

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF COLORADO**

In re:	)	
	)	
BRUNDAGE-BONE	)	Case No. 10-10758 ABC
CONCRETE PUMPING, INC.	)	Chapter 11
EIN: 84-0972141	)	
	)	
Debtor.	)	
	)	
In re:	)	
	)	Case No. 10-10760 ABC
JLS CONCRETE PUMPING, INC.	)	Chapter 11
EIN: 84-0972141	)	
	)	<i>Jointly Administered Under</i>
Debtor.	)	<i>Case No. 10-10758 ABC</i>

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**DEBTORS' PLAN OF REORGANIZATION UNDER  
CHAPTER 11 OF THE UNITED STATES BANKRUPTCY CODE**

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## **INTRODUCTION**

Brundage-Bone Concrete Pumping, Inc. and JLS Concrete Pumping, Inc., as debtors and debtors-in-possession in the above-captioned Chapter 11 Cases, hereby respectfully propose the following Plan for the resolution of outstanding Claims against, and Interests in, the Debtors pursuant to the Bankruptcy Code. Capitalized terms used in the Plan and not otherwise defined herein shall have the meanings ascribed to such terms in Article I.A hereof. Reference is made to the Disclosure Statement for a discussion of the Debtors' history, businesses, assets, results of operations, and projections of future operations, as well as a summary and description of the Plan and certain related matters. The Debtors are the proponents of the Plan within the meaning of section 1129 of the Bankruptcy Code.

ALL HOLDERS OF CLAIMS AND INTERESTS, TO THE EXTENT APPLICABLE, ARE ENCOURAGED TO READ THE PLAN AND THE DISCLOSURE STATEMENT IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN.

## **ARTICLE I.**

### **DEFINED TERMS, RULES OF INTERPRETATION, COMPUTATION OF TIME, AND GOVERNING LAW**

#### **A. Defined Terms**

As used in the Plan, the capitalized terms below have the following meanings, unless the context otherwise requires.

1. "Accrued Professional Compensation" means at any given moment, all accrued, contingent, and/or unpaid fees and expenses (including success fees and Allowed Fee Claims) for legal, financial, advisory, accounting, and other services and reimbursement of expenses that are awardable and allowable under sections 328, 330(a), or 331 of the Bankruptcy Code or otherwise rendered prior to the Effective Date by any Professionals retained in the Chapter 11 Cases that the Bankruptcy Court has not denied by a Final Order, to the extent that any such fees and expenses have not been previously paid regardless of whether a fee application has been Filed for any such amount. To the extent that the Bankruptcy Court or any higher court denies or reduces by a Final Order any amount of a Professional's fees or expenses, then the amount by which such fees or expenses are reduced or denied shall no longer constitute Accrued Professional Compensation.

2. "Administrative Claim" means any Claim for costs and expenses of administration of the Estate under sections 503(b), 507(b), or 1114(e)(2) of the Bankruptcy Code, including: (a) the actual and necessary costs and expenses incurred after the Petition Date of preserving the Estate and operating the business of the Debtors; (b) Fee Claims; (c) all fees and charges assessed against the Estates under chapter 123 of Title 28 of the United States Code, 28 U.S.C. §§ 1911–1930; and (d) Claims arising under section 503(b)(9) of the Bankruptcy Code.

3. “Administrative Claim Bar Date” means the deadline for filing requests for payment of Administrative Claims, which shall be the first Business Day that is 45 days following the Effective Date, except as otherwise provided herein; provided that the Administrative Claim Bar Date shall not apply to Claims that may be entitled to administrative priority pursuant to section 503(b)(9) of the Bankruptcy Code, which Claims shall be subject to the General Bar Date.

4. “ADR Procedure” means the procedure approved by the Bankruptcy Court establishing an alternative dispute resolution for resolution of certain pre-petition tort claims against Debtors.

5. “ADR Tort Claim” means a claim relating to property damage, workmen’s compensation, bodily injury or death arising from events that occurred prior to the Petition Date; provided that ADR Tort Claims does not include Workman’s Compensation Claims under Texas law.

6. “Affiliate” has the meaning set forth at section 101(2) of the Bankruptcy Code.

7. “AIG Equipment” means the construction equipment either owned by the Debtors or leased to the Debtors by AIG Equipment Lender under the AIG Equipment Loan Documents.

8. “AIG Equipment Lender” means each successor or incumbent lender, as applicable, currently a party to an AIG Equipment Loan Document, by assignment or otherwise.

9. “AIG Equipment Lender Claim” means any Claim derived from, based upon, or arising under any AIG Equipment Loan Document, including the AIG Equipment Lender Secured Claim, the AIG Equipment Lender Trust Secured Claim and the AIG Equipment Lender Deficiency Claim.

10. “AIG Equipment Lender Deficiency Claim” means the AIG Equipment Lender Claim after deducting the AIG Equipment Lender Secured Claim and the AIG Equipment Lender Secured Excess Equipment Claim under the applicable AIG Equipment Loan Document, which for the purposes of the Plan shall be \$5,663,394.

11. “AIG Equipment Lender Secured Claim” means the \$8,144,500 Secured portion of any AIG Equipment Lender Claim under the AIG Equipment Loan Document, which Claim is secured by the AIG Equipment retained by the Reorganized Debtor or transferred to the BB Operating Subsidiary.

12. “AIG Equipment Lender Secured Excess Equipment Claim” means the \$1,000,000 Secured portion of any AIG Equipment Lender Claim under the AIG Equipment Loan Document, which Claim is secured by the AIG Equipment transferred to the BB Liquidating Subsidiary.

13. “AIG Equipment Loan Document” means each of those certain schedules to the GE Master Lease Agreement, by and sold, transferred and assigned to AIG

Commercial Equipment Finance, Inc., each with an original aggregate principal amount of: (a) \$1,486,939 with respect to construction equipment schedule number dated as of February 27, 2006; (b) \$1,061,420 with respect to construction equipment schedule number 025, dated as of August 25, 2006; (c) \$1,623,160 with respect to construction equipment schedule number 026, dated as of September 8, 2006; (d) \$1,954,180 with respect to construction equipment schedule number 027, dated as of October 12, 2006; (e) \$4,307,740 with respect to construction equipment schedule number 028, dated as of December 1, 2006; (f) \$5,228,874 with respect to construction equipment schedule number 031, dated as of October 2002; (g) \$3,330,758 with respect to construction equipment schedule number 033, dated as of November 14, 2007; and (h) that certain Forbearance Agreement by and among AIG Commercial Equipment Finance, Inc. as lender, Brundage-Bone Concrete Pumping, Inc. as borrower and the guarantors party thereto dated July 24, 2009, as each of the above documents listed or referred to in (a)-(h) has been or may be further amended, restated, supplemented, or otherwise modified from time to time, including all agreements, documents, guarantees, notes, instruments, security agreements, financing statements, and any other agreements delivered pursuant thereto or in connection therewith.

14. “Allowed” means with respect to a Claim or Interest, or any portion thereof: (a) any Claim, proof of which is timely Filed by the applicable Claims Bar Date (or for which Claim under the Bankruptcy Code or Final Order of the Bankruptcy Court a Proof of Claim is not or shall not be required to be Filed); (b) any Claim that is listed in the Debtors’ schedules as not contingent, not unliquidated, and not disputed, and for which no Proof of Claim has been timely Filed; or (c) any Claim or Interest expressly deemed Allowed pursuant to the Plan; provided that with respect to any Claim described in clauses (a) and (b) above, such Claim shall be considered Allowed only if and to the extent that with respect to any Claim no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court or as to which any objection has been determined by a Final Order to the extent such objection is determined in favor of the respective Holder. Any Claim that has been or is hereafter listed in the Schedules as contingent, unliquidated or disputed, and for which no Proof of Claim is or has been timely Filed, is not considered Allowed and shall be expunged without further action by the Debtors and without further notice to or action, approval, or order of the Bankruptcy Court.

15. “Amended Organizational Documents” means any agreements, contracts, or documents, including any amended corporate governance documents to the extent necessary to implement the terms and conditions of the Plan.

16. “Annual Revised Fair Market Value” means the fair market value of the equipment transferred to the BB Liquidating Subsidiary by the Reorganized Debtor as determined on an annual basis by a nationally recognized equipment appraiser.

17. “Asset Management Agreement” means that agreement between the Reorganized Debtor and the BB Liquidating Subsidiary that provides for the calculation and payment of the Asset Management Fee, which agreement is attached to the Disclosure Statement as Exhibit \_\_\_\_\_.



18. “Asset Management Fee” means the fee paid by the Reorganized Debtor to pay all of the operating costs of the BB Liquidating Subsidiary plus all interest due and payable under the Secured Trust Equipment Note, which Asset Management Fee is more fully described in the Asset Management Agreement.

19. “Avoidance Actions” means any and all actual or potential claims or causes of action to avoid a transfer of property or an obligation incurred by the Debtors pursuant to sections 502(d), 544, 545, 547, 548, 549, 550, and 551 of the Bankruptcy Code.

20. “BB Liquidating Subsidiary” means the wholly owned subsidiary of the Reorganized Debtor that is established to hold the Excess Equipment transferred by the Reorganized Debtor to the BB Liquidating Subsidiary and to be the issuer of the Secured Trust Equipment Notes on the Effective Date.

21. “BB Liquidating Trust” means the trust established to hold the Lender Trust Deficiency Notes, the Reorganized Debtor Secured Lender Warrants and the Reorganized Debtor Trust Warrants.

22. “BB Liquidating Trustee” means Wilmington Trust Corporation.

23. “BB Operating Subsidiary” means wholly-owned subsidiary of the Reorganized Debtor that is established to own and operate the construction equipment that is transferred to by the Reorganized Debtor and the BB Liquidation Subsidiary on or after the Effective Date.

24. “BB Unsecured Trust” means the trust established to hold the BB Unsecured Trust Note and to disburse the proceeds to the Class 4 creditors, which trust agreement is attached to the Disclosure Statement as Exhibit \_\_\_\_\_.

25. “BB Unsecured Trust Note” means the Reorganized Debtor’s \$2,000,000 promissory note payable in 20 equal quarterly installments (\$100,000) without interest over 5 years.

26. “BB Unsecured Trustee” means trustee selected by the Unsecured Creditors’ Committee.

27. “Bankruptcy Code” means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as applicable to the Chapter 11 Cases.

28. “Bankruptcy Court” means the United States Bankruptcy Court for the District of Colorado.

29. “Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure, as applicable to the Chapter 11 Cases, promulgated under 28 U.S.C. § 2075 and the general, local, and chambers rules of the Bankruptcy Court.

30. “BofA Equipment” means the construction equipment owned by BofA Equipment Lender that is leased to the Debtors under the BofA Equipment Loan Documents and the construction equipment that is owned by the Debtors that is subject to a



security interest for the benefit of BofA Equipment Lender under the BofA Loan Documents.

31. “BofA Equipment Lender” means each successor or incumbent lender, as applicable, currently a party to a BofA Equipment Loan Document, by assignment or otherwise.

32. “BofA Equipment Lender Claim” means any Claim derived from, based upon, or arising under any BofA Equipment Loan Document.

33. “BofA Equipment Lender Deficiency Claim” means the BofA Equipment Lender Claim after deducting the BofA Equipment Lender Secured Claim under the BofA Equipment Loan Document.

