following address:  
 26



1 Tonkon Torp LLP  
2 Attention: Spencer Fisher  
3 1600 Pioneer Tower  
4 888 SW Fifth Avenue  
5 Portland, OR 97204-2099

6 Any ballots received after 4 p.m. Pacific Time on August 29, 2013 will not be  
7 included in any calculation to determine whether the parties entitled to vote on the Plan have  
8 voted to accept or reject the Plan.

9 If you do not receive a ballot, or if a ballot is damaged or lost, please contact Spencer  
10 Fisher at the address above, by telephone at 503-802-2167, or at [spencer.fisher@tonkon.com](mailto:spencer.fisher@tonkon.com).

11 When a ballot is signed and returned without further instruction regarding acceptance  
12 or rejection of the Plan, the signed ballot shall be counted as a vote accepting the Plan. When  
13 a ballot is returned indicating acceptance or rejection of the Plan but is unsigned, the  
14 unsigned ballot will not be included in any calculation to determine whether parties entitled  
15 to vote on the Plan have voted to accept or reject the Plan. When a ballot is returned without  
16 indicating the amount of the Claim, the amount shall be as set forth on Debtor's Schedules or  
17 any Proof of Claim filed with respect to such Claim.

18 If a proof of claim has been filed with respect to such impaired Claim, then the vote  
19 will be based on the amount of the proof of claim. If no proof of claim has been filed, then  
20 the vote will be based on the amount scheduled by Debtor in its Schedules. Holders of  
21 disputed Claims who have settled their dispute with Debtor are entitled to vote the settled  
22 amount of their Claim. The Bankruptcy Code provides that such votes will be counted unless  
23 the Claim has been disputed, disallowed, disqualified, or suspended prior to computation of  
24 the vote on the Plan. The Claim to which an objection has been filed is not allowed to vote  
25 unless and until the Bankruptcy Court rules on the objection. The Bankruptcy Code provides  
26 that the Bankruptcy Court may, if requested to do so by the holder of such Claim, estimate or  
temporarily allow a Disputed Claim for the purposes of voting on the Plan.

1           10.2 Parties Entitled to Vote. Pursuant to Section 1126 of the Bankruptcy Code,  
 2 any holder of an Allowed Claim that is in an impaired Class under the Plan, and whose Class  
 3 is not deemed to reject the Plan, is entitled to vote. A Class is "impaired" unless the legal,  
 4 equitable and contractual rights of the holders of claims in that Class are left unaltered by the  
 5 Plan or if the Plan reinstates the Claims held by Members of such Class by (a) curing any  
 6 defaults, (b) reinstating the maturity of such claim, (c) compensating the holder of such claim  
 7 for damages that result from the reasonable reliance on any contractual provision of law that  
 8 allows acceleration of such claim, and (d) otherwise leaving unaltered any legal, equitable, or  
 9 contractual right of which the Claim entitles the holder of such Claim. Because of their  
 10 favorable treatment, Classes that are not impaired are conclusively presumed to accept the  
 11 Plan. Accordingly, it is not necessary to solicit votes from the holders of Claims in Classes  
 12 that are not impaired. Class 1 (Other Priority Claims) is not impaired by the Plan and is  
 13 conclusively presumed to have accepted the Plan.

14           Classes of Claims or interests that will not receive or retain any money or property  
 15 under a Plan on account of such Claims or interests are deemed, as a matter of law under  
 16 Section 1126(g) of the Bankruptcy Code, to have rejected the Plan and are likewise not  
 17 entitled to vote on the Plan. Class 3 (Equity Interests) will not receive or retain any money or  
 18 property on account of such Equity Interests, and are deemed to have rejected the Plan.

19           Class 2 (General Unsecured Claims) is impaired under the Plan and is entitled to vote  
 20 to accept or reject the Plan.

21           10.3 Votes Required for Class Acceptance of the Plan. For a Class of Claims to  
 22 accept the Plan, Section 1126 of the Bankruptcy Code requires acceptance by Creditors that  
 23 hold at least two-thirds in dollar amount and a majority in number of the Allowed Claims of  
 24 such Class, in both cases counting only those claims actually voting to accept or reject the  
 25 Plan. The holders of Claims who fail to vote are not counted as either accepting or rejecting  
 26 the Plan. If the Plan is confirmed, the Plan will be binding with respect to all holders of

1 Claims in each Class, including Classes and members of Classes that did not vote or that  
2 voted to reject the Plan.

3 **11. CONFIRMATION OF THE PLAN**

4 11.1 Confirmation Hearing. The Bankruptcy Court has scheduled a hearing on  
5 confirmation of the Plan on September 5, 2013 at 1:30 p.m. Pacific time. The hearing will be  
6 held at the United States Bankruptcy Court for the District of Oregon, Courtroom No. 1,  
7 1001 SW Fifth Avenue, Portland, Oregon 97204, before the Honorable Elizabeth L. Perris,  
8 United States Bankruptcy Judge. At that hearing, the Bankruptcy Court will consider  
9 whether the Plan satisfies the various requirements of the Bankruptcy Code, including  
10 whether it is feasible and whether it is in the best interests of creditors of Debtor. Debtor will  
11 submit a report to the Bankruptcy Court at that time concerning the votes for acceptance or  
12 rejection of the Plan by the parties entitled to vote thereon.

13 Section 1128(b) of the Bankruptcy Code provides that any party in interest may  
14 object to confirmation of the Plan. Any objections to confirmation of the Plan must be made  
15 in writing and filed with the Bankruptcy Court and received by counsel for Debtor no later  
16 than August 29, 2013, by 4 p.m. Pacific time. Unless an objection to confirmation is timely  
17 filed and received, it may not be considered by the Bankruptcy Court.

18 11.2 Requirements of Confirmation. At the hearing on confirmation, the  
19 Bankruptcy Court will determine whether the provisions of Section 1129 of the Bankruptcy  
20 Code have been satisfied. If all the provisions of Section 1129 are met, the Bankruptcy Court  
21 may enter an order confirming the Plan. Debtor believes the Plan satisfies all the  
22 requirements of Chapter 11 of the Bankruptcy Code, that it has complied or will have  
23 complied with all the requirements of Chapter 11, and that the Plan has been proposed and is  
24 made in good faith.

25 Among other requirements for confirmation, to confirm the Plan the Bankruptcy  
26 Court must determine that the Plan meets the requirements of Section 1129(a)(7) of the

1 Bankruptcy Code; that is, that the Plan is in the best interests of each holder of a Claim in an  
2 impaired Class that has not voted to accept the Plan. Accordingly, if an impaired Class does  
3 not unanimously accept the Plan, the "best interests" test requires that the Bankruptcy Court  
4 find that the Plan provides to each holder of a Claim in such impaired Class a recovery on  
5 account of the holder's Claim that has a value at least equal to the value of the distribution  
6 each such holder would receive if Debtor was liquidated under Chapter 7 of the Bankruptcy  
7 Code.

8 The Plan is a liquidating Plan, and all or nearly all of Debtor's assets have been  
9 liquidated and converted to cash. The only impaired Class is Class 2 (General Unsecured  
10 Claims). Debtor believes that the Plan provides to each holder of a General Unsecured Claim  
11 a recovery on account of the holder's Claim that has a value at least equal to the value of the  
12 distribution such holder would receive if Debtor was liquidated under Chapter 7 of the  
13 Bankruptcy Code.

14 Debtor believes a Chapter 7 liquidation would be substantially similar to the Plan, but  
15 that General Unsecured Creditors would receive less on account of their claims under a  
16 Chapter 7 liquidation than they are likely to receive under the Plan. Debtor believes the  
17 liquidation and distribution to creditors will be more efficient under the Plan than under a  
18 Chapter 7.

19 In a Chapter 7 case, additional time will be required for a Chapter 7 trustee to become  
20 familiar with Debtor's affairs and assets. Conversion to Chapter 7 is likely to delay the wind-  
21 down of the estate and the distribution of monies to Creditors. Further, the compensation to  
22 be paid to the Plan Agent (3% of monies disbursed to certain Creditors) will likely be less  
23 than the compensation a Chapter 7 Trustee would be entitled to receive under Section 326 of  
24 the Bankruptcy Code. For these reasons, among others, Debtor believes that conversion to a  
25 case under Chapter 7 would result in (a) additional costs being borne by the estate above  
26

those the estate would incur under the Plan; (b) lower distributions being received by Creditors; and (c) significant delays in distributions to Creditors.

## **12. RETENTION OF CAUSES OF ACTION**

12.1 General. The Plan provides that Debtor shall retain any and all claims and causes of action whatsoever (whether known, unknown, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, or undisputed, and whether asserted or assertable directly, indirectly, or derivatively, at law, in equity, or otherwise), including, but not limited to, all Avoidance Actions. The Plan further provides that the Plan Agent shall be vested with all rights of Debtor and the Estate to pursue such claims, causes of action and rights.

12.2 Reservation of Rights/Claims Against Affiliates. The Plan expressly reserves all claims, causes of action and rights of Debtor and the Estate against Affiliates, including, but not limited to, a receivable from Sector Corporation in the amount of approximately \$6.2 million. The Plan provides that the Plan Agent shall be vested with all rights of Debtor and the Estate to pursue such claims, causes of action and rights, and that neither the Plan nor the Disclosure Statement shall have any res judicata or collateral estoppel effect upon Debtor and the Estate's claims against Affiliates, including, but not limited to, the \$6.2 million Sector receivable.

## **13. MISCELLANEOUS PROVISIONS**

In addition to the provisions discussed above, the Plan contains a number of administrative and miscellaneous provisions. See Section 8 (Effect of Confirmation); Section 9 (Retention of Jurisdiction); Section 10 (Administrative Provisions); and Section 11 (Miscellaneous Provisions) of the Plan. Those provisions are not restated or summarized in this Disclosure Statement. Please review the Plan carefully and contact your legal or tax adviser if you have any questions regarding the Plan.

1 **14. TAX CONSEQUENCES TO DEBTOR OF THE PLAN**

2 Although Debtor has not concluded its tax analysis, Debtor believes confirmation of  
 3 the Plan is not expected to generate substantial tax consequences to Debtor. In addition,  
 4 Debtor has significant net operating loss carry-forwards from past years, and there is also  
 5 basis in many of the assets that were liquidated, such that Debtor believes it will have no  
 6 federal tax obligations resulting from the liquidation of its assets, and any tax obligations at  
 7 the state level are expected to be de minimis.

8 CIRCULAR 230 DISCLAIMER: TO ENSURE COMPLIANCE WITH  
 9 REQUIREMENTS IMPOSED BY THE INTERNAL REVENUE SERVICE, HOLDERS OF  
 10 CLAIMS ARE HEREBY NOTIFIED THAT (A) ANY DISCUSSION OF FEDERAL TAX  
 11 ISSUES IN THIS DISCLOSURE STATEMENT (INCLUDING ANY ATTACHMENTS) IS  
 12 NOT INTENDED OR WRITTEN TO BE USED OR RELIED UPON, AND CANNOT BE  
 13 USED OR RELIED UPON, FOR THE PURPOSE OF (1) AVOIDING TAX-RELATED  
 14 PENALTIES UNDER THE INTERNAL REVENUE CODE OF 1986, AS AMENDED, OR  
 15 (2) PROMOTING, MARKETING OR RECOMMENDING TO ANOTHER PARTY ANY  
 16 TRANSACTION OR TAX MATTER(S) ADDRESSED HEREIN, AND (B) ANY  
 17 DISCUSSION OF FEDERAL TAX ISSUES IN THIS DISCLOSURE STATEMENT  
 18 (INCLUDING ANY ATTACHMENTS) ARE WRITTEN IN CONNECTION WITH  
 19 DEBTOR SOLICITING ACCEPTANCES OF THE PLAN THROUGH THIS  
 20 DISCLOSURE STATEMENT.

21 YOU ARE URGED TO CONSULT YOUR OWN TAX ADVISOR ABOUT ANY  
 22 FEDERAL, STATE, LOCAL, AND APPLICABLE FOREIGN, INCOME AND OTHER  
 23 TAX CONSEQUENCES OF THE PLAN.