34. “BofA Equipment Lender Secured Claim” means the Secured portion of any BofA Equipment Lender Claim and the BofA Equipment Lender Trust Secured Claim under the BofA Equipment Loan Document.

35. “BofA Equipment Loan Document” means each of (a) that certain master equipment lease agreement number 17102-90000 by and between Banc of America Leasing & Capital, LLC, as lessor and Brundage- Bone Concrete Pumping, Inc., as lessee, dated as of June 13, 2007 together with those certain schedules, entered into from time to time, by and between Banc of America Leasing & Capital LLC, as lessor, and Brundage-Bone Concrete Pumping, Inc., as lessee, described as: (i) schedule 90001, dated as of July 26, 2007, in an aggregate principal amount of \$4,885,886; (ii) schedule 90002, dated as of October 3, 2007, in an aggregate principal amount of \$991,880; and (iii) schedule 90003, dated as of December 3, 2007, in an aggregate principal amount of \$1,122,610, and (b) that certain promissory note and loan and security agreement, each, by and among Fifth Third Bank, as lender, Brundage-Bone Concrete Pumping, Inc., as borrower, and the guarantors party thereto, dated as of December 6, 2005, in an original aggregate principal amount of \$5,956,446, as sold, assigned and transferred to Banc of America Leasing & Capital LLC, pursuant to that assignment and specification of assigned contract by and between Fifth Third Bank and Banc of America Leasing & Capital LLC, dated as of December 7, 2005; and (c) that certain Forbearance Agreement by and among Banc of America Leasing & Capital, LLC as lender, Brundage-Bone Concrete Pumping, Inc. as borrower and the guarantors party thereto dated August 4, 2009, as each of the above documents listed or referred to in (a), (b) and (c) has been or may be further amended, restated, supplemented, or otherwise modified from time to time, including all agreements, documents, guarantees, notes, instruments, security agreements, financing statements, and any other agreements delivered pursuant thereto or in connection therewith.

36. “Brundage-Bone” means Brundage-Bone Concrete Pumping, Inc., a Colorado corporation.

37. “Business Day” means any day, other than a Saturday, Sunday, or “legal holiday” (as defined in Bankruptcy Rule 9006(a)).

38. “Cash” means the legal tender of the United States of America or the equivalent thereof, including bank deposits, checks, and Cash Equivalents.

39. “Cash Equivalents” means equivalents of Cash in the form of readily marketable securities or instruments issued by an Entity, including readily marketable direct obligations of, or obligations guaranteed by, the United States of America, commercial paper of domestic corporations carrying a Moody’s rating of “P2” or better, or equivalent rating of any other nationally recognized rating service, or interest bearing certificates of deposit or other similar obligations of domestic banks or other financial institutions having a shareholders’ equity or capital of not less than one hundred million dollars (\$100,000,000) having maturities of not more than one year, at the then generally prevailing rates of interest for like amounts and like periods.

40. “Cause of Action” means any claim, cause of action, controversy, demand, right, action, Lien, indemnity, guaranty, suit, obligation, liability, damage, judgment, account, defense, offset, power, privilege, license, and franchise of any kind or character whatsoever, known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively, whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity, or pursuant to any other theory of law. Cause of Action also includes: (a) any right of setoff, counterclaim, or recoupment and any claim on contracts or for breaches of duties imposed by law or in equity; (b) the right to object to Claims or Interests; (c) any claim pursuant to sections 362, 510, 542, 543, 544 through 550, or 553 of the Bankruptcy Code; (d) any claim or defense including fraud, mistake, duress, and usury and any other defenses set forth in section 558 of the Bankruptcy Code; (e) any state law fraudulent transfer claim; (f) any claim or cause of action of any kind against any Debtor Releasee, Third Party Releasee or Exculpated Party based in whole or in part upon acts or omissions occurring prior to or after the Petition Date; (g) any cause of action listed in the Disclosure Statement; and (j) any Avoidance Action.

41. “CBI Equipment” means the construction equipment owned by the Debtors that is subject to a security interest for the benefit of CBI Equipment Lender under the CBI Loan Documents.

42. “CBI Leasing Equipment Lender” means each successor or incumbent lender, as applicable, currently a party to a CBI Equipment Loan Document, by assignment or otherwise.

43. “CBI Leasing Equipment Lender Claim” means any Claim derived from, based upon, or arising under any CBI Leasing Equipment Loan Document.

44. “CBI Leasing Equipment Lender Deficiency Claim” means the CBI Leasing Equipment Lender Claim after deducting the CBI Leasing Equipment Lender Secured Claim under the CBI Leasing Equipment Loan Document.

45. “CBI Leasing Equipment Lender Secured Claim” means the Secured portion of any CBI Leasing Equipment Lender Claim under the CBI Leasing Equipment Loan Document.

46. “CBI Leasing Equipment Loan Document” means each of (a) that certain promissory note, dated as of December 8, 2006, and that certain loan and security agreement, dated as of August 9, 2006, each, by and among Wachovia Financial Services, Inc., as lender, Brundage-Bone Concrete Pumping, Inc., as borrower, and the guarantors party thereto, in an original aggregate principal amount of \$2,974,000, as sold, assigned and transferred to CBI Leasing Inc., pursuant to that master assignment agreement, by and between CBI Leasing Inc. and Wachovia Financial Services, Inc., dated as of December 14, 2006 and (b) that certain Forbearance Agreement by and among CBI Leasing, Inc. as lender, Brundage-Bone Concrete Pumping, Inc. as borrower and the guarantors party thereto dated July 23, 2009, as each of the documents listed or referred to in (a) and (b) above has been or may be further amended, restated, supplemented, or otherwise modified from time to time, including all agreements, documents, guarantees, notes, instruments, security agreements, financing statements, and any other agreements delivered pursuant thereto or in connection therewith.

47. “Certificate” means any instrument evidencing a Claim or an Interest.

48. “Chapter 11 Cases” means (a) when used with reference to a particular Debtor, the chapter 11 case pending for that Debtor under chapter 11 of the Bankruptcy Code in the Bankruptcy Court and (b) when used with reference to all Debtors, the jointly administered chapter 11 cases pending for the Debtors in the Bankruptcy Court.

49. “Claim” means any claim against a Debtor as defined in section 101(5) of the Bankruptcy Code.

50. “Claims Bar Date” means, as applicable: (a) April 16, 2010, the General Bar Date; (b) the Government Claims Bar Date; (c) the Administrative Claims Bar Date; or (d) such other period of limitation as may be specifically fixed by an order of the Bankruptcy Court for filing such Claims.

51. “Claims Register” means the official register of Claims maintained by the Notice, Claims and Solicitation Agent, or by the clerk of the Bankruptcy Court.

52. “Class” means a category of Holders of Claims or Interests as set forth in Article III hereof pursuant to section 1122(a) of the Bankruptcy Code.

53. “Class 1” means Class 1-A, Class 1-B, Class 1-C, Class 1-D, Class 1-E, Class 1-F, Class 1-G, Class 1-H and Class 1-I as set forth in Article III hereof pursuant to section 1122(a) of the Bankruptcy Code.

54. “Class 2” means Class 2-A, Class 2-B, Class 2-C, Class 2-D and Class 2-E as set forth in Article III hereof pursuant to section 1122(a) of the Bankruptcy Code.

55. “Class 3” means Class 3-A, Class 3-B, Class 3-C, Class 3-D, Class 3-E, Class 3-F, Class 3-G, Class 3-H and Class 3-I as set forth in Article III hereof pursuant to section 1122(a) of the Bankruptcy Code.

56. “CM/ECF” means the Bankruptcy Court’s Case Management and Electronic Case Filing system.

57. “Comerica Equipment” means the construction equipment owned by the Debtor that is security for the Comerica Equipment Lender Claim.

58. “Comerica Equipment Lender” means each successor or incumbent lender, as applicable, currently a party to a Comerica Equipment Loan Document, by assignment or otherwise.

59. “Comerica Equipment Lender Claim” means any Claim derived from, based upon, or arising under any Comerica Equipment Loan Document, including the Comerica Equipment Lender Secured Claim, the Comerica Equipment Lender Secured Excess Equipment Claim and the Comerica Equipment Lender Deficiency Claim.

60. “Comerica Equipment Lender Deficiency Claim” means the Comerica Equipment Lender Claim after deducting the Comerica Equipment Lender Secured Claim and the Comerica Equipment Lender Secured Excess Equipment Claim under the Comerica Equipment Loan Document, which for purposes of the Plan shall be \$2,374,535.

61. “Comerica Equipment Lender Secured Claim” means the \$3,857,500 Secured portion of any Comerica Equipment Lender Claim under the applicable Comerica Equipment Loan Document, which Claim is secured by the Comerica Equipment retained by the Reorganized Debtor or transferred to the BB Operating Subsidiary.

62. “Comerica Equipment Lender Secured Excess Equipment Claim” means the Secured portion of any Comerica Equipment Lender Claim under the applicable Comerica Equipment Loan Document, which Claim is secured by the Comerica Equipment, if any transferred to the BB Liquidating Subsidiary.

63. “Comerica Equipment Loan Document” means each of (a) that certain promissory note, by and among Fifth Third Bank, as lender, Brundage-Bone Concrete Pumping, Inc., as borrower, and the guarantors party thereto, dated as of June 15, 2005, in an original aggregate principal amount of \$8,946,676, as sold, assigned and transferred to Comerica Corporation, pursuant to that notice and acknowledgement of assignment, dated as of June 15, 2005 and (b) that certain Forbearance Agreement by and among Comerica Leasing Corporation as lender, Brundage-Bone Concrete Pumping, Inc. as borrower and the guarantors party thereto dated July 24, 2009, as each of the documents listed or referred to above in (a) and (b) has been or may be further amended, restated, supplemented, or otherwise modified from time to time, including all agreements, documents, guarantees, notes, instruments, security agreements, financing statements, and any other agreements delivered pursuant thereto or in connection therewith.

64. “Committee” means the official committee of unsecured creditors appointed by the United States Trustee in the Chapter 11 Cases, pursuant to section 1102 of the Bankruptcy Code, comprising the Committee Members, and as the same may have been reconstituted from time to time.

65. “Committee Member” means a member of the Committee, as appointed by the United States Trustee in the Chapter 11 Cases.

66. “Confirmation” means the entry of the Confirmation Order on the docket of the Chapter 11 Cases, subject to all conditions specified in Article X.A hereof having been: (a) satisfied; or (b) waived pursuant to Article X.B hereof.

67. “Confirmation Date” means the date upon which the Confirmation Order is entered by the Bankruptcy Court on its docket, with respect to the Chapter 11 Cases.

68. “Confirmation Hearing” means the hearing at which the Confirmation Order is first considered by the Bankruptcy Court.

69. “Confirmation Hearing Notice” means the notice approved in the Solicitation Procedures Order that sets forth in detail the voting and objection deadlines with respect to the Plan.

70. “Confirmation Order” means the order of the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code.

71. “Consummation” means the occurrence of the Effective Date.

72. “Creditor” means any creditor of a Debtor as defined in section 101(10) of the Bankruptcy Code.

73. “CTO” means William K. Snyder, a Managing Partner with CRG Partners Group LLC, in his capacity as the Chief Turnaround Officer of the Debtors, charged with primarily managing the reorganization process and whose appointment was authorized by Order of the Bankruptcy Court.

74. “Cure” means the distribution in the ordinary course of business following the later of (a) the Effective Date or (b) the date on which an Executory Contract or Unexpired Lease is assumed, of Cash or such other property as may be ordered by the Bankruptcy Court or agreed upon by the applicable non-debtor counterparty to such Executory Contract or Unexpired Lease and the Debtors, subject to Plan Sponsor Approval, or the Reorganized Debtors, as applicable, in an amount equal to all unpaid monetary obligations under applicable law (including, to the extent provided for under the applicable Executory Contract or Unexpired Lease assumed pursuant to section 365 of the Bankruptcy Code, postpetition interest at the contract rate as agreed between the parties or determined by the Bankruptcy Court) or such lesser amount as may be agreed upon by the parties, under an Executory Contract or Unexpired Lease assumed pursuant to section 365 of the Bankruptcy Code, to the extent such obligations are enforceable under the Bankruptcy Code and applicable non-bankruptcy law.

75. “Cure Bar Date” means the deadline for filing requests for payment of Cure or otherwise objecting to assumption, which shall be the later of: (a) 30 days after the Effective Date; and (b) 30 days after the effectiveness of the assumption of the applicable Executory Contract or Unexpired Lease, unless otherwise ordered by the Bankruptcy Court or agreed to by the counterparty to the applicable Executory Contract or Unexpired Lease and the Debtors.

76. “Debtor Releasees” means, collectively: (a) all current and former officers, directors, members, managers, and employees of the Debtors; and (b) all attorneys, financial advisors, advisors, accountants, investment bankers, investment advisors, actuaries, professionals and affiliates of the Debtors, their subsidiaries, and each of their respective predecessors and successors in interest, and all of their respective current and former members or shareholders (including ex officio members or shareholders), managers, officers, directors, employees, partners, attorneys, financial advisors, accountants, managed funds, investment bankers, investment advisors, actuaries, professionals, and affiliates, each in their respective capacities as such.

77. “Debtors” means Brundage-Bone Concrete Pumping, Inc. and JLS Concrete Pumping, Inc., in their capacities as the debtors and debtors-in-possession in the Chapter 11 Cases.

78. “Deficiency Claims” means, collectively, the Lender Deficiency Claims and the Real Estate Lender Deficiency Claims.

79. “DIP Agent” means Wells Fargo Bank, N.A., the administrative agent under the DIP Credit Agreement or any successor agent appointed in accordance with such agreement.

80. “DIP Credit Agreement” means that certain \$15,000,000 superpriority debtor-in-possession credit agreement, approved by Order of the Bankruptcy Court dated March 1, 2010, by and among the Debtors named therein, the DIP Agent, and the DIP Lenders named therein, as the same may have been subsequently modified, amended, or supplemented, together with all instruments and agreements related thereto.

81. “DIP Facility” means that certain \$15,000,000 superpriority debtor-in-possession credit facility entered into pursuant to the DIP Credit Agreement.

82. “DIP Facility Claim” means any and all Claims arising under or related to the DIP Facility, including all fees and expenses of attorneys and financial advisors of the DIP Agent, all of which have been Allowed pursuant to the Bankruptcy Court orders approving the DIP Facility, which includes the Wells Fargo Credit Facility Line of Credit Claim.

83. “DIP Lenders” means, collectively, the Lenders (as defined in the DIP Credit Agreement) party to the DIP Facility from time to time.

84. “Disclosure Statement” means the disclosure statement for the Plan, as amended, supplemented, or modified from time to time, including all exhibits and schedules thereto and references therein that relate to the Plan, that is prepared and



distributed in accordance with the Bankruptcy Code, the Bankruptcy Rules, and any other applicable law.

85. “Disputed” means with respect to any Claim or Interest, any Claim or Interest that is not yet Allowed.

86. “Distribution Agent” means any Entities chosen by the Reorganized Debtors, which Entities may include, without limitation, the Reorganized Debtors, the BB Equipment Trustee, the BB Unsecured Trustee or the Notice, Claims and Solicitation Agent, to make or facilitate distributions required by the Plan.

87. “Distribution Date” means the date occurring as soon as reasonably practicable after the Effective Date when distributions under the Plan shall commence.

88. “Distribution Record Date” means the date for determining which Holders of Allowed Claims are eligible to receive distributions pursuant to the Plan, which shall be the Confirmation Date or such other date as designated in the Plan or a Final Order.

89. “Effective Date” means the date selected by the Debtors that is the first Business Day thirty (30) days after the Confirmation Date.

90. “Employee Equity Incentive Program” means a plan or plans by which, on or after the Effective Date, 10% of New Common Stock shall be reserved for issuance of Warrants with an exercise price of \$.01 per share of New Common Stock for the benefit of certain continuing employees of the Reorganized Debtors, with an allocation reserved for new employees, the terms of which are set forth in Exhibit \_\_\_\_\_ to the Disclosure Statement.

91. “Entity” has the meaning set forth at section 101(15) of the Bankruptcy Code.

92. “Equipment Leases” means the leases of construction equipment by and among Brundage-Bone Concrete Pumping, Inc. as lessee and AIG Equipment Lender, GE Commercial Finance Equipment Lender and WFEFI Equipment Lender as lessors.

93. “Equipment Lessors” means AIG Equipment Lender, GE Commercial Finance Equipment Lender and WFEFI Equipment Lender.

94. “Equity Security” means any equity security, as defined at section 101(16) of the Bankruptcy Code, in the Debtors.

95. “Estate” means as to each Debtor, the estate created for the Debtor in its Chapter 11 Case pursuant to section 541 of the Bankruptcy Code.

96. “Excess Cash Flow” means the Reorganized Debtors’ net income after taxes, plus non-cash amortization and depreciation, minus working capital requirements (after financing credits), capital expenditures, and principal payments under the Plan, calculated annually in conjunction with the Reorganized Debtors’ audited financial statements. 75% of Excess Cash Flow shall be used to pay PIK Interest and reduce the principal balance owed on



the Lender Secured Senior Term Notes. The remaining 25% of the Excess Cash Flow shall be retained by the Reorganized Debtor for operations.

97. “Excess Equipment” means any construction equipment transferred by the Reorganized Debtor to the BB Liquidating Subsidiary, a description of the Excess Equipment and the name of the Holder of the Secured Claim on each piece of Excess Equipment is attached hereto as **Exhibit B**.

98. “Exculpated Parties” means each of: (a) the Debtors and the Reorganized Debtors; (b) the Debtor Releasees; (c) the Committee; (d) all current and former Committee Members; (e) the DIP Agent and the DIP Lenders, in each of the foregoing cases, solely in their capacity as such; (f) the Exit Facility Lenders and (g) with respect to each of the foregoing Entities, all of the current and former members (including ex officio members), officers, directors, employees, partners, attorneys, financial advisors, accountants, managed funds, investment bankers, investment advisors, actuaries, professionals, agents, affiliates, and representatives of each of the foregoing Entities (whether current or former, in each case in his, her or its capacity as such).

99. “Executory Contract” means a contract to which one or more of the Debtors is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

100. “Exit Facility” means that senior, secured credit facility to be entered into pursuant to the Exit Facility Agreement to pay off the DIP Facility (including the standby letters of credit) and provide the Reorganized Debtor with an operating line of credit.

101. “Exit Facility Agreement” means that certain loan agreement and other documents to be entered into by the Reorganized Debtor and the Exit Facility Lenders on the Effective Date, substantially consistent with the term sheet attached as **Exhibit A** hereto and substantially in the form of the Exit Facility Agreement set forth in Exhibit \_\_\_\_\_ to the Disclosure Statement.

102. “Exit Facility Lenders” means the lender or lenders party to the Exit Facility Agreement from time to time, which shall be \_\_\_\_\_ or its designee, which designee may be any Entity.

103. “Federal Judgment Rate” means the federal judgment rate in effect as of the Petition Date, which was 0.35%.

104. “Fee Claim” means any Claim arising under sections 328, 330(a), 331, 363, or 503 of the Bankruptcy Code for Accrued Professional Compensation.

105. “File” means to file with the Bankruptcy Court in the Chapter 11 Cases or, in the case of Proofs of Claim, to file with the Notice, Claims and Solicitation Agent.

106. “Final Decree” means the decree contemplated under Bankruptcy Rule 3022.

107. “Final Order” means an order or judgment of the Bankruptcy Court, or other court of competent jurisdiction with respect to the subject matter, as entered on the docket

in any Chapter 11 Case or the docket of any court of competent jurisdiction, that has not been reversed, stayed, modified, or amended, and as to which the time to appeal, or seek certiorari or move for a new trial, reargument, or rehearing has expired and no appeal or petition for certiorari or other proceedings for a new trial, reargument, or rehearing been timely taken, or as to which any appeal that has been taken or any petition for certiorari that has been timely filed has been withdrawn or resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought or the new trial, reargument, or rehearing shall have been denied, resulted in no modification of such order, or has otherwise been dismissed with prejudice.

108. “GE Commercial Finance Equipment” means the construction equipment owned by GE Commercial Finance that is leased to the Debtors under the GE Commercial Finance Equipment Loan Documents.

109. “GE Commercial Finance Equipment Lender” means each successor or incumbent lender, as applicable, currently a party to a GE Commercial Finance Equipment Loan Document, by assignment or otherwise.

110. “GE Commercial Finance Equipment Lender Claim” means any Claim derived from, based upon, or arising under any GE Commercial Finance Equipment Loan Document, which Claim shall be calculated utilizing the Lease Modification Formula.

111. “GE Commercial Finance Equipment Lender Deficiency Claim” means the GE Commercial Finance Equipment Lender Claim after deducting the GE Commercial Finance Equipment Lender Secured Claim and the GE Commercial Finance Equipment Lender Secured Excess Equipment Claim under the GE Commercial Finance Equipment Loan Document, which for purposes of the Plan shall be \$2,602,001.

112. “GE Commercial Finance Equipment Lender Secured Claim” means the \$4,207,300 Secured portion of any GE Commercial Finance Equipment Lender Claim under the GE Commercial Finance Equipment Loan Document, which Claim is secured by the GE Commercial Finance Equipment retained by the Reorganized Debtor or transferred to the BB Operating Subsidiary.

113. “GE Commercial Finance Equipment Lender Secured Excess Equipment Claim” means the \$2,360,200 Secured portion of any GE Commercial Finance Equipment Lender Claim under the GE Commercial Finance Equipment Loan Document, which Claim is secured by the GE Commercial Finance Equipment transferred to the BB Liquidating Subsidiary.