24 **15. RECOMMENDATION AND CONCLUSION**

25 Please read this Disclosure Statement and the Plan carefully. After reviewing all the  
 26 information and making an informed decision, please vote by using the enclosed ballot.

1 Debtor strongly urges you to vote in support of the Plan.

2 DATED this 18th day of July, 2013.

3 BEALL CORPORATION

4  
5 By /s/ James Beall  
James Beall, President

6 Presented by:

7 TONKON TORP LLP

8

9 By /s/ Michael W. Fletcher  
10 Albert N. Kennedy, OSB No. 82142  
Michael W. Fletcher, OSB No. 010448  
11 Of Attorneys for Debtor

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

# **EXHIBIT 1**

## **DEBTOR'S PLAN OF LIQUIDATION**



1 **Albert N. Kennedy**, OSB No. 821429 (Lead Attorney)

Direct Dial: (503) 802-2013

2 Facsimile: (503) 972-3713

E-Mail: al.kennedy@tonkon.com

3 **Michael W. Fletcher**, OSB No. 010448

Direct Dial: (503) 802-2169

4 Facsimile: (503) 972-3869

E-Mail: michael.fletcher@tonkon.com

5 **TONKON TORP LLP**

1600 Pioneer Tower

6 888 S.W. Fifth Avenue

Portland, OR 97204

7 Attorneys for Debtor

9 UNITED STATES BANKRUPTCY COURT

10 DISTRICT OF OREGON

11 In re

12 Beall Corporation,

13 Debtor.

Case No. 12-37291-elp11

**DEBTOR'S SECOND AMENDED  
PLAN OF LIQUIDATION (JULY 18,  
2013)**

26 DEBTOR'S SECOND AMENDED PLAN OF LIQUIDATION (JULY 18, 2013)

**Tonkon Torp** LLP  
888 SW Fifth Avenue, Suite 1600  
Portland, Oregon 97204  
503-221-1440

## TABLE OF CONTENTS

	<u>Page</u>
SECTION 1 DEFINITIONS.....	1
1.1. Defined Terms .....	1
1.2. Other Terms .....	9
1.3. Interpretation; Application of Definitions; and Rules of Construction .....	9
SECTION 2 UNITED STATES TRUSTEE FEES .....	10
SECTION 3 TREATMENT OF ADMINISTRATIVE EXPENSE CLAIMS AND PRIORITY TAX CLAIMS .....	10
3.1. Administrative Expense Claims.....	10
3.2. Priority Tax Claims .....	11
SECTION 4 CLASSIFICATION AND TREATMENT OF CLAIMS AND EQUITY INTERESTS .....	11
4.1. Classification.....	11
4.2. Treatment .....	12
SECTION 5 DISPUTED CLAIMS; OBJECTIONS TO CLAIMS.....	13
SECTION 6 MEANS FOR IMPLEMENTATION OF THE PLAN.....	13
6.1. Funding Plan Obligations and Ongoing Expenses.....	13
6.2. Continuation of Debtor; Winding Up Affairs; Dissolution .....	14
6.3. Post-Effective Date Management; Plan Agent .....	14
6.4. Distributions by Plan Agent.....	18
SECTION 7 TREATMENT OF EXECUTORY CONTRACTS .....	19
7.1. General Rejection of Executory Contracts .....	19
7.2. Claims for Rejection Damages .....	19
SECTION 8 EFFECT OF PLAN CONFIRMATION .....	20
8.1. Effect of Confirmation.....	20
8.2. Revesting; Operation of Business .....	20
SECTION 9 RETENTION OF JURISDICTION .....	20
9.1. Jurisdiction of the Bankruptcy Court.....	20
9.2. Failure of Bankruptcy Court to Exercise Jurisdiction.....	21
SECTION 10 ADMINISTRATIVE PROVISIONS.....	21
10.1. Modification of the Plan .....	21
10.2. Revocation or Withdrawal of Plan.....	22
SECTION 11 MISCELLANEOUS PROVISIONS.....	23
11.1. Continuation of Creditors' Committee.....	23
11.2. Retention of Causes of Action .....	23
11.3. Utility Deposits .....	24
11.4. Governing Law .....	24
11.5. Withholding and Reporting Requirements .....	24

11.6.	Section 1146(c) Exemption.....	24
11.7.	Severability .....	25
11.8.	Binding Effect .....	25
11.9.	Recordable Order .....	25
11.10.	Plan Controls.....	25
11.11.	Effectuating Documents and Further Transactions.....	25
11.12.	Saturday, Sunday or Legal Holiday .....	26
11.13.	Timing of Distributions.....	26
11.14.	Final Order.....	26
11.15.	Event of Default; Remedy .....	26
11.16.	Amendments to Claims.....	26
11.17.	Setoff, Recoupment and Defenses .....	27
11.18.	No Retiree Benefits.....	27
11.19.	Computation of Time Periods .....	27
11.20.	Severability .....	27
11.21.	Exhibits .....	28

Beall Corporation, debtor and debtor-in-possession ("Debtor"), proposes the following Plan pursuant to the provisions of Chapter 11 of the Bankruptcy Code. A Disclosure Statement has been provided with this Plan to assist you in understanding the Plan and making an informed decision whether to vote for or against the Plan.

## SECTION 1

### DEFINITIONS

1.1. Defined Terms. Definitions of certain terms used in the Plan are set forth below. Other terms are defined in the text of the Plan or in the text of the Disclosure Statement. In either case, when a defined term is used, the first letter of each word in the defined term is capitalized. Terms used and not defined in the Plan or Disclosure Statement shall have the meanings given in the Bankruptcy Code or Bankruptcy Rules, or otherwise as the context requires. The meanings of all terms shall be equally applicable to both the singular and plural, and masculine and feminine, forms of the terms defined. The words "herein," "hereof," "hereto," "hereunder," and others of similar import, refer to the Plan as a whole and not to any particular article, section, subsection, or clause contained in the Plan. Captions and headings to articles, sections, and exhibits are inserted for convenience of reference only and are not intended to be part of or to affect the interpretation of the Plan. The rules of construction set forth in Section 102 of the Bankruptcy Code shall apply. In computing any period of time prescribed or allowed by the Plan, the provisions of Bankruptcy Rule 9006(a) shall apply.

1.1.1 Administrative Expense Claim means a Claim that is entitled to priority under Sections 503(b) and 507(a)(2) of the Bankruptcy Code.

1.1.2 Affiliates means, collectively, Sector Corporation, St. Johns Corporation, Diamond Beall Development, LLC, Beall Lessors, Inc., and Beall Family, LLC.

1.1.3 Affiliate Collateral has the meaning assigned to such term in the KeyBank Settlement Agreement.

1.1.4 Allowed Amount means: (a) with reference to any Claim (other than an Administrative Expense Claim): (i) if the holder thereof has not filed a proof of claim with the Court within the applicable period of limitation fixed pursuant to Bankruptcy Rule 3003(c)(3), the amount of the Claim that is listed in Debtor's schedules, as they may from time to time be amended in accordance with Bankruptcy Rule 1009, as not disputed, contingent, or unliquidated; or (ii) if the holder thereof has filed a proof of claim with the Court within the applicable period of limitation fixed pursuant to Bankruptcy Rule 3003(c)(3), (a) the amount stated in such proof of claim, if no objection to such proof of claim has been interposed within any applicable period of limitation fixed by this Plan or a Final Order; (b) such amount as shall be fixed by Final Order if an objection has been timely interposed; (c) with reference to an Administrative Expense Claim that requires Court approval as precondition to payment, such amount as shall be fixed by Final Order; (d) with reference to any Claim arising from the recovery of property under Sections 550 or 553 of the Bankruptcy Code, or from the denial or avoidance of an interest in property of the Estate (i) if, within 30 days after the judgment for the recovery of money or property, or after the judgment that denies or avoids any such interest, becomes a Final Order, the holder thereof fully satisfies such judgment, (a) the amount so paid to the Estate pursuant to such judgment (whether or not such holder files a proof of claim with the Court respecting such Claim) and/or (b) such additional amount as shall be fixed by a Final Order, but only if a proof of claim therefor is filed with the Court and served on Debtor within 30 days after such judgment becomes a Final Order; or (ii) if, in response to a demand for payment and before an adversary proceeding or other legal action is commenced with regard to such matters, the holder thereof complies with such a demand, the amount so paid to the Estate pursuant to such demand (whether or not such holder files a proof of claim with the Court respecting such Claim); or (e) any Claim allowed under or pursuant to the terms of this Plan; provided, however, that the Allowed Amount shall not include interest, penalties, or other charges

1 accruing on a Claim after the Petition Date except as specifically provided for in this Plan or  
2 in the Confirmation Order.

3 1.1.5 Allowed Claim means a Claim for which an Allowed Amount has  
4 been determined.

5 1.1.6 Assets at any particular time means, collectively, all right, title, and  
6 interest of the Estate in and to the property described in Section 541 of the Bankruptcy Code,  
7 and includes all Avoidance Actions. Without limiting the preceding, Assets include all  
8 subrogation rights of Debtor and any right, title and interest of the Estate to receive payments  
9 from the Debtor's Affiliates or the Affiliate Collateral pursuant to the KeyBank Settlement  
10 Agreement.

11 1.1.7 Available Cash at any particular time means that amount of Cash  
12 held by or for the Debtor that the Plan Agent, in his sole discretion after consultation with the  
13 Committee, determines is then available for distribution to holders of Allowed General  
14 Unsecured Claims, after establishing such reserves as the Plan Agent deems necessary or  
15 appropriate. Without limiting the preceding, Available Cash includes any Cash received by  
16 Debtor from the Debtor's Affiliates or the Affiliate Collateral for the benefit of Allowed  
17 General Unsecured Claims pursuant to the KeyBank Settlement Agreement, subject to the  
18 establishment of such reserves against such Cash as the Plan Agent deems necessary or  
19 appropriate.

20 1.1.8 Avoidance Action means any claim or cause of action of the Estate  
21 that arises under Chapter 5 of the Bankruptcy Code, or under any similar or related state or  
22 federal statutes and common law, including, without limitation, state fraudulent transfer or  
23 conveyance laws, whether or not such claim or cause of action is asserted or pending on the  
24 Effective Date or is thereafter asserted or commenced.

25 1.1.9 Ballot means a ballot submitted by a holder of a Claim to accept or  
26 reject this Plan.

1.1.10 Bankruptcy Code or Code means Title 11 of the United States Code, and any amendments thereto.

1.1.11 Bankruptcy Court or Court means (a) the United States District Court for the District of Oregon having jurisdiction over this Chapter 11 case and, to the extent of any reference made pursuant to 28 U.S.C. § 157, the United States Bankruptcy Court for the District of Oregon and any court having competent jurisdiction to hear appeals therefrom; and (b) any other court having competent jurisdiction with respect to matters described in this Plan.

1.1.12 Bankruptcy Rules means, collectively, the Federal Rules of Bankruptcy Procedure, as amended and promulgated under Section 2075, Title 28, of the United States Code, and the local rules and standing orders of the Bankruptcy Court.

1.1.13 Case or Chapter 11 Case means the case under Chapter 11 of the Bankruptcy Code with respect to Debtor pending in the District of Oregon, administered as *In re Beall Corporation*, Case No. 12-37291-elp11.

1.1.14 Cash means lawful currency of the United States of America.

1.1.15 Claim means (a) any right to payment from Debtor arising before the Effective Date, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or (b) any right to an equitable remedy against Debtor arising before the Effective Date for breach of performance if such breach gives rise to a right of payment from Debtor, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

1.1.16 Claiming Period means, with respect to any particular Distribution made by Debtor pursuant to this Plan, a period of 90 days following such Distribution.

1.1.17 Class means a category of Claims or Equity Interests that is substantially similar to each other, as classified pursuant to the Plan.

1.1.18 Collateral means, with respect to a Secured Claim, the property, or interest in property, of the Estate that secures such Claim.

1.1.19 Committee means the Official Committee of Unsecured Creditors of Debtor appointed by the United States Trustee pursuant to Section 1102 of the Bankruptcy Code, as such Committee may be constituted from time to time.

1.1.20 Confirmation Date means the date of entry of the Confirmation Order.

1.1.21 Confirmation Order means the order of the Bankruptcy Court confirming the Plan pursuant to Section 1129 of the Bankruptcy Code.

1.1.22 Creditor means a holder of a Claim.

1.1.23 Debtor means Beall Corporation, as Debtor and Debtor-in-Possession.

1.1.24 Disallowed Amount means, with respect to a particular Disputed Claim, that amount which is equal to the difference, if any, between the Face Amount of such Claim and the Allowed Amount thereof.

1.1.25 Disclosure Statement means Debtor's disclosure statement pertaining to the Plan, as amended, modified, supplemented, or restated from time to time.

1.1.26 Disputed Amount means, with respect to a particular Disputed Claim, that amount which is equal to the difference, if any, between the Face Amount of such Claim and the amount of the Claim that Debtor concedes.

1.1.27 Disputed Claim means any Claim for which an Allowed Amount has not yet been determined and with respect to which Debtor or the Committee has an objection (whether or not a written objection has been filed with the Court) or to which an objection has been filed with the Court.

1.1.28 Distribution means a payment of Cash by Debtor under this Plan to a holder of an Allowed General Unsecured Claim.



1.1.29 Distribution Date means any date on which the Plan Agent determines, in his discretion after consultation with the Committee, to make a distribution to the holders of Allowed General Unsecured Claims under this Plan.

1.1.30 Effective Date means the first day of the first month after the Confirmation Date on which (a) all conditions precedent (if any) specified in the Plan have been satisfied or waived and (b) no stay of the Confirmation Order is in effect.

1.1.31 Equity Interest means any capital stock or other ownership interest in Debtor, however denominated and whether or not transferable, and any option, warrant, or right to purchase, sell, or subscribe for an ownership interest in or other equity security of Debtor.

1.1.32 Estate means the estate of Debtor created by Section 541 of the Bankruptcy Code.

1.1.33 Face Amount means (a) with reference to any Claim (other than an Administrative Expense Claim) (i) if the holder thereof has not filed a proof of claim with the Court within the applicable period of limitation fixed pursuant to Bankruptcy Rule 3003(c)(3), the amount of the Claim that is listed in Debtor's schedules, as they may from time to time be amended in accordance with Bankruptcy Rule 1009, as not disputed, contingent, or unliquidated; or (ii) if the holder thereof has filed a proof of claim with the Court within the applicable period of limitation fixed pursuant to Bankruptcy Rule 3003(c)(3), the amount stated in such proof of claim; or (b) with reference to an Administrative Expense Claim of a professional for which an application for allowance of compensation or reimbursement of expenses is filed within such time as may be fixed by the Court, the net amount to which the applicant would be entitled if the application was to be granted in full.

1.1.34 Filed means filed with the Bankruptcy Court in the Chapter 11 Case.

1.1.35 Final Distribution Date means the date the Plan Agent, after consultation with the Committee, determines, in its good faith discretion, that no further payments or distributions will be made or required by Debtor under the Plan.

1.1.36 Final Order means an order or judgment entered on the docket by the Clerk of the Bankruptcy Court, or any other court exercising jurisdiction over the subject matter and the parties, that has not been reversed, stayed, modified, or amended and as to which the time for filing a notice of appeal, or petition for *certiorari* or request for *certiorari*, or request for rehearing, shall have expired, or a stipulation or other agreement entered into which is intended by the parties thereto to have the same effect with like finality.

1.1.37 General Unsecured Claim means any Unsecured Claim not otherwise treated or classified under this Plan.

1.1.38 Interest Rate means a fixed per annum interest rate of 2.5%, unless a different interest rate is determined and set by the Bankruptcy Court, in which case such interest rate determined by the Bankruptcy Court shall be the "Interest Rate" under this Plan.

1.1.39 KeyBank means KeyBank National Association.

1.1.40 KeyBank Settlement Agreement means that certain settlement agreement entered into by and among Debtor, KeyBank the Committee, and the Affiliates, as previously approved by this Bankruptcy Court [Dkt. #\_\_\_].

1.1.41 Other Priority Claim means any Claim for an amount entitled to priority in right of payment pursuant to Section 507(a) of the Code other than a Priority Tax Claim or an Administrative Expense Claim.

1.1.42 Petition Date means September 24, 2012.

1.1.43 Plan Agent means such person or entity serving from and after the Effective Date as Debtor's sole director and officer for purposes of effectuating this Plan.

1.1.44 Plan means this plan of liquidation, and all exhibits and schedules hereto, which are incorporated by reference, as amended, modified, restated, or supplemented from time to time.

1.1.45 Priority Tax Claim means any Claim of a governmental unit of the kind entitled to priority under Section 507(a)(8) of the Bankruptcy Code.

1.1.46 Pro Rata at any particular time means, with respect to any Allowed Claim in a Class, the same proportion that the Allowed Amount of such Claim bears to the aggregate of (a) the Allowed Amount of all Claims in such Class, plus (b) the Face Amounts of all Disputed Claims in such Class, as reduced from time to time as and to the extent the Disallowed Amounts of such Claims are determined.

1.1.47 Rejection Claim means a Claim arising from the rejection of an unexpired executory contract pursuant to this Plan or a Final Order.

1.1.48 Reorganized Debtor means Debtor from and after the Effective Date. Unless the context clearly requires otherwise, any reference to "Debtor" herein for any period from and after the Effective Date shall be deemed to refer to Reorganized Debtor.

1.1.49 Scheduled Amounts means the amount of Claims stated in the Schedules.

1.1.50 Schedules means the Schedules of Assets and Liabilities Filed by Debtor pursuant to Section 521 of the Bankruptcy Code, as amended, modified, restated, or supplemented from time to time.

1.1.51 Secured Claim means a Claim to the extent such Claim constitutes a secured claim under Sections 506(a) or 1111(b) of the Bankruptcy Code.

1.1.52 Unclaimed Property at any particular time means the Cash, exclusive of any interest earned thereon, held by or for Debtor that is unclaimed by a Creditor following a Distribution made by or for Debtor pursuant to the Plan (including property attributable to checks that have been returned as undeliverable without a proper

forwarding address, checks that have not been cashed, and checks that were not mailed or delivered because of the absence of a proper address to which to mail or deliver such property).

1.1.53 Unsecured Claim means a Claim that is not an Administrative Expense Claim, a Priority Tax Claim, an Other Priority Claim, a Property Tax Claim, or a Secured Claim.

1.2. Other Terms. Terms used and not defined in this Plan that are defined in the Bankruptcy Code or in the Bankruptcy Rules shall have the meanings ascribed to them in the Bankruptcy Code or in the Bankruptcy Rules, as applicable.

1.3. Interpretation; Application of Definitions; and Rules of Construction.

Wherever from the context it appears appropriate, each term stated in either the singular or the plural shall include both the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and neuter. For purposes of the Plan (a) any reference in the Plan to a contract, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions; (b) any reference in the Plan to an existing document or exhibit filed or to be filed means such document or exhibit as it may have been or may be amended, modified, or supplemented; and (c) unless otherwise specified, all references in the Plan to Sections and Exhibits are references to Sections and Exhibits of or to the Plan. The words "herein," "hereof," "hereto," "hereunder," "hereunto" and other words of similar meaning refer to this Plan as a whole and not to any particular section, subsection, or clause contained in this Plan. The rules of construction contained in Section 102 of the Bankruptcy Code shall apply to the construction of this Plan. The headings in this Plan are for convenience of reference only and shall not limit or otherwise affect the provisions of this Plan. Unless otherwise indicated herein, all references to dollars means United States dollars.

**SECTION 2**

**UNITED STATES TRUSTEE FEES**

Fees payable by Debtor to the United States Trustee under 28 U.S.C. § 1930(a)(6), or to the Clerk of the Bankruptcy Court, will be paid in full on the Effective Date. Reorganized Debtor shall continue to pay such fees to the Office of the United States Trustee, and shall continue to file monthly reports with the Office of the United States Trustee, until this Case is closed by the Bankruptcy Court, dismissed, or converted. This requirement is subject to any amendments to 28 U.S.C. § 1930(a)(6) that Congress makes retroactively applicable to confirmed Chapter 11 cases. After confirmation, Reorganized Debtor shall serve on the United States Trustee a monthly financial report for each month, or portion thereof, that the case remains open. The monthly financial report shall include a statement of all disbursements made during the course of the month, whether or not pursuant to the Plan.

**SECTION 3**

**TREATMENT OF ADMINISTRATIVE**

**EXPENSE CLAIMS AND PRIORITY TAX CLAIMS**

3.1. Administrative Expense Claims. Each holder of an Administrative Expense Claim shall receive payment of such Claim in full in Cash on the later of (a) the Effective Date or (b) the date on which such Claim becomes an Allowed Claim, unless such holder agrees to a different treatment of such Claim (including, without limitation, any different treatment that may be provided for in any documentation, statute, or regulation governing such Claim); provided, however, that Administrative Expense Claims representing obligations incurred in the ordinary course of business by Debtor during the Chapter 11 Case shall be paid by Debtor in the ordinary course of business and in accordance with any terms and conditions of the particular transaction, and any agreements relating thereto. Except as otherwise ordered by the Court, Administrative Expense Claims shall be deemed disallowed,

1 barred forever, and not enforceable against Debtor or any of Debtor's Assets unless a request  
 2 for payment therefor is filed with the Court and served on Debtor within 30 days after the  
 3 Confirmation Date.

4 3.2. Priority Tax Claims. Each Allowed Priority Tax Claim shall be paid in full,  
 5 with interest from and after the Effective Date at the Interest Rate, in Cash no later than five  
 6 years after the Petition Date. Until such Claims are paid in full, on each anniversary of the  
 7 Effective Date the Plan Agent shall make regular Pro Rata installment payments to the  
 8 holders of the Allowed Priority Tax Claims out of Cash then available for distribution to  
 9 holders of Allowed Priority Tax Claims, after establishing such reserves against such Cash as  
 10 the Plan Agent deems necessary or appropriate.

#### 11 **SECTION 4**

#### 12 **CLASSIFICATION AND TREATMENT OF CLAIMS AND EQUITY INTERESTS**

13 4.1. Classification. All Claims (other than Administrative Expense Claims and  
 14 Priority Tax Claims) and all Equity Interests are placed in the following Classes for all  
 15 purposes. A Claim is classified in a particular Class only to the extent the Claim falls within  
 16 the description of that Class and is classified in another Class only to the extent that any  
 17 remainder of the Claim falls within the description of such other Class. A Claim is in a  
 18 particular Class only to the extent the Claim is an Allowed Claim in that Class and has not  
 19 been paid or otherwise satisfied prior to the Effective Date. Class 1 is unimpaired by the  
 20 Plan. All other Classes are impaired by the Plan.

21 4.1.1 Class 1 (Other Priority Claims) consists of all Allowed Other  
 22 Priority Claims.

23 4.1.2 Class 2 (General Unsecured Claims) consists of all Allowed  
 24 General Unsecured Claims.  
 25  
 26

1                   4.1.3     Class 3 (Equity Interests) consists of all Equity Interests and any  
 2 and all Claims arising from or relating to such Equity Interests that are or would be subject to  
 3 subordination under Section 510(b) of the Bankruptcy Code.

4                   4.2.     Treatment. The Classes of Claims and Equity Interests shall receive the  
 5 treatment described herein, which treatment shall be in full and complete satisfaction,  
 6 settlement, release, and discharge of, and in exchange for, all such Claims and Equity  
 7 Interests.

8                   4.2.1     Class 1 (Other Priority Claims). Each Allowed Class 1 Claim shall  
 9 be paid in full in Cash on the later of (a) the Effective Date or (b) the date on which such  
 10 Claim becomes an Allowed Claim.

11                   4.2.2     Class 2 (General Unsecured Claims). Subject to the minimum  
 12 Distribution provisions set forth in Section 6.4.5 of this Plan, on each Distribution Date  
 13 Debtor shall make Pro Rata distributions of Available Cash to the holders of Allowed  
 14 General Unsecured Claims.