114. “GE Commercial Finance Equipment Loan Document” means each of (a) the GE Master Lease Agreement, the obligations of which are secured by certain specific equipment collateral as evidenced by those certain construction equipment schedules and (b) each of those certain construction equipment schedules to which General Electric Capital Corporation is the incumbent, successor, or otherwise lender party thereto, each with an original aggregate principal amount of: (i) \$515,350 with respect to construction equipment schedule number 007, dated as of September 22, 2004; (ii) \$515,350 with respect to construction equipment schedule number 009, dated as of September 22, 2004;

(iii) \$515,350 with respect to construction equipment schedule number 010, dated as of September 22, 2004; (vi) \$515,350 with respect to construction equipment schedule number 011, dated as of October 21, 2004; (v) \$709,520 with respect to construction equipment schedule number 012, dated as of October 21, 2004; (vi) \$515,350 with respect to construction equipment schedule number 013, dated as of October 21, 2004; (vii) \$709,520 with respect to construction equipment schedule number 014, dated as of October 21, 2004; (viii) \$709,520 with respect to construction equipment schedule number 015, dated as of October 21, 2004; (xi) \$ 1.186 million with respect to construction equipment schedule number 016, dated as of October 21, 2004; (x) \$488,965 with respect to construction equipment schedule number 018, dated as of November 18, 2005; (xi) \$488,965 with respect to construction equipment schedule number 019, dated November 18, 2005; \$486,865 with respect to construction equipment schedule number 020, dated November 18, 2005; \$625,648 with respect to construction equipment schedule number 021, dated November 18, 2005; \$1,127,292 with respect to construction equipment schedule number 023, dated as of March 13, 2006; \$4,835,280 with respect to construction equipment schedule number 029, dated as of December 11, 2006; \$665,200 with respect to construction equipment schedule number 040, dated as of May 1, 2008, as each of the above documents listed or referred to in (a) and (b) has been or may be further amended, restated, supplemented, or otherwise modified from time to time, including all agreements, documents, guarantees, notes, instruments, security agreements, financing statements, and any other agreements delivered pursuant thereto or in connection therewith.

115. “GE Commercial Finance Real Estate” means real estate located at 6461 & 6475 Downing Street, Denver, CO 80229 and 350 West 700 South, Pleasant Grove, UT 84062.

116. “GE Commercial Finance Real Estate Lender” means each successor or incumbent lender, as applicable, currently a party to a GE Commercial Finance Real Estate Loan Document, by assignment or otherwise.

117. “GE Commercial Finance Real Estate Lender Claim” means any Claim derived from, based upon, or arising under any GE Commercial Finance Real Estate Loan Document.

118. “GE Commercial Finance Real Estate Lender Deficiency Claim” means the GE Commercial Finance Real Estate Lender Claim after deducting the related GE Commercial Finance Real Estate Secured Claim under the GE Commercial Finance Real Estate Loan Document.

119. “GE Commercial Finance Real Estate Lender Secured Claim” means the Secured portion of the GE Commercial Finance Real Estate Lender Claim under the GE Commercial Finance Real Estate Loan Document, which is secured by a first mortgage on the GE Commercial Finance Real Estate.

120. “GE Commercial Finance Real Estate Loan Document” means each of (a) that certain promissory note, by and between GE Commercial Finance Business Property Corporation, as lender, and Brundage-Bone Concrete Pumping, Inc., as borrower, dated on or around August, 2005, in an original aggregate principal amount of \$ 1.826 million,

secured by that certain real estate collateral located at 6461 & 6475 Downing Street, Denver, CO, 80229, and (b) that certain promissory note, by and between GE Commercial Finance Business Property Corporation, as lender, and Brundage-Bone Concrete Pumping, Inc., as borrower, dated on or around August, 2005, in an original aggregate principal amount of \$1 .072 million, secured by that certain real estate collateral located at 350 West 700 South, Pleasant Grove, UT, 84062, as each of the above documents listed or referred to in (a) and (b) has been or may be further amended, restated, supplemented, or otherwise modified from time to time, including all agreements, documents, guarantees, notes, instruments, security agreements, financing statements, and any other agreements delivered pursuant thereto or in connection therewith.

121. “GE Master Lease Agreement” means that certain master lease agreement, by and among General Electric Capital Corporation, as lessor, Brundage-Bone Concrete Pumping, Inc. as lessee, and the guarantors, party thereto, dated as of October 23, 2002, as has been or may be further amended, restated, supplemented, or otherwise modified from time to time, including all agreements, documents, guarantees, notes, instruments, security agreements, financing statements, and any other agreements delivered pursuant thereto or in connection therewith.

122. “General Bar Date” means April 16, 2010, the date set by the Bankruptcy Court pursuant to which all Proofs of Claim except Administrative Claims and Governmental Claims against any of the Debtors must be Filed; provided that all Proofs of Claim based on Administrative Claims that may be entitled to administrative priority pursuant to section 503(b)(9) of the Bankruptcy Code must be Filed by the General Bar Date.

123. “General Unsecured Claim” means any unsecured Claim against any Debtor that is not a/an: (a) DIP Facility Claim; (b) Administrative Expense Claim; (c) Fee Claim; (d) Priority Tax Claim; (e) Other Priority Claim; (f) Lender Secured Claim; (g) Real Estate Lender Secured Claim; (h) Intercompany Claim; (i) Section 510(b) Claim; or (j) Interest.

124. “GMAC Equipment” means the vehicles either owned by the Debtors or leased to the Debtors under the GMAC Equipment Loan Document.

125. “GMAC Equipment Lender” means each successor or incumbent lender, as applicable, currently a party to a GMAC Equipment Loan Document, by assignment or otherwise.

126. “GMAC Equipment Lender Claim” means any Claim derived from, based upon, or arising under any GMAC Equipment Loan Document.

127. “GMAC Equipment Lender Secured Claim” means the Secured portion of any GMAC Equipment Lender Claim under the GMAC Equipment Loan Document.

128. “GMAC Equipment Loan Document” means each of (a) that certain ComTRAC lease agreement, by and between General Motors Acceptance Corporation, as lessor, and Brundage-Bone Concrete Pumping, Inc., as lessee, dated as of February 7, 2006, in an original aggregate principal amount of \$41,345 and (b) that certain retail

installment sale contract GMAC flexible finance plan, by and between Westfall GMC, as creditor/seller, and Brundage-Bone Concrete Pumping Inc., as buyer, dated as of May 30, 2007, in an original aggregate principal amount of \$40,651, as each of the above documents listed or referred to in (a) and (b) has been or may be further amended, restated, supplemented, or otherwise modified from time to time, including all agreements, documents, guarantees, notes, instruments, security agreements, financing statements, and any other agreements delivered pursuant thereto or in connection therewith.

129. “Governmental Claim” means any claim held by any Governmental Unit against any of the Debtors.

130. “Governmental Claims Bar Date” means the date set by the Bankruptcy Court pursuant to which all Government Claims must be Filed.

131. “Governmental Unit” has the meaning set forth at section 101(27) of the Bankruptcy Code.

132. “Holder” means any Person or Entity holding a Claim or an Interest.

133. “Impaired” means, with respect to any Class of Claims or Interests, a Claim or Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

134. “Insider” has the meaning set forth at section 101(31) of the Bankruptcy Code.

135. “Insurance Policy Documents” means all of the Debtors’ insurance policies and any agreements, documents or instruments relating thereto maintained by the Debtors as of the Petition Date, including all insurance policies for directors’ and officers’ liability maintained by the Debtors as of the Petition Date.

136. “Intercompany Claim” means any Claim of a Debtor against another Debtor.

137. “Intercompany Contract” means any contract between two or more Debtors.

138. “Intercompany Interest” means any Interest held by a Debtor in another Debtor.

139. “Interest” means any Equity Security including all issued, unissued, authorized, or outstanding shares of stock together with any warrants, options, or contractual rights to purchase or acquire such Equity Securities at any time and all rights arising with respect thereto.

140. “Interim Compensation Order” means the Order Establishing Interim Compensation Procedure for Professionals dated January 21, 2010, allowing Professionals to seek interim compensation in accordance with the compensation procedures approved therein, as may have been modified by a Final Order approving the retention of any particular Professional.

141. “JLS” means JLS Concrete Pumping, Inc., a California corporation.

142. “KeyBank Equipment” means the construction equipment that is owned by the Debtors that is security under the KeyBank Equipment Loan Documents.

143. “KeyBank Equipment Lender” means each successor or incumbent lender, as applicable, currently a party to a KeyBank Equipment Loan Document, by assignment or otherwise.

144. “KeyBank Equipment Lender Claim” means any Claim derived from, based upon, or arising under any KeyBank Equipment Loan Document, including the KeyBank Equipment Lender Secured Claim, the KeyBank Equipment Lender Secured Excess Equipment Claim and the KeyBank Equipment Lender Deficiency Claim.

145. “KeyBank Equipment Lender Deficiency Claim” means the KeyBank Equipment Lender Claim after deducting the KeyBank Equipment Lender Secured Claim and the KeyBank Equipment Lender Secured Excess Equipment Claim under the KeyBank Equipment Loan Document, which for purposes of the Plan shall be \$11,244,001.

146. “KeyBank Equipment Lender Secured Claim” means the \$9,267,300 Secured portion of any KeyBank Equipment Lender Claim under the KeyBank Equipment Loan Document, which Claim is secured by the KeyBank Equipment retained by the Reorganized Debtor or transferred to the BB Operating Subsidiary.

147. “KeyBank Equipment Lender Secured Excess Equipment Claim” means the \$3,225,500 Secured portion of any KeyBank Equipment Lender Claim under the KeyBank Equipment Loan Document, which Claim is secured by the KeyBank Equipment transferred to the BB Liquidating Subsidiary.

148. “KeyBank Equipment Loan Document” means each of (a) that certain promissory note and revolving credit agreement by and among KeyBank National Association, as lender, Brundage-Bone Concrete Pumping Inc., as borrower, and the guarantors party thereto, dated as of November 30, 2006, in the maximum principal amount of \$25 million and (b) that certain Forbearance Agreement by and among KeyBank National Association and Key Equipment Finance, Inc. as lenders, Brundage-Bone Concrete Pumping, Inc. as borrower and the guarantors party thereto dated July 31, 2009, as each of the above documents has been or may be further amended, restated, supplemented, or otherwise modified from time to time, including all agreements, documents, guarantees, notes, instruments, security agreements, financing statements, and any other agreements delivered pursuant thereto or in connection therewith.

149. “Key Equipment Finance Equipment” means the construction equipment that is owned by the Debtors that is security under the Key Equipment Finance Loan Documents.

150. “Key Equipment Finance Lender” means each successor or incumbent lender, as applicable, currently a party to a Key Equipment Finance Loan Document, by assignment or otherwise.



151. “Key Equipment Finance Lender Claim” means any Claim derived from, based upon, or arising under any Key Equipment Finance Loan Document, including the Key Equipment Lender Secured Claim, the Key Equipment Lender Secured Excess Equipment Claim and the Key Equipment Lender Deficiency Claim.

152. “Key Equipment Finance Lender Deficiency Claim” means the Key Equipment Finance Lender Claim after deducting the Key Equipment Finance Lender Secured Claim and the Key Finance Equipment Lender Secured Excess Equipment Claim under the Key Finance Equipment Loan Document, which for purposes of the Plan shall be \$3,840,355.

153. “Key Equipment Finance Lender Secured Claim” means the \$4,170,600 Secured portion of any Key Equipment Finance Lender Claim under the Key Equipment Finance Loan Document, which Claim is secured by the Key Equipment Finance retained by the Reorganized Debtor or transferred to the BB Operating Subsidiary.

154. “Key Equipment Finance Lender Secured Excess Equipment Claim” means the \$1,872,200 Secured portion of any Key Equipment Finance Lender Claim under the Key Equipment Finance Loan Document, which Claim is secured by the Key Equipment Finance transferred to the BB Liquidating Subsidiary.