15                   A final Distribution shall be made to the holders of Allowed General  
 16 Unsecured Claims promptly following the later to occur of (a) the date on which all Assets  
 17 have been reduced to Cash or abandoned by Debtor, (b) the date on which all Disputed  
 18 Claims have been withdrawn or resolved by Final Order, or (c) the date on which all required  
 19 tax returns have been filed; provided, however, that in no event shall Debtor be obligated to  
 20 make such a Distribution if the Plan Agent, in its sole discretion after consultation with the  
 21 Committee, determines that there is insufficient Available Cash to make a cost efficient  
 22 Distribution, taking into account the size of the Distribution to be made and the number of  
 23 recipients of such Distribution, in which event such Available Cash shall, at the sole  
 24 discretion of the Plan Agent, either be paid into the Court and disposed of under Chapter 129  
 25 of Title 28 of the United States Code or donated to one or more Section 501(c)(3)  
 26 organizations, which shall be selected by the Plan Agent in its sole discretion. In no event

1 shall the foregoing impair the right of Debtor to use such excess funds to satisfy the costs of  
2 administering this Plan.

3 4.2.3 Class 3 (Equity Interests). On the Effective Date, all Equity  
4 Interests shall be deemed cancelled. No holder of an Equity Interest shall receive or retain on  
5 account of such Equity Interest any distributions, money, or other consideration on account  
6 of such Equity Interest under this Plan.

## 7 **SECTION 5**

### 8 **DISPUTED CLAIMS; OBJECTIONS TO CLAIMS**

9 Only Claims that are Allowed Claims shall be entitled to distributions under  
10 this Plan. No Cash or other property shall be distributed under this Plan on account of any  
11 Disputed Claim, or a portion of any such Claim, unless and until such Disputed Claim  
12 becomes an Allowed Claim. Debtor reserves the right to contest and object to any Claims  
13 and previously Scheduled Amounts, including, without limitation, those Claims and  
14 Scheduled Amounts that are specifically referenced herein; are not listed in the Schedules;  
15 are listed therein as disputed, contingent and/or unliquidated in amount; or are listed therein  
16 at a different amount than Debtor currently believes is validly due and owing. Unless  
17 otherwise ordered by the Bankruptcy Court, all objections to Claims and Scheduled Amounts  
18 (other than Administrative Expense Claims) shall be Filed and served upon the holder of the  
19 Claim objected to on or before the later of (a) 45 days after the Effective Date or (b) 60 days  
20 after the date (if any) on which a Proof of Claim is Filed in respect of a Rejection Claim.  
21 The Bankruptcy Court shall set the last day for filing objections to Administrative Expense  
22 Claims.

## 23 **SECTION 6**

### 24 **MEANS FOR IMPLEMENTATION OF THE PLAN**

25 6.1. Funding Plan Obligations and Ongoing Expenses. Subject to any  
26 restrictions imposed on Debtor in this Plan, Debtor will fund its Plan obligations and its



1 ongoing expenses and liabilities from its existing Cash, Cash generated from Avoidance  
 2 Actions, Cash generated from any further liquidation of Assets, and any Cash received from  
 3 the Affiliates or the Affiliate Collateral under or pursuant to the KeyBank Settlement  
 4 Agreement.

5 6.2. Continuation of Debtor; Winding Up Affairs; Dissolution. From and after  
 6 the Effective Date, Debtor shall continue in existence solely for purposes of (a) administering  
 7 this Plan and winding up its affairs as expeditiously as reasonably possible; (b) liquidating,  
 8 by conversion to Cash or other methods, the Assets as expeditiously as reasonably possible;  
 9 (c) enforcing and prosecuting all claims and causes of action, including Avoidance Actions,  
 10 and other rights, interests, and privileges respecting the Assets, and compromising and  
 11 settling such claims, causes of action, rights, interests, and privileges; (d) reconciling Claims  
 12 and resolving Disputed Claims; (e) filing appropriate tax returns; and (f) taking such other  
 13 actions as may be necessary or appropriate in connection with any of the above or to  
 14 otherwise effectuate this Plan. Debtor may incur and pay any and all reasonable and  
 15 necessary expenses in performing the foregoing functions, and may hire agents and  
 16 professionals to assist with the foregoing functions. On the Final Distribution Date, Debtor  
 17 shall be deemed dissolved under applicable law without the need for any corporate or other  
 18 actions, consents, or approvals other than filing articles of dissolution with the Oregon  
 19 Secretary of State. In addition, on or promptly following the Final Distribution Date, Debtor  
 20 may, without the need for any further actions, consents, or approvals, dispose of or destroy  
 21 any and all records maintained by Debtor.

22 6.3. Post-Effective Date Management; Plan Agent

23 6.3.1 Plan Agent as Sole Shareholder, Director, and Officer. From and  
 24 after the Effective Date, Debtor shall be managed by a one-person Board of Directors (the  
 25 "Plan Agent"). The Plan Agent shall be, without any required corporate or other action, the  
 26 sole shareholder, director, and officer of Debtor, and shall serve in such capacity until this

1 Plan has been fully effectuated and Debtor's affairs have been fully wound up. The initial  
 2 Plan Agent shall be such person or entity that is selected by Debtor and approved by the  
 3 Committee. Such initial Plan Agent shall continue to serve as the Plan Agent until the earlier  
 4 of (a) the date on which the Plan has been fully effectuated and Debtor's affairs have been  
 5 fully wound up or (b) the date on which such Plan Agent is removed, resigns or is unable to  
 6 serve as Plan Agent. In the event the initial Plan Agent (or any future Plan Agent) is  
 7 removed, resigns or is unable to serve as Plan Agent, the Committee shall name the  
 8 replacement Plan Agent without the need for Court approval or any corporate action. The  
 9 Committee may at any time seek to remove and replace the Plan Agent for cause by filing a  
 10 motion with the Bankruptcy Court.

11                   6.3.2     Duties and Rights of Plan Agent. The Plan Agent shall use its best  
 12 efforts to cause Debtor to fulfill all of its duties and obligations under this Plan. Without  
 13 limiting the rights set forth in Section 6.3.1 above, the Plan Agent shall have broad and  
 14 exclusive power to manage Debtor. The Plan Agent shall have full power, authority, and  
 15 responsibility to take any and all such actions as the Plan Agent in its good faith discretion  
 16 deems necessary or appropriate to cause Debtor to fulfill its duties and obligations under this  
 17 Plan. In addition to all rights and powers given to the Plan Agent under this Plan, the Plan  
 18 Agent shall have all of the rights and powers given to directors and officers under Oregon  
 19 law and shall have all rights and powers of a trustee appointed pursuant to Section 1104 of  
 20 the Bankruptcy Code. Without limiting any rights the Plan Agent may have pursuant to law  
 21 or this Plan, the Plan Agent is empowered, on behalf of Debtor, to (a) sell, hold, manage,  
 22 administer, and distribute the Assets in accordance with this Plan or any Orders entered by  
 23 the Court, and take such actions as may be necessary or appropriate to effect distributions to  
 24 be made by Debtor under this Plan or any Orders entered by the Court; (b) establish bank  
 25 accounts; (c) engage and pay professionals, including attorneys, accountants, actuaries,  
 26 appraisers, brokers, and others, to assist Debtor in fulfilling its obligations under this Plan

(such professionals may include, but are not limited to, any professionals engaged by Debtor or the Committee at any time prior to the Effective Date); (d) object to Claims and resolve Disputed Claims; (e) initiate and pursue all claims and causes of action retained by Debtor under this Plan (including any Avoidance Action), and compromise and settle such claims and causes of action; (f) obtain and pay for directors' and officers' liability insurance in such amounts and with such carriers as determined by the Plan Agent in its good faith discretion; (g) obtain and pay for liability insurance policies, including policies providing errors and omissions coverage (including "tail" coverage) to the Plan Agent and any agents employed by the Plan Agent or Debtor; (h) exercise, post-Confirmation, any post-Confirmation duties or obligations imposed on Debtor pursuant to any agreements entered into by Debtor in connection with the Case or any Orders entered by this Court, including any orders approving settlements; (i) enter into and effectuate settlements with Creditors; (j) incur and repay debt; and (k) exercise such other powers and take such other actions that the Plan Agent, in its sole discretion, deems reasonably necessary or appropriate to effectuate this Plan or Orders entered by this Court.

6.3.3 Compensation of Plan Agent. The Plan Agent shall receive, as compensation for its services hereunder, an amount equal to 3% of all monies disbursed by the Plan Agent to holders of Allowed Priority Tax Claims, Allowed Other Priority Claims, or Allowed General Unsecured Claims on account of such Allowed Claims. The fees, costs, and expenses of the Plan Agent shall be paid by on a monthly basis in arrears out of the Assets. Prior to making any payment to itself under this Plan, the Plan Agent shall submit its invoice for such payment to the Committee, which shall have 10 days to object to the invoice (or any portion thereof). If no objection is made within such 10 day period, the Plan Agent may make the payment. Any objections of the Committee which cannot be resolved by the Plan Agent and the Committee shall be resolved by the Court.

1                   6.3.4     Fees and Expenses of Agents and Professionals. From the Assets,  
 2 the Plan Agent shall pay the reasonable fees and expenses of all professional persons and  
 3 agents employed by the Plan Agent in connection with this Plan, as well as the reasonable  
 4 post-Confirmation fees and expenses of any attorney employed by the Committee in  
 5 connection with this Plan. Any such professional person or agent seeking a payment from  
 6 the Plan Agent shall submit an invoice to the Plan Agent, which (absent an objection by the  
 7 Plan Agent), the Plan Agent shall promptly pay. Any objection that cannot be resolved by  
 8 the Plan Agent and the party seeking such payment shall be resolved by the Court.

9                   6.3.5     Standard of Care. The Plan Agent shall exercise the rights and  
 10 powers granted to it by this Plan in the same manner, and use the same degree of care and  
 11 skill in its exercise, as a prudent person would exercise and use under the circumstances in  
 12 the conduct of his or her own affairs having due regard for the purposes of this Plan. The  
 13 Plan Agent shall not be liable or responsible for any misconduct or negligence of any  
 14 attorney, accountant, or other professional employed or selected by the Plan Agent. The Plan  
 15 Agent shall not be liable for any, and shall be discharged from all, liability to Debtor, all  
 16 Creditors, and all Equity Interest holders for any and all acts or omissions of the Plan Agent,  
 17 except for gross negligence or willful misconduct.

18                  6.3.6     Reporting. The Plan Agent shall provide such reports to the  
 19 Committee from time to time as the Committee reasonably requests.

20                  6.3.7     Bond. The Plan Agent shall not be required to post a fiduciary  
 21 bond unless the Committee requests to the Plan Agent that the Plan Agent obtain such a  
 22 bond. If such a request is made, then within 15 business days after such request the Plan  
 23 Agent shall obtain a fiduciary bond, and evidence of such bond shall be filed with the Court.  
 24 Unless the Committee agrees to a lower amount, the face amount of the bond shall at all  
 25 times be in an amount no less than 125% of the total amount of Cash under the Plan Agent's  
 26 control. The cost of such bond shall be paid out of the Assets.

1           6.4.     Distributions by Plan Agent

2                   6.4.1     Form of Payments. Distributions to be made by the Plan Agent  
3 under this Plan shall be made by check drawn on a domestic bank or by wire transfer from a  
4 domestic bank, at the sole election of the Plan Agent.

5                   6.4.2     Delivery of Distributions. Except as otherwise agreed to by the  
6 Plan Agent in writing, Distributions to be made pursuant to this Plan may be delivered by  
7 regular mail, postage prepaid, in an envelope addressed as directed in a written request  
8 served on the Plan Agent, but if no such request is made, to the address shown in Debtor's  
9 Schedules, as they may from time to time be amended in accordance with Bankruptcy  
10 Rule 1009, or, if a different address is stated in a proof of claim duly filed with the Court, to  
11 such address stated in the proof of claim.

12                   6.4.3     Unclaimed Property. During the Claiming Period applicable to  
13 any particular Distribution made pursuant to this Plan, Unclaimed Property with respect to  
14 such Distribution shall be distributed to the holders of Allowed Claims entitled thereto upon  
15 presentment to the Plan Agent of satisfactory proof of entitlement. After the expiration of the  
16 Claiming Period (subject to the right of the Plan Agent, in its sole discretion, to waive the  
17 provisions of this sentence, in whole or in part): (a) holders of Allowed Claims previously  
18 entitled to such Unclaimed Property shall no longer be entitled thereto; (b) such Claims shall  
19 be deemed disallowed for all purposes; and (c) the then-remaining Cash constituting  
20 Unclaimed Property with respect to such Distribution shall be redesignated as and become  
21 Available Cash (but without impairing the right of the Plan Agent to use such redesignated  
22 funds to satisfy the costs of administering this Plan).

23                   6.4.4     Time Bar to Cash Payments. Checks issued in respect of Allowed  
24 Claims shall be null and void if not negotiated within 90 days after the date of issuance  
25 thereof. Any requests for reissuance of any check shall be made to the Plan Agent prior to  
26 the expiration of such 90-day period. After such date (subject to the right of the Plan Agent,

in its sole discretion, to waive the provisions of this sentence, in whole or in part), (a) the holder of any such Claim who has failed to make a timely request for reissuance of such a voided check shall not be entitled to any other or further Distribution under this Plan on account of such voided check and (b) the Unclaimed Property held on account of such voided check shall be redesignated as and become Available Cash (but without impairing the right of Debtor to use such funds to satisfy the costs of administering this Plan).

6.4.5 Minimum Distributions. If any Distribution to be made to any holder of an Allowed Claim under this Plan (including any Pro Rata Distribution) is \$10 or less, then, notwithstanding any contrary provision in this Plan, the Plan Agent shall not be obligated to make such Distribution to such holder. Distributions withheld pursuant to this section shall become available to the Plan Agent to use to satisfy the costs of administering this Plan.

## SECTION 7

### TREATMENT OF EXECUTORY CONTRACTS

7.1. General Rejection of Executory Contracts. Except as otherwise specifically provided in this Plan or in the Confirmation Order, effective as of the Effective Date, all executory contracts of Debtor not previously rejected by operation of law or by Court order (excluding only those that are assumed pursuant to Court order entered prior to the Confirmation Date and those that are the subject of a motion to assume filed prior to the Confirmation Date) shall be deemed to be automatically rejected by Debtor as of the Confirmation Date. The Confirmation Order shall constitute a Court order approving such rejections pursuant to the provisions of Sections 365 and 1123(b)(2) of the Bankruptcy Code.

7.2. Claims for Rejection Damages. A Claim for damages arising by reason of the rejection of an executory contract shall be classified and treated as a General Unsecured Claim; provided, however, that any such Claim shall be deemed disallowed, barred forever,

1 and not enforceable against Debtor or any property of the Estate unless a proof of claim  
2 therefor is filed with the Court and served on Debtor within 30 days after the Effective Date.

3 **SECTION 8**

4 **EFFECT OF PLAN CONFIRMATION**

5 8.1. Effect of Confirmation. The effect of confirmation shall be as set forth in  
6 Section 1141 of the Bankruptcy Code.

7 8.2. Revesting; Operation of Business. Except as otherwise expressly provided  
8 in this Plan, on the Effective Date all property and assets of the Estate of Debtor shall revest  
9 in Debtor, free and clear of all claims, liens, encumbrances, charges, and other interests of  
10 Creditors arising on or before the Effective Date; and Debtor may operate, from and after the  
11 Effective Date, free of any restrictions imposed by the Bankruptcy Code or the Bankruptcy  
12 Court.

13 **SECTION 9**

14 **RETENTION OF JURISDICTION**

15 9.1. Jurisdiction of the Bankruptcy Court. Notwithstanding the entry of the  
16 Confirmation Order, the Court shall retain jurisdiction of the Chapter 11 Case pursuant to  
17 and for the purposes set forth in Sections 1127(b) and 1141-1146 of the Code to enforce the  
18 provisions of this Plan and to ensure that the intent and purposes of this Plan are carried out  
19 and given effect. Without limiting the preceding, the Court shall retain jurisdiction to:

20 9.1.1 Classify the Claim or interest of any Creditor, reexamine Claims or  
21 interests that have been allowed for voting purposes, and determine any objections that may  
22 be filed to Claims or interests;

23 9.1.2 Determine requests for payment of Claims entitled to priority  
24 under Section 507(a) of the Bankruptcy Code, including compensation and reimbursement of  
25 expenses in favor of professionals employed at the expense of the Estate;  
26

- 1                   9.1.3     Avoid transfers or obligations to subordinate Claims under  
2 Chapter 5 of the Bankruptcy Code;  
3                   9.1.4     Approve the assumption, assignment, or rejection of an executory  
4 contract or unexpired lease pursuant to this Plan;  
5                   9.1.5     Resolve controversies and disputes regarding the interpretation or  
6 enforcement of this Plan;  
7                   9.1.6     Implement the provisions of this Plan and enter orders in aid of  
8 confirmation;  
9                   9.1.7     Enforce settlements entered into by the Plan Agent;  
10                  9.1.8     Resolve any motion by the Committee to remove and replace the  
11 Plan Agent;  
12                  9.1.9     To the extent the Court has jurisdiction, adjudicate adversary  
13 proceedings and contested matters pending or hereafter commenced in the Chapter 11 Case;  
14 and  
15                  9.1.10    Enter a final decree closing the Chapter 11 Case.  
16           9.2.     Failure of Bankruptcy Court to Exercise Jurisdiction. If the Bankruptcy  
17 Court abstains from exercising, or declines to exercise, jurisdiction over any matter arising  
18 under, arising in, or related to the Chapter 11 Case, this section shall not prohibit or limit the  
19 exercise of jurisdiction by any other court having competent jurisdiction with respect to such  
20 subject matter.

21                                   **SECTION 10**

22                                   **ADMINISTRATIVE PROVISIONS**

- 23           10.1.   Modification of the Plan. Debtor may alter, amend, or modify the Plan  
24 pursuant to Section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 at any time  
25 prior to the time the Bankruptcy Court has signed the Confirmation Order. After such time,  
26 and prior to the substantial consummation of the Plan, Debtor may, so long as the treatment



of holders of Claims and interests under the Plan is not adversely affected, institute proceedings in Bankruptcy Court to remedy any defect or omission or to reconcile any inconsistencies in the Plan, Disclosure Statement, or Confirmation Order, and any other matters as may be necessary to carry out the purposes and effects of the Plan.

10.2. Revocation or Withdrawal of Plan

10.2.1 Right to Revoke. Debtor reserves the right to revoke or withdraw the Plan at any time prior to the Effective Date.

10.2.2 Effect of Withdrawal or Revocation. If Debtor revokes or withdraws the Plan prior to the Effective Date, then the Plan shall be deemed null and void. In such event, nothing contained herein shall be deemed to constitute a waiver or release of any claims by or against Debtor, or to prejudice in any manner the rights of Debtor in any further proceeding involving Debtor.

10.2.3 Nonconsensual Confirmation. Debtor may request that the Bankruptcy Court confirm the Plan pursuant to Section 1129(b) of the Bankruptcy Code if the requirements of all provisions of Section 1129(a) of the Bankruptcy Code, except Subsection 1129(a)(8), are met.

10.2.4 Conditions of Effectiveness. The Effective Date will not occur and the Plan will not become effective unless and until the Bankruptcy Court shall have entered a Confirmation Order in form and substance reasonably acceptable to Debtor.

10.2.5 Compromise of Controversies. Pursuant to Bankruptcy Rule 9019, and in consideration for the classification, distributions, and other benefits provided under the Plan, the provisions of the Plan shall constitute a good faith compromise and settlement of all Claims or controversies that are resolved pursuant to the Plan. The entry of the Confirmation Order shall constitute the Court's approval of each of the compromises and settlements provided for in the Plan, and the Court's findings shall constitute its determination that such compromises and settlements are in the best interests of Debtor.

## SECTION 11

## MISCELLANEOUS PROVISIONS

11.1. Continuation of Creditors' Committee. Notwithstanding the entry of the Confirmation Order, so long as any members of the Committee are willing to serve, the Committee shall continue until it is dissolved by action of the members thereof or until the Final Distribution Date, whichever occurs first. Neither the Committee nor any of its past, present, or future members (nor any of the respective past, present, or future officers, directors, employees, or agents of such members) shall have or incur any liability to any holder of a Claim or Equity Interest or to any other entity for any act or omission in connection with or arising out of the Chapter 11 Case, or the negotiation and pursuit of confirmation of this Plan, or the consummation of this Plan, or the administration of this Plan, or the property to be distributed under this Plan.

### 11.2. Retention of Causes of Action.

11.2.1 General. Debtor shall retain any and all claims and causes of action whatsoever (whether known, unknown, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, or undisputed, and whether asserted or assertable directly, indirectly, or derivatively, at law, in equity, or otherwise), including, but not limited to, all Avoidance Actions. The Plan Agent shall be vested with all rights of Debtor and the Estate to pursue such claims, causes of action and rights.

11.2.2 Reservation of Rights/Claims Against Affiliates. Without limiting 11.2.1 above, the Plan reserves all claims, causes of action and rights of Debtor and the Estate against Affiliates, including, but not limited to, a receivable from Sector Corporation in the amount of approximately \$6.2 million. The Plan Agent shall be vested with all rights of Debtor and the Estate to pursue such claims, causes of action and rights. Neither the Plan nor the Disclosure Statement shall have any res judicata or collateral estoppel effect upon

1 Debtor and the Estate's claims against Affiliates, including, but not limited to, the  
2 \$6.2 million Sector receivable.

3 11.3. Utility Deposits. All utilities holding a utility deposit obtained as a result of  
4 this Bankruptcy Case shall immediately after the Effective Date return or refund such utility  
5 deposit to Debtor. At the sole option of Debtor, Debtor may apply any such utility deposit  
6 that has not been refunded to Debtor in satisfaction of any payments due or to become due  
7 from Debtor to a utility holding such a utility deposit.

8 11.4. Governing Law. Except to the extent the Bankruptcy Code, the Bankruptcy  
9 Rules, or other federal laws are applicable, the laws of the State of Oregon shall govern the  
10 construction and implementation of the Plan, and all rights and obligations arising under the  
11 Plan.

12 11.5. Withholding and Reporting Requirements. In connection with the Plan and  
13 all instruments issued in connection therewith and distributions thereon, Debtor shall comply  
14 with all withholding, reporting, certification, and information requirements imposed by any  
15 federal, state, local, or foreign taxing authorities, and all distributions hereunder shall, to the  
16 extent applicable, be subject to any such withholding, reporting, certification, and  
17 information requirements. Entities entitled to receive distributions hereunder shall, as a  
18 condition to receiving such distributions, provide such information and take such steps as  
19 Debtor may reasonably require to ensure compliance with such withholding and reporting  
20 requirements, and to enable Debtor to obtain the certifications and information as may be  
21 necessary or appropriate to satisfy the provisions of any tax law.

22 11.6. Section 1146(c) Exemption. Pursuant to Section 1146(c) of the Bankruptcy  
23 Code, the issuance, transfer, or exchange of any security under the Plan; or the execution,  
24 delivery, or recording of an instrument of transfer pursuant to, in implementation of, or as  
25 contemplated by the Plan; or the revesting, transfer, or sale of any real property of Debtor  
26 pursuant to, in implementation of, or as contemplated by the Plan; shall not be taxed under

1 any state or local law imposing a stamp tax, transfer tax, or similar tax or fee. Consistent  
2 with the foregoing, each recorder of deeds or similar official for any city, county, or  
3 governmental unit in which any instrument hereunder is to be recorded shall, pursuant to the  
4 Confirmation Order, be ordered and directed to accept such instrument without requiring the  
5 payment of any documentary stamp tax, deed stamps, transfer tax, intangible tax, or similar  
6 tax.