155. “Key Equipment Finance Loan Document” means (a) that certain promissory note, dated September 6, 2006, and that certain loan and security agreement, dated September 26, 2006, each, by and among Fifth Third Bank, as lender, Brundage-Bone Concrete Pumping, Inc., as borrower, and the guarantors party thereto, in an aggregate principal amount of \$6,488,887, as sold, assigned, and transferred to Key Equipment Finance Inc., pursuant to that certain specification of assigned interest, entered into by and between Fifth Third Bank and Key Equipment Finance Inc., on or around September 26, 2006; (b) that certain promissory note, dated as of March 28, 2007, and that certain master security agreement, dated as of March 28, 2007, each, by and among Key Equipment Finance Inc., as lender, Brundage-Bone Concrete Pumping Inc., as borrower, and the guarantors, party thereto, in an aggregate principal amount of \$5,427,250 and (c) that certain Forbearance Agreement by and among KeyBank National Association and Key Equipment Finance, Inc. as lenders, Brundage-Bone Concrete Pumping, Inc. as borrower and the guarantors party thereto dated July 31, 2009, as each of the above documents has been or may be further amended, restated, supplemented, or otherwise modified from time to time, including all agreements, documents, guarantees, notes, instruments, security agreements, financing statements, and any other agreements delivered pursuant thereto or in connection therewith.

156. “Lease Modification Formula” means the method by which lease payments under the Equipment Leases are converted to debt for purposes of the Plan. On the Effective Date, the amounts payable under each Equipment Lease shall be converted to debt in accordance with the following formula: All unpaid (pre- and post-petition) and future amounts due under each Equipment Lease shall be discounted to present value at the rate of 5% per annum and the amount derived from such calculation shall represent the amount of each Lessor Equipment Lender Claim. Attached as Exhibit \_\_\_\_\_ to the Disclosure Statement is the calculation of each Equipment Lessor’s Equipment Lender Claim.



157. “Lender Deficiency Claims” means collectively the (a) AIG Equipment Lender Deficiency Claim, (b) Comerica Equipment Lender Deficiency Claim, (c) GE Commercial Equipment Lender Deficiency Claim, (d) KeyBank Equipment Lender Deficiency Claim, (e) Key Equipment Finance Lender Deficiency Claim, (f) People’s Capital Equipment Lender Deficiency Claim, (g) Wachovia Equipment Lender Deficiency Claim, (h) Wells Fargo Lender Deficiency Claim and (i) WFEFI Equipment Lender Deficiency Claim.

158. “Lender Secured Claims” means collectively the (a) AIG Equipment Lender Secured Claim, (b) Comerica Equipment Lender Secured Claim, (c) GE Commercial Equipment Lender Secured Claim, (d) KeyBank Equipment Lender Secured Claim, (e) Key Equipment Finance Lender Secured Claim, (f) People’s Capital Equipment Lender Secured Claim, (g) Wachovia Equipment Lender Secured Claim, (h) Wells Fargo Credit Facility Secured Claim, (i) Wells Fargo Equipment Lender Secured Claim and (j) WFEFI Equipment Lender Secured Claim.

159. “Lender Secured Excess Equipment Claim” means collectively the (a) AIG Equipment Lender Secured Excess Equipment Claim, (b) Comerica Equipment Lender Secured Excess Equipment Claim, (c) GE Commercial Equipment Lender Secured Excess Equipment Claim, (d) KeyBank Equipment Finance Secured Excess Equipment Claim, (e) Key Equipment Lender Secured Excess Equipment Claim, (f) People’s Capital Equipment Lender Secured Excess Equipment Claim, (g) Wachovia Equipment Lender Secured Excess Equipment Claim, (h) Wells Fargo Credit Facility Secured Excess Equipment Claim, and (i) WFEFI Lender Secured Excess Equipment Claim.

160. “Lender Secured Senior Term Notes or Lender STNs” means collectively the promissory notes of the Reorganized Debtor issued in payment of (a) AIG Equipment Lender Secured Claim, (b) Comerica Equipment Lender Secured Claim, (c) GE Commercial Equipment Lender Secured Claim, (d) KeyBank Equipment Finance Secured Claim, (e) Key Equipment Finance Equipment Lender Secured Claim, (f) People’s Capital Equipment Lender Secured Claim, (g) SunTrust Finance Equipment Lender Secured Claim, (h) Wachovia Equipment Lender Secured Claim, (i) Wells Fargo Credit Facility Secured Claim, and (j) WFEFI Lender Secured Claim. The Lender Secured Senior Term Notes shall be paid interest on the unpaid principal balance at the rate of one month Libor plus 3.25 percent plus an additional 3.25% that shall be paid-in-kind from Excess Cash Flow (“PIK Interest”). Principal owed under the Lender Secured Senior Term Notes shall be paid in quarterly monthly installments equal to \$1,250,000 plus 75% of the Excess Cash Flow (after payment of PIK Interest), with the first quarterly payment due on June 30, 2011. The maturity date of the Lender Secured Senior Term Notes shall be five years after the Effective Date. All principal payments shall be paid pro rata based upon the amount of the then outstanding amount of each Lender Secured Senior Term Note. In the event the Reorganized Debtor purchases Excess Equipment from the BB Liquidating Subsidiary, the purchase price shall be added as an additional Lender Secured Senior Term Note and the total amount of the annual principal payment shall be increased by an amount equal to the ratable share of principal paid on the other Secured Lender Trust Equipment Notes.

161. “Lender Secured Trust Equipment Notes or Lender TENs” means collectively the promissory notes issued by the BB Liquidating Subsidiary issued in payment of (a) AIG Equipment Lender Secured Excess Equipment Claim, (b) Comerica Equipment Lender Secured Excess Equipment Claim, (c) GE Commercial Equipment Lender Secured Excess Equipment Claim, (d) KeyBank Equipment Lender Secured Excess Equipment Claim, (e) Key Equipment Finance Lender Secured Excess Equipment Claim, (f) People’s Capital Equipment Lender Secured Excess Equipment Claim, (g) Wachovia Equipment Lender Secured Excess Equipment Claim, (h) Wells Fargo Credit Facility Secured Excess Equipment Claim, and (i) WFEFI Lender Secured Excess Equipment Claim. The Lender Secured Trust Equipment Notes shall be paid interest quarterly on the unpaid principal balance at the rate of one month Libor plus 3.00 percent, which interest shall be paid from the Asset Management Fee. The maturity date of the Lender Secured Trust Equipment Notes shall be five years after the Effective Date. Principal will be paid in the following manner: (a) in the event the Reorganized Debtor purchases Excess Equipment from the BB Liquidating Subsidiary, the Fair Market Value of Excess Equipment shall be added to the Lender Secured Senior Term Note and deducted from the Lender Secured Trust Equipment Note; (b) in the event the Excess Equipment is sold to a third party, the net proceeds of the sale shall be paid to the Holder of the Lender Secured Trust Equipment Note in full satisfaction of that portion of the Lender Secured Trust Equipment Note attributable to Excess Equipment being sold; or (c) the Excess Equipment shall be surrendered to the Holder of the Lender Secured Trust Equipment Note in full satisfaction of that portion of the Lender Secured Trust Equipment Note attributable to the Excess Equipment surrendered.

162. “Lender Trust Deficiency Notes” or “Lender TDNs” means collectively the Deficiency Notes issued to holders of Lender Deficiency Claims from the BB Liquidating Trust, which Lender Deficiency Notes shall be paid in kind with interest at a rate of one month Libor plus 5 percent and on the Effective Date shall be secured by 80% of the Reorganized Debtors Warrants.

163. “Lessor Equipment Lender Claim” means collectively the (a) AIG Equipment Lender Claim, (b) GE Commercial Finance Equipment Lender Claim (c) KeyBank Equipment Finance and (d) Wells Fargo Equipment Lender Claim.

164. “Lien” has the meaning set forth at section 101(37) of the Bankruptcy Code.

165. “Loan Document” means collectively the (a) AIG Equipment Loan Document, (b) BofA Equipment Loan Document, (c) CBI Leasing Equipment Loan Document, (d) Comerica Equipment Loan Document, (e) GE Commercial Finance Equipment Loan Document, (f) KeyBank Equipment Loan Document, (g) Key Equipment Finance, (h) People’s Capital Equipment Loan Document, (i) PNC Equipment Loan Document, (j) RBS Equipment Loan Document, (k) SunTrust Equipment Loan Document, (l) Wachovia Equipment Loan Document, (m) Wells Fargo Credit Agreement, and (n) WFEFI Loan Document, or any other documentation evidencing any loans, indebtedness, advances, or other financial accommodations or any other obligation owing from the Debtors to any other party, which obligation is secured by any property of the Debtors that consists of equipment, equipment materials, instruments, tools, devices, vehicles,

machines, supplies, appurtenances or improvements to any of the foregoing, any other similar physical object utilized in the course of the debtors' businesses or any other like personal property, as all such foregoing documentation has been or may be further amended, restated, supplemented, or otherwise modified from time to time, including all agreements, documents, guarantees, notes, instruments, security agreements, financing statements, and any other agreements delivered pursuant thereto or in connection therewith.

166. "Loan Star Real Estate" means the real estate located at 4707 West OST, Houston, TX 77015.

167. "Loan Star Real Estate Lender" means each successor or incumbent lender, as applicable, currently a party to a Loan Star Real Estate Loan Document, by assignment or otherwise.

168. "Loan Star Real Estate Lender Claim" means any Claim derived from, based upon, or arising under any Loan Star Real Estate Loan Document.

169. "Loan Star Real Estate Lender Secured Claim" means the Secured portion of the Loan Star Real Estate Lender Claim under the Loan Star Real Estate Loan Document, which is secured by a first mortgage on the Loan Star Real Estate.

170. "Loan Star Real Estate Loan Document" means each of (a) that certain real estate lien note, by and among Lone Star Bank, as payee, Brundage-Bone Concrete Pumping, Inc., as maker, and the guarantors party thereto, dated as of December 5, 2006, in an original aggregate principal amount of \$1.32 million, secured by that certain real estate collateral located at 101 Precision Drive, Buda, TX, 78610, and (b) that certain real estate lien note, by and among Loan Star Bank, as beneficiary, Brundage-Bone Concrete Pumping, Inc., as grantor, and the guarantors party thereto, dated as of December 5, 2007, in an original aggregate principal amount of \$704,000, secured by that certain real estate collateral located at 4707 West OST, Houston, TX, 77015, as each of the above documents listed or referred to in (a) and (b) has been or may be further amended, restated, supplemented, or otherwise modified from time to time, including all agreements, documents, guarantees, notes, instruments, security agreements, financing statements, and any other agreements delivered pursuant thereto or in connection therewith.

171. "M&I Marshall Real Estate" means the real estate located at 1025 South 48<sup>th</sup> Street, Tempe, AZ 85282.

172. "M&I Marshall Real Estate Lender" means each successor or incumbent lender, as applicable, currently a party to a M&I Real Estate Real Estate Loan Document, by assignment or otherwise.

173. "M&I Marshall Real Estate Lender Claim" means any Claim derived from, based upon, or arising under any M&I Marshall Real Estate Loan Document.

174. “M&I Marshall Real Estate Lender Secured Claim” means the Secured portion of the M&I Marshall Real Estate Lender Claim under the M&I Marshall Real Estate Loan Document, which is secured by a first mortgage on the M&I Real Estate.