7 11.7. Severability. In the event any provision of this Plan is determined to be  
8 unenforceable, such determination shall not limit or affect the enforceability and operative  
9 effect of any other provisions of this Plan. To the extent any provision of this Plan would, by  
10 its inclusion in this Plan, prevent or preclude the Bankruptcy Court from entering the  
11 Confirmation Order, the Bankruptcy Court, on the request of Debtor, may modify or amend  
12 such provision, in whole or in part, as necessary to cure any defect or remove any  
13 impediment to the confirmation of this Plan existing by reason of such provision.

14 11.8. Binding Effect. The provisions of this Plan shall bind Debtor and all  
15 holders of Claims and Equity Interests, and their respective successors, heirs, and assigns.

16 11.9. Recordable Order. The Confirmation Order shall be deemed to be in  
17 recordable form, and shall be accepted by any recording officer for filing and recording  
18 purposes without further or additional orders, certifications, or other supporting documents.

19 11.10. Plan Controls. In the event and to the extent any provisions of this Plan are  
20 inconsistent with the provisions of the Disclosure Statement, or any other instrument or  
21 agreement contemplated to be executed pursuant to this Plan, the provisions of this Plan shall  
22 control and take precedence.

23 11.11. Effectuating Documents and Further Transactions. Debtor shall execute,  
24 deliver, file, or record such contracts, instruments, assignments, and other agreements or  
25 documents, and take or direct such actions as may be necessary or appropriate to effectuate  
26 and further evidence the terms and conditions of this Plan.

1 11.12. Saturday, Sunday or Legal Holiday. If any payment or act under this Plan is  
2 required to be made or performed on a date that is not a business day, then the making of  
3 such payment or the performance of such act may be completed on the next succeeding  
4 business day, but shall be deemed to have been completed as of the required date.

5 11.13. Timing of Distributions. Notwithstanding anything to the contrary herein,  
6 (a) any distribution required by this Plan to be made on the Effective Date in respect of a  
7 Claim shall be made as soon as practicable after (but in any event within 30 days of) the later  
8 of (i) the Effective Date or (ii) the date on which such Claim becomes Allowed and any other  
9 conditions to distribution with respect to such Claim shall have been satisfied; and (b) any  
10 distribution required by this Plan or any instrument issued pursuant to this Plan to be made  
11 on a date subsequent to the Effective Date shall be made on the later of (i) such date or (ii) as  
12 soon as practicable after (but in any event within 30 days of) the date on which the pertinent  
13 Claim becomes Allowed and any other conditions to distribution with respect to such Claim  
14 shall have been satisfied.

15 11.14. Final Order. Any requirement in this Plan for a Final Order may be waived  
16 by Debtor; provided, however, that nothing contained herein shall prejudice the right of any  
17 party-in-interest to seek a stay pending appeal with respect to such Final Order.

18 11.15. Event of Default; Remedy. Except as otherwise provided in this Plan or in  
19 the Confirmation Order, in the event Debtor shall default in the performance of its  
20 obligations under this Plan, and shall not have cured such default within 30 days after receipt  
21 of written notice of default from the Creditor to whom the performance is due, then such  
22 Creditor may exercise its remedies on default. An event of default occurring with respect to  
23 one Creditor or Claim shall not be an event of default with respect to any other Creditor or  
24 Claim.

25 11.16. Amendments to Claims. No Claim may be amended by the holder thereof at  
26 any time after the date that is 30 days after the Effective Date (the "Claim Amendment Bar

1 Date") other than to reduce the amount of the Claim, unless such period is extended by Court  
2 order on a motion filed with the Court and served on Debtor within such 30-day period.

3 Objections to any Claim that is timely amended by the holder thereof after the Effective Date  
4 shall be filed no later than 60 days after proof of such amended Claim is filed with the Court.

5 11.17. Setoff, Recoupment and Defenses. Nothing contained in this Plan shall  
6 constitute a waiver or release by Debtor of any rights of setoff or recoupment, or of any  
7 defense it may have with respect to any Claim (including, without limitation, rights under  
8 Section 502(d) of the Bankruptcy Code). Debtor may, but shall not be required to, set off  
9 against any Claim and the distributions to be made pursuant to this Plan in respect of such  
10 Claim, any claims of any nature whatsoever that Debtor may have against the holder of such  
11 Claim, but neither the failure to do so nor the allowance of any Claim hereunder shall  
12 constitute a waiver or release of any such claim Debtor may have against such holder.

13 11.18. No Retiree Benefits. Debtor has no retiree benefit plan, fund, or program, as  
14 defined in Section 1114 of the Bankruptcy Code, for the purpose of providing or reimbursing  
15 payments for retired employees and their spouses and dependents, for medical, surgical, or  
16 hospital care benefits, or benefits in the event of sickness, accident, disability, or death under  
17 any plan, fund, or program (through the purchase of insurance or otherwise), and no such  
18 payments or benefits shall be made by Debtor pursuant to this Plan or otherwise.

19 11.19. Computation of Time Periods. In computing any period of time prescribed  
20 or allowed by this Plan, unless otherwise expressly provided herein, the provisions of  
21 Bankruptcy Rule 9006(a) shall apply.

22 11.20. Severability. In the event the Court determines that any provision of this  
23 Plan is invalid, void, or unenforceable, the Court shall, with the consent of Debtor and the  
24 Committee, have the power to alter and interpret such provision to make it valid or  
25 enforceable to the maximum extent practicable, consistent with the original purpose of the  
26 provision held to be invalid, void, or unenforceable, and such provision shall then be

1 applicable as altered or interpreted. Notwithstanding any such holding, alteration, or  
2 interpretation, the remainder of the provisions of this Plan shall remain in full force and  
3 effect and shall in no way be affected, impaired, or invalidated by such holding, alteration, or  
4 interpretation.

5 11.21. Exhibits. Any exhibits to this Plan are incorporated into and are a part of  
6 this Plan as if fully set forth herein.

7 DATED this 18th day of July, 2013.

8 BEALL CORPORATION

9  
10 By /s/ James E. Beall  
James E. Beall, President

11 Presented by:

12 TONKON TORP LLP

13  
14 By /s/ Michael W. Fletcher  
15 Albert N. Kennedy, OSB No. 82142  
Michael W. Fletcher, OSB No. 010448  
Of Attorneys for Debtor

# **EXHIBIT 2**

## **KEYBANK SETTLEMENT AGREEMENT**



## SETTLEMENT AGREEMENT

This Settlement Agreement (this "Agreement") is entered into by and among the parties identified below (each a "Party" and collectively the "Parties") and is made pursuant to the following terms and conditions:

### I. PARTIES

1. Debtor: Beall Corporation ("Debtor"), and its successors and assigns, including, but not limited to, any Trustee or Plan Agent or similar fiduciary appointed to act following the confirmation of any plan of liquidation confirmed in the Bankruptcy Case or otherwise appointed to serve in the Bankruptcy Case.

2. Committee: The general unsecured creditors' committee appointed in the Bankruptcy Case (the "Committee"), its successors and assigns, including, but not limited to, any committee appointed to act following the confirmation of any plan of liquidation in the Bankruptcy Case.

3. KeyBank: KeyBank, National Association ("KeyBank"), its successors and assigns.

4. Affiliates: Sector Corporation, St. Johns Corporation, and Diamond Beall Development, LLC, Beall Lessors, Inc. and Beall Family, LLC (collectively, the "Affiliates"), and their successors and assigns.

### II. RECITALS

1. On September 24, 2012, Debtor commenced Bankruptcy Case No. 12-37291-elp11 (the "Bankruptcy Case") in the United States Bankruptcy Court for the District of Oregon (the "Bankruptcy Court"). Shortly thereafter the United States Trustee appointed the Committee.

2. Pursuant to a series of Bankruptcy Court approved sales and subsequent sale and distribution orders, Debtor liquidated substantially all of its assets and distributed most of the net sale proceeds to KeyBank.

3. Debtor is currently holding approximately \$2,000,000 in net sale proceeds from such sales (the "Remaining Sale Proceeds").

4. KeyBank holds a first priority security interest in all or substantially all of Debtor's assets, including the Remaining Sale Proceeds.

5. The Debtor's and Affiliate's acknowledge that the obligations still owing to KeyBank as of June 11<sup>th</sup> as set forth on Exhibit A attached hereto together with accrued interest, fees and costs and less payments received are due and owing (the "Outstanding KeyBank Obligations"). The Outstanding KeyBank Obligations as of the date of this Agreement owed by

the Debtor on account of its guaranty obligations of the Affiliates debts owed to KeyBank are in excess of the Remaining Sale Proceeds.

6. The Outstanding KeyBank Obligations to KeyBank are secured by deeds of trust on substantially all of the Affiliates' real property as well as Article 9 liens on the Affiliates' personal property and pledges of membership interests and stock (the "Affiliate Collateral").

7. On March 12, 2013, KeyBank filed a motion with the Bankruptcy Court seeking to compel Debtor to distribute all sale proceeds to KeyBank, or alternatively to convert the Bankruptcy Case to Chapter 7 (the "Distribution Motion"). Both Debtor and the Committee objected to the Distribution Motion.

8. On May 6, 2013, Debtor, KeyBank, the Committee and the Affiliates participated in a settlement conference with the Honorable Randall L. Dunn. This Agreement as well as the simultaneously executed forbearance agreement between the Affiliates and KeyBank (the "Forbearance Agreement") are intended to document the essential terms agreed to among the Debtor, the Committee, KeyBank and the Affiliates at the settlement conference.

### III. AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the Parties agree as follows:

1. Incorporation of Recitals. The above recitals are incorporated herein by this reference.
2. Distribution of Sale Proceeds by Debtor to KeyBank. Within three (3) business days after entry of a Bankruptcy Court order approving this Agreement (the "Distribution Order"), Debtor shall pay KeyBank \$1,300,000 from the Remaining Sale Proceeds (the "Final Guaranty Payment"), which payment shall be applied by KeyBank to reduce the Outstanding KeyBank Obligations owed to KeyBank and Debtor's estate shall be subrogated to \$1,300,000 of the Outstanding KeyBank Obligations upon such payment (the "Beall Subrogation Obligation"), subject to the restrictions set forth in this Agreement.
3. Release of KeyBank's Claims against Debtor. Upon receipt of the \$1,300,000 Final Guaranty Payment referred to in Section 2 above, KeyBank shall have been deemed to have waived any and all rights to receive further payment from the Remaining Sale Proceeds or from the proceeds from the disposition or recovery of property of the Debtor or Debtor's estate, and KeyBank shall be deemed to have released Debtor and its bankruptcy estate from any and all claims, damages, liabilities, demands, actions, causes of action or suits, known or unknown, now existing or arising in the future; provided, however, that such deemed release shall not abrogate, diminish or impair the rights of subrogation that Debtor will hold on account of the \$1,300,000 Final Guaranty Payment to KeyBank made by Debtor hereunder nor shall it be deemed to affect KeyBank's rights in, priority of its Affiliate Liens in the Affiliate Collateral or KeyBank's rights to payment from the proceeds thereof. Without limiting the preceding release, KeyBank agrees and acknowledges that after receipt of the \$1,300,000 Final Guaranty Payment from Debtor, KeyBank will not receive any further payments or distributions from the property of the Debtor's estate, and KeyBank will have no further interest in any of Debtor's assets.

4. Conditions Precedent to the Effectiveness of This Agreement.

- (a) Execution of this Agreement by the Parties and Acknowledgment of the personal guarantors of the Outstanding KeyBank Obligations.
- (b) Execution of the Forbearance Agreement and Acknowledgment of the personal guarantors of the Outstanding KeyBank Obligations.
- (c) Entry of Final Distribution Order.
- (d) Receipt of the Final Guaranty Payment by KeyBank.

Upon satisfaction of the foregoing conditions precedent, the terms of this Agreement shall become binding on the Parties (the "Effective Date").

5. Outstanding KeyBank Obligations to KeyBank Unaffected. Other than the \$1,300,000 Final Guaranty Payment that the Debtor will pay on account of the Outstanding KeyBank Obligations, and the resulting release of Debtor set forth in Paragraph 3 above, the Affiliate Collateral, the obligations of the Affiliates to KeyBank and all documents and agreements arising out of or related to the Outstanding KeyBank Obligations, or the Affiliate Collateral (the "Affiliate Loan Documents") shall remain in full force and effect and are not modified by this Agreement.

6. Avoidance; Reinstatement of Obligations. If KeyBank receives a payment or a transfer of property on account of the Outstanding KeyBank Obligations and the payment or transfer subsequently is invalidated, avoided, declared to be fraudulent or preferential, set aside, or otherwise required to be transferred to a trustee, receiver, or the estate of an Affiliate or a Guarantor (or if KeyBank, in its sole and absolute discretion, agrees to any such avoidance following a demand therefor), then, in any such event, to the extent of the avoided payment or transfer (each of which is referred to in this Agreement as an "Avoided Transfer"), the Outstanding KeyBank Obligations intended to have been satisfied by the payment or transfer in question will be reinstated as Outstanding KeyBank Obligations and the limitations on the rights of the Debtor as set forth in Paragraph 10 below shall be reinstated.

7. Claims of Debtor Against Affiliates. The Debtor's claims against the Affiliates, other than the Beall Subrogation Claims (the "Other Claims"), shall remain in full force and effect and are not modified except as set forth below or waived by this Agreement; provided, however, that until payment in full of the Outstanding KeyBank Obligations, neither the Debtor nor any party acting on behalf of the Debtor will execute or take any Enforcement Action (as defined below) against the Affiliate Collateral on account of such Other Claims.

8. Affiliates' Acknowledgment of Beall Subrogation Obligation as a Debt Secured by the Affiliate Collateral. The Affiliates each acknowledge that they owe the Beall Subrogation Obligation jointly and severally to the Debtor and Debtor's estate and that payment in full of Outstanding KeyBank Obligations will not release the Affiliate Collateral from such Beall Subrogation Obligation which Affiliate Collateral will continue to secure the Beall Subrogation Obligation until such Beall Subrogation Obligation is paid in full. Upon KeyBank's receipt of the \$1,300,000 Final Guaranty Payment on account of the Outstanding KeyBank Obligations,



and subject to the limitations set forth herein, including, but not limited to, the limitations set forth in Paragraph 10 below, Debtor shall automatically be subrogated to all of the rights and remedies of KeyBank with respect to the Outstanding KeyBank Obligations Affiliate Collateral and the Affiliate Loan Documents.

9. Escrow of Assignments Documents. Within five (5) business days after receiving the Final Guaranty Payment, KeyBank shall deliver to Debtor: (i) fully executed assignment documents of the Affiliate Loan Documents as are necessary or appropriate to document the security interest of the Estate to secure the Beall Subrogation Claim and to assign to Debtor all of KeyBank's rights in the Outstanding KeyBank Obligations and Affiliate Collateral, including, but not limited to, assignments of all trust deeds, mortgages or similar security documents in form acceptable to KeyBank (the "Assignment Documents"); and (ii) escrow instructions providing that the Debtor shall hold such Assignment Documents in escrow and shall not record such Assignment Documents unless and until the Outstanding KeyBank Obligations have been paid in full.

10. Acknowledgement of No Rights to Exercise Beall Subrogation Claim in Affiliate Collateral Until Outstanding KeyBank Obligations are Fully Satisfied and Other Obligations Pending the Same.

(a) No Enforcement Action Rights in Affiliate Collateral. Except as otherwise set forth in this Agreement and until the Outstanding KeyBank Obligations have been paid in full, the Debtor on behalf of itself and the Debtor's estate and any successor or assigns of the Beall Subrogation Claim acknowledges that it will have no rights to commence an Enforcement Action<sup>1</sup> including, without limitation, the right to set off or credit bid its debt to collect the Beall Subrogation Claim.

(b) Payment Turnover. Until the Outstanding KeyBank Obligations are paid in full, whether or not an Insolvency Proceeding<sup>2</sup> has commenced, all Affiliate Collateral or proceeds thereof received by the Debtor will be segregated and held in trust for the benefit of KeyBank, and promptly paid to KeyBank.

(c) Marshaling, Etc. Until the payment in full of the Outstanding KeyBank Obligations, neither the Debtor nor Debtor's estate or any party acting on behalf of the Debtor or

<sup>1</sup> "Enforcement Action" means in relation to the Affiliate Collateral the acceleration of any or all of the Beall Subrogation Obligations or any other exercise of remedies under the Affiliate Loan Documents, including, without limitation: (a) foreclosing, executing, levying, collecting on, taking possession or control of, or selling or otherwise realizing on (judicially or non-judicially, including, without limitation, by means of a receiver) any of the Affiliate Collateral; or (b) soliciting bids from third Persons to conduct the liquidation or disposition of the Affiliate.

<sup>2</sup> "Insolvency Proceeding" means, with respect to any one of the Affiliates, any voluntary or involuntary case, proceeding, or other action: (a) by or against such Affiliate or guarantor of the Outstanding KeyBank Obligations ("Guarantor") seeking reorganization, arrangement, adjustment, liquidation, dissolution, or composition of the Affiliate or Guarantor's, or such Affiliate's or Guarantor's debts, under the Bankruptcy Code or any other law relating to bankruptcy, insolvency, reorganization of indebtedness, or relief of debtors; (b) seeking to have an order for relief entered against the Person, as debtor; or (c) seeking appointment of a receiver, trustee, custodian, or other similar official

Debtor's estate will assert any marshaling, appraisal, valuation, or other similar right that may otherwise be available to a subrogation claimant under applicable law.

11. Limitations on New Loans and Extension of Maturity. Without the express written consent of Debtor, which consent the Debtor will not unreasonably withhold, KeyBank and the Affiliates will not: (i) extend the maturity date of the Outstanding KeyBank Obligations beyond five (5) years after the Effective Date of this Agreement; (ii) make new loans in excess of \$1 million in the aggregate to the Affiliates or any one of the Affiliates ("New Loans") except that the foregoing limitations shall not apply following the filing of an Insolvency Proceeding commenced by any Affiliate or Guarantor and provided, however, this restriction on New Loans shall not prohibit KeyBank from making any protective advances or cure payments that it may choose to make in its sole discretion as contemplated in the Affiliate Loan Documents or in the Forbearance Agreement nor does the restriction on New Loans apply to the accrual of interest, fees or costs as provided for under the Affiliate Loan Documents. Nothing in this Paragraph shall be deemed to obligate KeyBank to make any New Loans to the Affiliates or to make any protective advances in connection with the Affiliate Collateral.

12. No Fiduciary Relationship. KeyBank will not have by reason of this Agreement or any other document, or be deemed to have, a fiduciary relationship with the Debtor or the Debtor's estate in connection with the Beall Subrogation Claim, the Outstanding KeyBank Obligations, the Affiliates or the Affiliate Collateral. The Parties to this Agreement recognize that the interests of KeyBank, the Affiliates and the Debtor and Debtor's estate in connection with the Beall Subrogation Claim may differ in relation to the Affiliates and the Affiliate's Collateral, and KeyBank may act in its own interest without taking into account the interests of the Debtor or Debtor's estate in relation to the Beall Subrogation Claim, subject to the express terms and conditions of this Agreement.

13. No Liability for Failure to Maintain or Preserve or in connection with Disposition of Affiliate Collateral. Except for obligations expressly provided for in this Agreement, KeyBank will have no liability to the Debtor or the Debtor's estate for any action, inaction, or omission by KeyBank with respect to any Outstanding KeyBank Obligations or any liens in the Affiliate Collateral, including, without limitation:

(a) the maintenance, preservation, or collection of Outstanding KeyBank Obligations, KeyBank liens in the Affiliate Collateral; and the foreclosure upon, or the sale, liquidation, maintenance, preservation, or other disposition of the Affiliate Collateral.

14. Affiliates Agreement to Pay Net Proceeds of Sale or Refinancing of Affiliate Collateral to Reduce Senior Obligations, Outstanding KeyBank Obligations and Beall Subrogation Claim. The Affiliates agree that upon the sale or refinancing of any of the Affiliate Collateral, the net proceeds from such sale or refinancing shall be utilized to pay down or pay off the liens and other obligations in the following order: (i) first any liens senior to the KeyBank liens; (ii) second to reduce the Outstanding KeyBank Obligations; and (iii) third in payment of the Beall Subrogation Claim. The Debtor and its representatives agree to cooperate with providing such documentation as necessary to the title company handling such sale or refinancing in order to consummate such transaction and appoints KeyBank as its attorney in fact to execute such documents so long as any Outstanding KeyBank Obligations remain unsatisfied.



15. Affiliate's Repayment of the Beall Subrogation Obligations. Within five (5) years of the date of this Agreement, the Affiliates agree that they shall pay to Debtor the principal sum of \$1,300,000, together with interest at the federal rate commencing from the Effective Date of this Agreement, all without offset, defense, counterclaim, or claim or recoupment of any kind whatsoever. The obligations of the Affiliates to make such payment to the Debtor on account of the Beall Subrogation Claim shall be joint and several. If such amount is not paid in full by such date and the Outstanding KeyBank Obligations are fully paid, then Debtor may in addition to other rights it may have, exercise any or all of its subrogated rights, including without limitation foreclosing on any remaining Affiliate Collateral.

16. Affiliate Payments to Debtor to Fund Amounts Owed to General Unsecured Creditors. Any payments made by the Affiliates to the Debtor on account of the Beall Subrogation Claim shall be utilized by Debtor to fund amounts owing to Debtor's general unsecured creditors, after paying (or reserving for) any then outstanding or expected administrative expenses.

17. Affiliates Consent to Section 363 Sale of Affiliate Collateral Upon Event of Default. The Affiliates hereby consent that upon an event of default that remains uncured pursuant to the terms of the Affiliate Loan Documents and the Forbearance Agreement or that is not waived or if there is a failure to pay the Beall Subrogation Claim by the due date set forth above, the Affiliates consent to a sale of sufficient Affiliate Collateral in the Bankruptcy Case pursuant to 11 U.S.C. § 363 to satisfy any Outstanding KeyBank Obligations and the Beall Subrogation Claim; provided, however, such § 363 sales shall be at a price acceptable to KeyBank to the extent there remains any Outstanding KeyBank Obligations and nothing in this paragraph shall require that KeyBank or the Debtor or its representatives utilize this § 363 sales remedy, and furthermore this paragraph is not intended to and shall not be deemed to affect or restrict KeyBank's or the Debtor's rights and remedies which are available under the terms of the Affiliate Loan Documents or applicable, non-bankruptcy law. The Plan Agent (or similar fiduciary) appointed under the Debtor's Plan of Liquidation shall have the power to sell the Affiliate Collateral and deliver deeds vesting title to purchasers of such property and exercise the powers conferred under this paragraph 17 with KeyBank's consent to the extent that the Outstanding KeyBank Obligations remain unpaid. Until the Outstanding KeyBank Obligations are paid in full, the Debtor and the Committee will not contest, protest, or object, and will be deemed to have consented pursuant to Section 363(f) of the Bankruptcy Code, to any disposition of the Affiliate Collateral free and clear of the Beall Subrogation Claim.

18. Release of Key Bank. In consideration of the benefits provided to Debtor and its estate (the "Estate"), Debtor and the Committee agree as follows ("General Release"):

(a) Debtor and the Committee hereby release, acquit and forever discharge KeyBank, all of KeyBank's predecessors in interest, and all of KeyBank's past and present officers, directors, attorneys, affiliates, employees and agents, of and from any and all claims, demands, obligations, liabilities, indebtedness, breaches of contract, breaches of duty or of any relationship, acts, omissions, misfeasance, malfeasance, causes of action, defenses, offsets, debts, sums of money, accounts, compensation, contracts, controversies, promises, damages, costs, losses and expenses, of every type, kind, nature, description or character, whether known or unknown, suspected or unsuspected, liquidated or unliquidated, each as though fully set forth

herein at length (each, a "Released Claim" and collectively, the "Released Claims"), that the Estate or Debtor now has or may acquire as of the date of the entry of the order approving this Agreement (hereinafter, the "Release Date"), including without limitation, those Released Claims in any way arising out of, connected with or related to any and all prior credit accommodations, if any, provided by KeyBank, or any of KeyBank's predecessors in interest, to Debtor, and any agreements, notes or documents of any kind related thereto or the transactions contemplated thereby or hereby, or any other agreement or document referred to herein or therein.