175. “M&I Marshall Real Estate Loan Document” means that certain loan document by and between M&I Marshall & Ilsley Bank, as lender, and Brundage-Bone Concrete Pumping, Inc., as borrower, dated as of May 28, 1999, in an original aggregate principal amount of \$757,600, secured by that certain real estate collateral located at 1025 South 48th Street, Tempe, AZ, 85282, as has been or may be further amended, restated, supplemented, or otherwise modified from time to time, including all agreements, documents, guarantees, notes, instruments, security agreements, financing statements, and any other agreements delivered pursuant thereto or in connection therewith.

176. “New Board” means the initial seven-member board of directors of Reorganized Brundage-Bone, five of whom shall be selected by the Holders of the Class 1 Claims and two of whom shall be selected by the management of the Reorganized Debtor.

177. “New Common Stock” means newly-issued common stock, par value \$.01, of Reorganized Brundage-Bone to be distributed pursuant to the Plan, as authorized by the articles of incorporation or organization of Reorganized Brundage-Bone.

178. “Notice, Claims, and Solicitation Agent” means Epiq Bankruptcy Solutions, LLC, retained as the Debtors’ notice, claims, and solicitation agent.

179. “Notice of Confirmation” means that certain notice pursuant to Bankruptcy Rule 3020(c)(2) notifying Holders of Claims and Interests and parties in interest that the Bankruptcy Court has confirmed the Plan.

180. “People’s Capital Equipment” means the construction equipment owned by the Debtor that is security under the People’s Capital Equipment Loan Documents, including the People’s Capital Equipment Lender Secured Claim, the People’s Capital Equipment Lender Secured Excess Equipment Claim and the People’s Capital Equipment Lender Deficiency Claim.

181. “People’s Capital Equipment Lender” means each successor or incumbent lender, as applicable, currently a party to a People’s Capital Equipment Loan Document, by assignment or otherwise.

182. “People’s Capital Equipment Lender Claim” means any Claim derived from, based upon, or arising under any People’s Capital Equipment Loan Document.

183. “People’s Capital Equipment Lender Deficiency Claim” means the People’s Capital Equipment Lender Claim after deducting the People’s Capital Equipment Lender Secured Claim and the People’s Capital Equipment Lender Secured Excess Equipment Claim under the People’s Capital Equipment Loan Document, which for purposes of the Plan shall be \$1,121,677.

184. “People’s Capital Equipment Lender Secured Claim” means the \$2,703,300 Secured portion of any People’s Capital Equipment Lender Claim under the People’s

Capital Equipment Loan Document, which is secured by the People's Capital Equipment retained by the Reorganized Debtor or transferred to the BB Operating Subsidiary.

185. "People's Capital Equipment Lender Secured Excess Equipment Claim" means the Secured portion of any People's Capital Equipment Lender Claim under the People's Capital Equipment Loan Document, which is secured by the People's Capital Equipment, if any, transferred to the BB Equipment Trust.

186. "People's Capital Equipment Loan Document" means each of (a) that certain promissory note, dated as of December 8, 2006, and that certain loan and security agreement, dated as of August 9, 2006, each, by and among Wachovia Financial Services, Inc., as lender, Brundage-Bone Concrete Pumping, Inc., as borrower, and the guarantors party thereto, in an original aggregate principal amount of \$4,899,600, as sold, assigned and transferred to People's Capital and Leasing Corp., pursuant to that master assignment agreement dated as of December 12, 2006, by and between Wachovia Financial Services, Inc. and People's Capital and Leasing Corp. and (b) that certain Forbearance Agreement by and among People's Capital and Leasing Corp. as lender, Brundage-Bone Concrete Pumping, Inc. as borrower and the guarantors party thereto dated July 24, 2009, as each of the documents listed or referred to above has been or may be further amended, restated, supplemented, or otherwise modified from time to time, including all agreements, documents, guarantees, notes, instruments, security agreements, financing statements, and any other agreements delivered pursuant thereto or in connection therewith.

187. "Periodic Distribution Date" means the first Business Day that is as soon as reasonably practicable occurring approximately 90 days after the Distribution Date, and thereafter, the first Business Day that is as soon as reasonably practicable occurring approximately 90 days after the immediately preceding Periodic Distribution Date.

188. "Person" means a person as defined in section 101(41) of the Bankruptcy Code.

189. "Petition Date" means January 18, 2010, the date on which the Debtors commenced the Chapter 11 Cases.

190. "Plan" means this joint plan of reorganization.

191. "PNC Equipment" means the construction equipment owned by the Debtor that is security for the PNC Equipment Lender Claim.

192. "PNC Equipment Lender" means each successor or incumbent lender, as applicable, currently a party to a PNC Equipment Loan Document, by assignment or otherwise.

193. "PNC Equipment Lender Claim" means any Claim derived from, based upon, or arising under any PNC Equipment Loan Document, including the PNC Equipment Lender Secured Claim and the PNC Equipment Lender Deficiency Claim.



194. “PNC Equipment Lender Deficiency Claim” means the PNC Equipment Lender Claim after deducting the PNC Equipment Lender Secured Claim under the PNC Equipment Loan Document.

195. “PNC Equipment Lender Secured Claim” means the Secured portion of any PNC Equipment Lender Claim under the PNC Equipment Loan Document, which Claim is secured by the PNC Equipment.

196. “PNC Equipment Loan Document” means each of (a) that certain promissory note, dated as of February 29, 2008, and that certain master security agreement dated as of March 15, 2007, each, by and among Key Equipment Finance Inc., as lender, Brundage-Bone Concrete Pumping, Inc., as borrower, and the guarantors party thereto, in an original aggregate principal amount of \$5,103,822, as sold, assigned and transferred to PNC Equipment Finance LLC, pursuant to that master assignment agreement dated as of May 20, 2005 and that certain specification of assigned interest dated as of March 6, 2008, by and between Key Equipment Finance Inc. and PNC Equipment Finance LLC; (b) that certain promissory note, dated as of February 29, 2008, and that certain master security agreement dated as of March 15, 2007, each, by and among Key Equipment Finance Inc., as lender, Brundage-Bone Concrete Pumping, Inc., as borrower, and the guarantors party thereto, in an original aggregate principal amount of \$4,936,614, as sold, assigned and transferred to PNC Equipment Finance LLC, pursuant to that master assignment agreement dated as of May 20, 2005 and that certain specification of assigned interest dated as of March 6, 2008, by and between Key Equipment Finance Inc. and PNC Equipment Finance LLC and (c) that certain Forbearance Agreement by and among PNC Equipment Finance, LLC as lender, Brundage-Bone Concrete Pumping, Inc. as borrower and the guarantors party thereto dated July 25, 2009, as each of the above documents listed or referred to in (a) and (b) has been or may be further amended, restated, supplemented, or otherwise modified from time to time, including all agreements, documents, guarantees, notes, instruments, security agreements, financing statements, and any other agreements delivered pursuant thereto or in connection therewith.

197. “Priority Tax Claim” means any Claim of a governmental unit of the kind specified in section 507(a)(8) of the Bankruptcy Code. “Pro Rata” means the proportion that an Allowed Claim in a particular Class bears to the aggregate amount of Allowed Claims in that Class, or the proportion that Allowed Claims in a particular Class bear to the aggregate amount of Allowed Claims in a particular Class and other Classes entitled to share in the same recovery as such Allowed Claim under the Plan.

198. “Professional” means an Entity: (a) employed pursuant to a Final Order in accordance with sections 327, 363, or 1103 of the Bankruptcy Code and to be compensated for services rendered prior to or on the Confirmation Date, pursuant to sections 327, 328, 329, 330, 331, or 363 of the Bankruptcy Code; or (b) awarded compensation and reimbursement by a Final Order pursuant to section 503(b)(4) of the Bankruptcy Code.

199. “Professional Claims” means Claims incurred by Professionals through the Effective Date.

200. "Proof of Claim" means any proof of Claim Filed against any of the Debtors in the Chapter 11 Cases.

201. "RBS Equipment" means the construction equipment owned by the Debtor that is security for the RBS Equipment Lender Claim.

202. "RBS Equipment Lender" means each successor or incumbent lender, as applicable, currently a party to a RBS Equipment Loan Document, by assignment or otherwise.

203. "RBS Equipment Lender Claim" means any Claim derived from, based upon, or arising under any RBS Equipment Loan Document, including the RBS Equipment Lender Secured Claim and the RBS Equipment Lender Deficiency Claim.

204. "RBS Equipment Lender Deficiency Claim" means the RBS Equipment Lender Claim after deducting the RBS Equipment Lender Secured Claim under the RBS Equipment Loan Document.

205. "RBS Equipment Lender Secured Claim" means the Secured portion of any RBS Equipment Lender Claim under the RBS Equipment Loan Document.

206. "RBS Equipment Loan Document" means (a) that certain loan and security agreement, by and among Fifth Third Bank, as lender, Brundage-Bone Concrete Pumping, Inc., as borrower, and the guarantors party thereto, dated as of June 21, 2006; (b) that certain promissory note, by and among Fifth Third Bank, as lender, Brundage-Bone Concrete Pumping, Inc., as borrower, and the guarantors party thereto, dated as of June 21, 2006, in an original aggregate principal amount of \$10,627,058, as sold, assigned and transferred to RBS Asset Finance, Inc., pursuant to that notice and acknowledgement of assignment, dated as of June 21, 2006; and (c) that certain Forbearance Agreement by and among RBS Asset Finance, Inc. as lender, Brundage-Bone Concrete Pumping, Inc. as borrower and the guarantors party thereto dated July 24, 2009, as each of the above documents listed or referred to in (a), (b) and (c) has been or may be further amended, restated, supplemented, or otherwise modified from time to time, including all agreements, documents, guarantees, notes, instruments, and any other agreements delivered pursuant thereto or in connection therewith.

207. "Real Estate Lender Deficiency Claim" means collectively the (a) GE Commercial Finance Real Estate Lender Deficiency Claim, (b) Loan Star Real Estate Lender Deficiency Claim, (c) M&I Marshall Real Estate Lender Deficiency Claim, and (d) Wells Fargo Real Estate Lender Deficiency Claim.

208. "Real Estate Lender Secured Claim" means collectively the (a) GE Commercial Finance Real Estate Lender Secured Claim, (b) Loan Star Real Estate Lender Secured Claim, (c) M&I Marshall Real Estate Lender Secured Claim, and (d) Wells Fargo Real Estate Lender Secured Claim.

209. "Real Estate Loan Document" means collectively the (a) GE Commercial Finance Real Estate Loan Document, (b) Loan Star Real Estate Loan Document, (c) M&I



Marshall Real Estate Loan Document, and (d) Wells Fargo Real Estate Loan Document, or any other documentation evidencing any loans, indebtedness, advances, or other financial accommodations or any other obligation owing from the Debtors to any other party, which obligation is secured by any property owned by the Debtors that consists of real estate, land, structures, minerals, riparian rights or interests, appurtenances or improvements to any of the foregoing, or any other like real property or real property rights or interests, as all such foregoing documentation has been or may be further amended, restated, supplemented, or otherwise modified from time to time, including all agreements, documents, guarantees, notes, instruments, security agreements, financing statements, and any other agreements delivered pursuant thereto or in connection therewith.