(b) Debtor and Committee on behalf of the Estate hereby acknowledge, represent and warrant to KeyBank that they agree to assume the risk of any and all unknown, unanticipated or misunderstood defenses and Released Claims which are released by the provisions of this General Release in favor of KeyBank, and Debtor and Committee on behalf of the Estate hereby waive and release all rights and benefits which they might otherwise have under any state or local laws or statutes with regard to the release of such unknown, unanticipated or misunderstood defenses and Released Claims.

(c) Debtor and Committee hereby specifically acknowledge and agree on behalf of the Estate that: (i) none of the provisions of this General Release shall be construed as or constitute an admission of any liability on the part of KeyBank; (ii) the provisions of this General Release shall constitute an absolute bar to any Released Claim of any kind, whether any such Released Claim is based on contract, tort, warranty, mistake or other theory, whether legal, statutory or equitable; and (iii) any attempt to assert a Released Claim barred by the provisions of this General Release shall subject the party asserting such claims to the provisions of applicable law setting for the remedies for the bringing of groundless, frivolous or baseless claims or causes of action.

19. Cooperation and Additional Documents. The Parties to this Agreement agree to cooperate in drafting, executing and filing such documents, and taking such actions, as are required to fully effectuate all of the terms and provisions of this Agreement. By executing this Agreement, the Debtor, the Affiliates, KeyBank, and the Committee provide their consent to the terms of this Agreement and agrees that they shall not impede the performance any Party's obligations under this Agreement.

20. Motion to Approve this Agreement. Debtor shall promptly seek entry of an order in the Bankruptcy Case approving this Agreement upon execution of this Agreement by the Parties. The Parties hereto agree to promptly provide such signatures.

21. Miscellaneous Provisions.

(a) This Agreement shall become effective upon the satisfaction of the Conditions Precedent set forth in Paragraph 4 above. Debtor or the Committee may record this Agreement, an abstract of this Agreement, and/or the Bankruptcy Court order approving this Agreement in the real property records of any county where any Affiliate Collateral is now or hereafter located to put third parties on notice of the Beall Subrogation Rights and the Debtors and its estates rights as set forth in this Agreement.

(b) This Agreement does not constitute and shall not be construed as an admission of liability or wrongdoing by any Party.

(c) If any party to this Agreement brings a legal proceeding, including but not limited to, a contested matter or adversary proceeding in the Bankruptcy Case, to obtain a declaration of or to enforce its rights under this Agreement, the prevailing party in such proceeding shall recover its costs and attorneys' fees incurred in the proceeding, including any fees and costs incurred on appeal.

(d) This Agreement contains the entire agreement among the Parties with respect to the subject matter contained herein, and there is no agreement on the part of any party to do any act or thing other than as expressly stated in this Agreement.

(e) The Parties recognize that a facsimile or PDF copy of this Agreement is binding on them (the formality of original ink signatures shall not be required; copies are sufficient). In addition, this Agreement may be signed in two or more counterparts without affecting its validity or enforceability.

(f) This Agreement shall be governed by the laws of the State of Oregon, without reference to the principles of conflict of laws.

(g) The Parties acknowledge and agree that all Parties participated in the drafting of this Agreement and that no provision of this Agreement shall be construed against any party on account on the concept that one party, rather than another, drafted a provision.

(h) Any plan proposed by Debtor shall be consistent with this Agreement.

(i) The Bankruptcy Court shall retain jurisdiction to enforce the terms of this Agreement.

AGREED as of this \_\_\_\_ day of July, 2013.

[SIGNATURES ON FOLLOWING PAGE]



BEALL CORPORATION  
Debtor in Possession  
Bankruptcy Case No. 12-37291-elp

By: James E. Beall  
Its: President

KEYBANK BANK, NATIONAL  
ASSOCIATION

By: Larry T. Burke  
~~Senior Vice President~~  
ST. JOHNS CORPORATION

By: James E. Beall  
Its: President

BEALL FAMILY, LLC

By: James E. Beall  
Its: Director

COMMITTEE OF GENERAL UNSECURED  
CREDITORS Appointed in the Chapter 11  
Bankruptcy Case of Beall Corporation,  
Bankruptcy Case No. 12-37291-elp

By: Jourdes A. Rice  
Its: Chairman

SECTOR CORPORATION

By: James E. Beall  
Its: President  
DIAMOND BEALL DEVELOPMENT, LLC


By: James E. Beall  
Its: Pres.

BEALL LESSORS, INC.

By: James E. Beall  
Its: Pres.

# ACKNOWLEDGMENT AND AGREEMENT OF INDIVIDUAL GUARANTORS

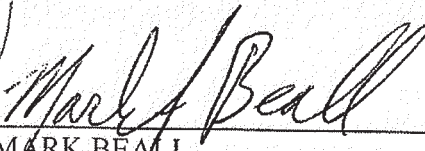
The undersigned, each an individual guarantor of the Indebtedness of the Affiliates<sup>3</sup> and of the Debtor as those terms are defined in the Agreement (the "Affiliates") to KeyBank, NA (the "Bank") (as more fully defined in the Affiliate Loan Documents and in this Agreement) pursuant to a Guaranty (as modified, the "Guaranty"), hereby (i) acknowledges receipt of the foregoing Agreement; (ii) reaffirms all Indebtedness to Bank pursuant to the terms of any Guaranty that it/he has executed; (iii) acknowledges that it is receiving a direct and indirect benefit from this Agreement and other accommodations provided under the terms of this Agreement; and (iv) acknowledges that Bank may amend, restate, extend, renew or otherwise modify the Agreement and any Indebtedness or agreement of the Affiliates, or enter into any agreement or extend additional or other credit accommodations, without notifying or obtaining the consent of the undersigned and without impairing the liability of the undersigned under any Guaranty that the undersigned has executed for all of the Affiliate's present and future Indebtedness to Bank.

  
JERRY E. BEALL

  
BRENT BEALL

  
MICHAEL BEALL

  
JAMES BEALL

  
MARK BEALL

035349/00002/4733542v2

<sup>3</sup> Capitalized Terms are defined in the Agreement unless otherwise indicated in this acknowledgment.

Exhibit A

This chart represents outstanding obligations as of June 11, 2013:

Borrower Name	Unpaid Principal Balance	Interest Accrued and unpaid a/o 6/11/13	Daily Per Diem	Current Interest Rate	Other Fees	Total Unpaid Obligation as of 5/14/13
Sector Corp	2,359,722.45	3,272.70	121.21	1.8492%	472.73	2,363,467.88
Sector Corp (Swap)	607,446.00	8,415.66	88.59	5.2500%	-	615,861.66
St. Johns Corp	1,348,523.48	1,870.27	69.27	1.8492%	-	1,350,393.75
St. Johns Corp (Swap)	442,333.00	6,128.16	64.51	5.2500%	-	448,461.16
Diamond Beall	227,385.15	2,309.98	41.37	6.5500%	-	229,695.13
<b>Total Unpaid a/o 5/14:</b>	<b>\$ 4,985,410.08</b>	<b>\$ 21,996.77</b>	<b>\$ 384.95</b>		<b>\$ 472.73</b>	<b>\$ 5,007,879.58</b>
				Attorney Fees - Prepetition:		103,318.00
				Attorney Fees - Postpetition:		152,980.00
				Appraisal Fees:		8,950.00
				<b>TOTAL AMOUNT DUE:</b>	<b>\$</b>	<b>5,273,127.58</b>

Postpetition Attorneys Fees: Attorneys fees are through 6/1/2013

Current Interest Rate: Monthly payments are being made pending the approval of the new deal

**CERTIFICATE OF SERVICE**

I hereby certify that I served the foregoing **DEBTOR'S SECOND AMENDED DISCLOSURE STATEMENT (JULY 18, 2013)** on the parties indicated as "ECF" on the attached List of Interested Parties by electronic means through the Court's Case Management/Electronic Case File system on the date set forth below.

In addition, I served the foregoing on the parties indicated as "Non-ECF" on the attached List of Interested Parties by mailing a copy thereof in a sealed, first-class postage prepaid envelope, addressed to each party's last-known address and depositing in the U.S. mail at Portland, Oregon on the date set forth below.

DATED this 18th day of July, 2013.

TONKON TORP LLP

By /s/ Michael W. Fletcher

Albert N. Kennedy, OSB No. 821429

Michael W. Fletcher, OSB No. 010448

Attorneys for Debtor

**LIST OF INTERESTED PARTIES**

***In re Beall Corporation***  
**U.S. Bankruptcy Court Case No. 12-37291-elp11**

**ECF PARTICIPANTS**

- JASON M AYRES jayres@fwlaw.com, cmontee@fwlaw.com
- DAVID W CRISWELL dcriswell@balljanik.com, swylen@balljanik.com
- SCOTT D FINK bronationalecf@weltman.com
- MICHAEL W FLETCHER michael.fletcher@tonkon.com, leslie.hurd@tonkon.com;andy.haro@tonkon.com
- DAVID W HERCHER dave.hercher@millernash.com, nancy.stoll@millernash.com;d.hercher@comcast.net
- MARY JO HESTON hestonm@lanepowell.com, campbelld@lanepowell.com;docketing-sea@lanepowell.com;barkerd@lanepowell.com
- THOMAS K HOOPER bmail@hooplax.com, tgranados@hooplax.com
- ALBERT N KENNEDY al.kennedy@tonkon.com, leslie.hurd@tonkon.com;andy.haro@tonkon.com
- LINDA S LAW linda.law@portlandoregon.gov, janet.long@portlandoregon.gov
- SHERRI DIANN MARTINELLI sherri.martinelli@greenemarkley.com, lori.pavey@greenemarkley.com
- R GIBSON MASTERS gib.masters@klgates.com, cheryl.mealy@klgates.com;bankruptcyecf@klgates.com
- JOSEPH M MEIER jmeier@cosholaw.com, jbean@cosholaw.com
- MICHAEL J MORRIS morrism@bennethartman.com, hartmansecretary@yahoo.com
- ZACHARY MOSNER BCUMosner@atg.wa.gov
- CHRISTOPHER L PARNELL cparnell@dunncarney.com, taichele@dunncarney.com
- JOHN SITHER John.Sither@usdoj.gov
- JONATHAN C SMALE jonathan@fieldjerger.com, koren@fieldjerger.com
- BRAD T SUMMERS tsummers@balljanik.com, akimmel@balljanik.com
- SKYLER M TANNER tanners@lanepowell.com, beldingt@lanepowell.com;docketing-pdx@lanepowell.com;barkerd@lanepowell.com
- JEANETTE L THOMAS JThomas@perkinscoie.com, etherrien@perkinscoie.com;docketpor@perkinscoie.com
- US Trustee, Portland USTPRegion18.PL.ECF@usdoj.gov

**NON-ECF PARTICIPANTS**

**SECURED CREDITORS**

Dan Willetts  
Key Bank  
1675 Broadway, Fifth Floor  
Denver, CO 80201

**REQUESTS FOR NOTICE**

Jason H. Robinson  
Babcock Scott & Babcock  
505 E 200 South, Suite 300  
Salt Lake City, UT 84102

Linda Boyle  
tw telecom inc.  
10475 Park Meadows Dr., #400  
Littleton, CO 80124

George A. Bogan  
Executive Vice President  
Main Steel Polishing Company, Inc.  
2 Hance Avenue  
Tinton Falls, NJ 07724

Old Dominion Freight Line, Inc.  
Legal Collections Department  
500 Old Dominion Way  
Thomasville, NC 27360

RICOH Americas Corporation  
Recovery & Bankruptcy Group  
3920 Arkwright Rd., #400  
Macon, GA 31210