210. “Reinstated” means: (a) leaving unaltered the legal, equitable, and contractual rights to which a Claim entitles the Holder of such Claim so as to leave such Claim Unimpaired; or (b) notwithstanding any contractual provision or applicable law that entitles the Holder of a Claim to demand or receive accelerated payment of such Claim after the occurrence of a default: (i) curing any such default that occurred before or after the Petition Date other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code or of a kind that section 365(b)(2) expressly does not require to be cured; (ii) reinstating the maturity (to the extent such maturity has not otherwise accrued by the passage of time) of such Claim as such maturity existed before such default; (iii) compensating the Holder of such Claim for any damages incurred as a result of any reasonable reliance by such Holder on such contractual provision or such applicable law; (iv) if such Claim arises from a failure to perform a nonmonetary obligation other than a default arising from failure to operate a nonresidential real property lease subject to section 365(b)(1)(A) of the Bankruptcy Code, compensating the Holder of such Claim (other than a Debtor or an Insider) for any actual pecuniary loss incurred by such Holder as a result of such failure; and (v) not otherwise altering the legal, equitable, or contractual rights to which such Claim entitles the Holder.

211. “Rejection Damages Claim” means any Claim on account of the rejection of an Executory Contract or Unexpired Lease to which a Debtor is a party pursuant to section 365 of the Bankruptcy Code.

212. “Releasing Party” means the DIP Agent, the DIP Lenders, the Wells Fargo Credit Facility Lender, the Committee, the Committee Members, and all other Holders of Claims or Interests.

213. “Reorganized Brundage-Bone” means either (a) Brundage-Bone Concrete Pumping Inc., as reorganized pursuant to and under the Plan, on or after the Effective Date, (b) a newly formed entity that receives substantially all of the assets of Brundage-Bone Concrete Pumping Inc. pursuant to and under the Plan, or (c) any successor thereto, by merger, consolidation.

214. “Reorganized Debtor” means a Debtor, as reorganized pursuant to and under the Plan, including Reorganized Brundage-Bone and Reorganized JLS or any successor thereto, by merger, consolidation, or otherwise, on or after the Effective Date.

215. “Reorganized Debtors’ Bylaws or Amended and Restated Bylaws” means the bylaws of Reorganized Debtor.

216. “Reorganized Debtors’ Charter or Restated Articles of Incorporation” means the certificate of incorporation or organization of Reorganized Debtor.

217. “Reorganized Debtor Secured Lenders Warrants” means Secured Lender Warrants held by BB Liquidation Trust on behalf of the holders of Lender Secured Senior Term Notes which entitle the holder thereof to acquire 10% of the New Common Equity of the Reorganized Debtors on a fully diluted basis.

218. “Reorganized Debtor Trust Warrants” means Trust Warrants held by BB Liquidation Trust on behalf of the Holders of the Lender Trust Deficiency Notes, which entitles the holder thereof to acquire up to 80% of the New Common Equity of the Reorganized Debtors on a fully diluted basis. The Reorganized Debtors shall have the right to reacquire the Trust Warrants at the rate of .1% of the Trust Warrants for each piece of Excess Equipment that is purchased by the Reorganized Debtors. The Reorganized Debtors shall have the right to reacquire the Trust Warrants at the rate of .05% of the Trust Warrants for each piece of Excess Equipment or sold to third parties for a minimum of 80% of the then Annual Revised Fair Market Value.

219. “Reorganized JLS” means either (a) JLS Pumping Inc., as reorganized pursuant to and under the Plan, on or after the Effective Date, (b) a newly formed entity that receives substantially all of the assets of JLS Concrete Pumping Inc. pursuant to and under the Plan, or (c) any successor thereto, by merger, consolidation.

220. “Restructuring Transactions” means one or more taxable transactions pursuant to section 1123(a)(5)(D) of the Bankruptcy Code.

221. “Retained Equipment” means any construction equipment retained by the Reorganized Debtor or transferred to the BB Operating Subsidiary, a description of which Retained Equipment and the name of the Holder of the Secured Claim on each piece of Retained Equipment is attached hereto as **Exhibit C**.

222. “Retiree Benefits” has the meaning set forth at section 1114(a) of the Bankruptcy Code.

223. “Schedules” means the schedules of assets and liabilities, schedules of Executory Contracts or Unexpired Leases, and statement of financial affairs Filed by the Debtors pursuant to section 521 of the Bankruptcy Code, the official bankruptcy forms, and the Bankruptcy Rules, as they may be amended, modified, or supplemented from time to time.

224. “Section 510(b) Claim” means any Claim subject to subordination under section 510(b) of the Bankruptcy Code, including, without limitation, any Claim that arises from the rescission of a purchase or sale of a security of any of the Debtors, or for damages arising from the purchase or sale of such a security, or for reimbursement, indemnification or contribution on account of such Claim; provided that a Section 510(b) Claim shall not

include any Claim subject to subordination under section 510(b) of the Bankruptcy Code arising from or related to an Interest.

225. “Secured” means, when referring to a Claim: (a) secured by a Lien on property in which the Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor’s interest in the Estate’s interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code, or as otherwise agreed to, in writing, by the Debtors, subject to Plan Sponsor Approval, or the Reorganized Debtors, as applicable, and the holder of such Claim.

226. “Secured Claim” means a Claim that is Secured.

227. “Securities Act” means the United States Securities Act of 1933, as amended.

228. “Securities Exchange Act” means the United States Securities Exchange Act of 1934, as amended.

229. “Security” means a security as defined in section 2(a)(1) of the Securities Act.

230. “Servicer” means an indenture trustee, agent, servicer or other authorized representative of Holders of Claims or Interests recognized by the Debtors.

231. “Shareholders’ Agreement” means the Shareholders agreement, substantially in the form of agreement set forth in Exhibit \_\_\_\_ to the Disclosure Statement, between Reorganized Debtor, employees of the Reorganized Debtor who receive New Common Stock pursuant to the Employee Equity Incentive Program and Holders of Claims that are entitled to receive Reorganized Debtor Secured Lender Warrants and Reorganized Debtor Trust Warrants under the Plan and all securities or rights exercisable or convertible into New Common Stock, to be entered into on the Effective Date or as soon as practicable thereafter.

232. “SunTrust Equipment” means the construction equipment owned by the Debtor that is security for the SunTrust Equipment Lender Claim.

233. “SunTrust Equipment Lender” means each successor or incumbent lender, as applicable, currently a party to a SunTrust Equipment Loan Document, by assignment or otherwise.

234. “SunTrust Equipment Lender Claim” means any Claim derived from, based upon, or arising under any SunTrust Equipment Loan Document, including the SunTrust Equipment Lender Secured Claim and the SunTrust Equipment Lender Deficiency Claim.

235. “SunTrust Equipment Lender Deficiency Claim” means the SunTrust Equipment Lender Claim after deducting the SunTrust Equipment Lender Secured Claim under the SunTrust Equipment Loan Document.

236. “SunTrust Equipment Lender Secured Claim” means the Secured portion of any SunTrust Equipment Lender Claim under the SunTrust Equipment Loan Document.

237. “SunTrust Equipment Loan Document” means each of (a) that certain promissory note, by and among Fifth Third Bank, as lender, Brundage-Bone Concrete Pumping, Inc., as borrower, and the guarantors party thereto, dated as of September 26, 2006, in an original aggregate principal amount of \$5,316,798, and that certain loan and security Agreement by and among Fifth Third Bank, as lender, Brundage-Bone Concrete Pumping, Inc., as borrower, dated as of September 26, 2006, each as sold, assigned and transferred to SunTrust Equipment Finance & Leasing Corporation, as successor by assignment to SunTrust Leasing Corporation, pursuant to that notice and acknowledgement of assignment, dated as of September 28, 2006; (b) that certain promissory note, by and between Key Equipment Finance Inc., as lender, and Brundage-Bone Concrete Pumping, Inc., as borrower, dated as of March 28, 2007, in an original aggregate principal amount of \$5,622,750, and that certain master security agreement by and between Key Equipment Finance Inc., as lender, and Brundage-Bone Concrete Pumping, Inc., as borrower, dated as of March 15, 2007, each as sold, assigned and transferred to SunTrust Equipment Finance & Leasing Corporation, as successor by assignment to SunTrust Leasing Corporation, pursuant to that notice and acknowledgement of assignment, dated as of April 6, 2007 and (c) that certain Forbearance Agreement by and among SunTrust Equipment Finance & Leasing Corporation as lender, Brundage-Bone Concrete Pumping, Inc. as borrower and the guarantors party thereto dated July 24, 2009, as each of the above documents listed or referred to in (a), (b) and (c) has been or may be further amended, restated, supplemented, or otherwise modified from time to time, including all agreements, documents, guarantees, notes, instruments, and any other agreements delivered pursuant thereto or in connection therewith.

238. “Third Party Releasee” means each of: (a) the Debtors and the Reorganized Debtors; (b) the Debtor Releasees; (c) the Committee; (d) all current and former Committee Members; (e) the DIP Agent and the DIP Lenders, in each of the foregoing cases, solely in their capacity as such; (f) the Exit Facility Lenders; (g) the non-Debtor guarantors under the Loan Documents and Real Estate Loan Documents; (h) any Holder of a Class 1 Claim that votes all of the Class 1 Claims of such Holder to accept the Plan; and (i) with respect to each of the foregoing Entities, all of the current and former members (including ex officio members), officers, directors, employees, partners, attorneys, financial advisors, accountants, managed funds, investment bankers, investment advisors, actuaries, professionals, agents, affiliates, and representatives of each of the foregoing Entities (in each case in his, her, or its capacity as such)].

239. “Unexpired Lease” means a lease to which one or more of the Debtors is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

240. “Unimpaired” means, with respect to a Class of Claims or Interests, a Claim or an Interest that is unimpaired within the meaning of sections 1123(a)(4) and 1124 of the Bankruptcy Code.

241. “Voting Deadline” means [ ], 2010.

242. “Voting Record Date” means two Business Days after the date upon which the Solicitation Procedures Order is entered by the Bankruptcy Court on its docket, within the meaning of Bankruptcy Rules 5003 and 9021.

243. “Wachovia Equipment” means the construction equipment owned by the Debtor that is security for the Wachovia Equipment Lender Claim.

244. “Wachovia Equipment Lender” means each successor or incumbent lender, as applicable, currently a party to a Wachovia Equipment Loan Document, by assignment or otherwise.

245. “Wachovia Equipment Lender Claim” means any Claim derived from, based upon, or arising under any Wachovia Equipment Loan Document, including the Wachovia Equipment Lender Secured Claim, the Wachovia Equipment Lender Secured Excess Equipment Claim and the Wachovia Equipment Lender Deficiency Claim.

246. “Wachovia Equipment Lender Deficiency Claim” means the Wachovia Equipment Lender Claim after deducting the Wachovia Equipment Lender Secured Claim and the Wachovia Equipment Lender Secured Excess Equipment Claim under the Wachovia Equipment Loan Document, which for purposes of the Plan shall be \$5,536,352.

247. “Wachovia Equipment Lender Secured Claim” means the 5,728,100 Secured portion of any Wachovia Equipment Lender Claim under the Wachovia Equipment Loan Document, which Claim is secured by the Wachovia Equipment retained by the Reorganized Debtor or transferred to the BB Operating Subsidiary.

248. “Wachovia Equipment Lender Secured Excess Equipment Claim” means the \$2,197,600 Secured portion of any Wachovia Equipment Lender Claim under the Wachovia Equipment Loan Document, which Claim is secured by the SunTrust Equipment transferred to the BB Liquidating Subsidiary.

249. “Wachovia Equipment Loan Document” means each of (a) that certain loan and security agreement, by and among First Union Commercial Corporation (a subsidiary of Wachovia Bank, National Association), as lender, Brundage-Bone Concrete Pumping, Inc., as borrower, and the guarantors party thereto, dated as of September 30, 2005 and August 9, 2006; (b) an equipment loan (Loan No. 2030082-00 1) evidenced by that certain promissory note, by and among First Union Commercial Corporation (a subsidiary of Wachovia Bank, National Association), as lender, Brundage-Bone Concrete Pumping, Inc., as borrower, and the guarantors party thereto, dated as of December 26, 2003, in an original aggregate principal amount of up to \$10 million, (c) an equipment loan (Loan No. 2050060-00 1) evidenced by that certain promissory note, by and among First Union Commercial Corporation (a subsidiary of Wachovia Bank, National Association), as lender, Brundage-Bone Concrete Pumping, Inc., as borrower, and the guarantors party thereto, dated as of September 30, 2005, in an original aggregate principal amount of up to \$10 million; (c) an equipment loan (Loan No. 9060005-001) evidenced by that certain promissory note no. 1, by and among Wachovia Financial Services, Inc. (a subsidiary of Wachovia Bank, National Association), as lender, Brundage-Bone Concrete Pumping, Inc., as borrower, and the guarantors party thereto, dated as of December 8, 2006, in an original



aggregate principal amount of up to \$4,896,780; and (d) that certain Forbearance Agreement by and among Wachovia Financial Services, Inc. as lender, Brundage-Bone Concrete Pumping, Inc. as borrower and the guarantors party thereto dated July 24, 2009, as each of the above documents listed or referred to in (a), (b), (c) and (d) has been or may be further amended, restated, supplemented, or otherwise modified from time to time, including all agreements, documents, guarantees, notes, instruments, and any other agreements delivered pursuant thereto or in connection therewith.

250. "Wells Fargo" means Wells Fargo Bank, National Association, as the prepetition lender party to the Wells Fargo Credit Agreement.

251. "Wells Fargo Additional Real Estate" means the real property located at 1025 S. 48<sup>th</sup> Street, Tempe, AZ, 786 N. Miller Avenue, Springfield, MO and 2001 Hinton Drive, Irving, TX.

252. "Wells Fargo Credit Agreement" means that certain amended and restated credit agreement, dated as of June 25, 2008, by and among Brundage-Bone, Wells Fargo, and the guarantors party thereto, as has been or may be further amended, restated, supplemented, or otherwise modified from time to time, including all agreements, documents, guarantees, notes, instruments, and any other agreements delivered pursuant thereto or in connection therewith.

253. "Wells Fargo Credit Equipment" means the construction equipment owned by the Debtor that is security for the Wells Fargo Credit Equipment Lender Claim.

254. "Wells Fargo Credit Facility" means that certain senior secured credit facility issued pursuant to the Wells Fargo Credit Agreement, consisting of any loans, obligations, indebtedness, advances, or other financial accommodations provided for pursuant thereto, including: (a) a line of credit, including any letters of credit issued thereunder or pursuant thereto, not to exceed the aggregate principal amount of \$23,700,000, evidenced by that certain promissory note with attached addendum executed by Brundage-Bone Concrete Pumping, Inc., as borrower in favor of Wells Fargo dated as of June 25, 2008; (b) an equipment line of credit not to exceed the aggregate principal amount of \$34,000,000, evidenced by that certain promissory note executed by Brundage-Bone Concrete Pumping, Inc., as borrower in favor of Wells Fargo dated as of April 7, 2006; (c) a Term Loan A, in the original principal amount of \$7,812,500, evidenced by that certain promissory note with attached addendum executed by Brundage-Bone Concrete Pumping, Inc., as borrower in favor of Wells Fargo dated as of April 7, 2006; (d) a Term Loan B, in the original principal amount of \$15,000,000, evidenced by that certain promissory note with attached addendum executed by Brundage-Bone Concrete Pumping, Inc., as borrower in favor of Wells Fargo dated as of March 10, 2005; (e) a Term Loan C, in the original principal amount of \$2,100,000, evidenced by that certain promissory note with attached addendum executed by Brundage-Bone Concrete Pumping, Inc., as borrower in favor of Wells Fargo dated as of January 5, 2006, secured by that certain real estate collateral located at 2410 E. Gowan Rd., North Las Vegas, NV 89030; (f) a Term Loan D in the original principal amount of \$1,177,500, evidenced by that certain promissory note with attached addendum executed by Brundage-Bone Concrete Pumping, Inc., as borrower in favor of Wells Fargo dated as of June 25, 2008, secured by that certain real estate collateral located at 1893

Brown Ave., Riverside, CA 92509; (g) a Term Loan E in the original principal amount of \$1,104,000, evidenced by that certain promissory note with attached addendum executed by Brundage-Bone Concrete Pumping, Inc., as borrower in favor of Wells Fargo dated as of June 25, 2008, secured by that certain real estate collateral located at 1037 and 1055 4th Ave. North, Kent, WA 98032; (h) a Term Loan F in the original principal amount of \$795,000, evidenced by that certain promissory note with attached addendum executed by Brundage-Bone Concrete Pumping, Inc., as borrower in favor of Wells Fargo dated as of February 12, 2007, secured by that certain real estate collateral located at 301 North Cloverdale Rd., Boise ID 83713; (i) a Term Loan G in the original principal amount of \$1,650,000, evidenced by that certain promissory note with attached addendum executed by Brundage-Bone Concrete Pumping, Inc., as borrower in favor of Wells Fargo dated as of February 18, 2008, secured by that certain real estate collateral located at 1627 N.E. Argyle Dr., Portland, OR 97211; (j) certain other letters of credit issued pursuant to that certain Application and Agreement for Standby Letter of Credit dated as of June 18, 2007; (k) that certain overadvance loan of up to \$3,000,000; and (l) that certain Forbearance Agreement by and among Wells Fargo Bank, National Association and Wells Fargo Equipment Finance, Inc. as lenders, Brundage-Bone Concrete Pumping, Inc. as borrower and the guarantors party thereto dated July 24, 2009, as each of the above documents listed or referred to in (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k) and (l) has been or may be further amended, restated, supplemented, or otherwise modified from time to time, including all agreements, documents, guarantees, notes, instruments, and any other agreements delivered pursuant thereto or in connection therewith.

255. "Wells Fargo Credit Facility Claim" means any Claim derived from, based upon, or arising under that portion of the Wells Fargo Credit Facility that consists of: (a) that certain equipment line of credit not to exceed the aggregate principal amount of \$34,000,000, evidenced by that certain promissory note executed by Brundage-Bone Concrete Pumping, Inc., as borrower in favor of Wells Fargo dated as of April 7, 2006; (b) that certain Term Loan A, in the original principal amount of \$7,812,500, evidenced by that certain promissory note with attached addendum executed by Brundage-Bone Concrete Pumping, Inc., as borrower in favor of Wells Fargo dated as of April 7, 2006; and (c) that certain Term Loan B, in the original principal amount of \$15,000,000, evidenced by that certain promissory note with attached addendum executed by Brundage-Bone Concrete Pumping, Inc., as borrower in favor of Wells Fargo dated as of March 10, 2005, as each of the above documents listed or referred to in (a), (b), and (c) has been or may be further amended, restated, supplemented, or otherwise modified from time to time, including all agreements, documents, guarantees, notes, instruments, and any other agreements delivered pursuant thereto or in connection therewith, including the Wells Fargo Credit Facility Secured Claim, the Wells Fargo Credit Facility Secured Excess Equipment Claim and the Wells Fargo Credit Facility Equipment Lender Deficiency Claim.

256. "Wells Fargo Credit Facility Deficiency Claim" means the Wells Fargo Credit Facility Claim after deducting the Wells Fargo Credit Facility Secured Claim and the Wells Fargo Credit Facility Secured Excess Equipment Claim under the Wells Fargo Credit Facility Equipment Loan Document, which for purposes of the Plan shall be \$18,831,548.



257. “Wells Fargo Credit Facility Line of Credit Claim” means any Claim derived from, based upon, or arising under that portion of that certain line of credit, including any letters of credit issued thereunder or pursuant thereto, not to exceed the aggregate principal amount of \$23,700,000, evidenced by that certain promissory note with attached addendum executed by Brundage-Bone Concrete Pumping, Inc., as borrower in favor of Wells Fargo dated as of June 25, 2008, as has been or may be further amended, restated, supplemented, or otherwise modified from time to time, including all agreements, documents, guarantees, notes, instruments, and any other agreements delivered pursuant thereto or in connection therewith, which Claim is a portion of and included in the DIP Facility Claim.

258. “Wells Fargo Credit Facility Secured Claim” means the \$8,834,100 Secured portion of any Wells Fargo Credit Facility Claim under the Wells Fargo Credit Agreement, which Claim is secured by the Wells Fargo Credit Facility Equipment retained by the Reorganized Debtor or transferred to the BB Operating Subsidiary.

259. “Wells Fargo Credit Facility Secured Excess Equipment Claim” means the \$7,862,000 Secured portion of any Wells Fargo Credit Facility Claim under the Wells Fargo Credit Agreement, which Claim is secured by the Wells Fargo Credit Facility Equipment transferred to the BB Liquidating Subsidiary.

260. “WFEFI Equipment” means the construction equipment owned by WFEFI Equipment Lender that is leased to the Debtors under the WFEFI Loan Document.

261. “WFEFI Equipment Lender” means each successor or incumbent lender, as applicable, currently a party to a Wells Fargo Equipment Loan Document, by assignment or otherwise.

262. “WFEFI Equipment Lender Claim” means any Claim derived from, based upon, or arising under any WFEFI Equipment Loan Document, including the WFEFI Equipment Lender Secured Claim, the WFEFI Equipment Lender Secured Excess Equipment Claim and the WFEFI Equipment Lender Deficiency Claim.

263. “WFEFI Equipment Lender Deficiency Claim” means the WFEFI Equipment Lender Claim after deducting the Wells Fargo Equipment Lender Secured Claim and the Wells Fargo Equipment Lender Secured Excess Equipment Claim under the Wells Fargo Equipment Loan Document, which for purposes of the Plan shall be \$25,883,592.

264. “WFEFI Equipment Lender Secured Claim” means the \$30,978,000 Secured portion of any Wells Fargo Equipment Lender Claim under the Wells Fargo Equipment Loan Document, which Claim is secured by the WFEFI Equipment retained by the Reorganized Debtor or transferred to the BB Operating Subsidiary.

265. “WFEFI Equipment Lender Secured Excess Equipment Claim” means the \$16,077,700 Secured portion of any Wells Fargo Equipment Lender Claim under the Wells Fargo Equipment Loan Document, which Claim is secured by the WFEFI Equipment transferred to the BB Liquidating Subsidiary.

266. “WFEFI Equipment Loan Document” means each of (a) that certain amended and restated revolving loan agreement, by and among Wells Fargo Equipment Finance, Inc., as lender, Brundage-Bone Concrete Pumping, Inc. as borrower, and the guarantors, party thereto, dated as of June 14, 2004, in an original maximum principal amount of \$75 million, secured by certain concrete pump equipment as evidenced by those certain promissory notes and security agreements, each with an aggregate principal amount of: (i) \$621,648 with respect to promissory note contract number 21877-701; (ii) \$385,680 with respect to promissory note contract number 21877- 702; (iii) \$385,680 with respect to promissory note contract number 21877-703; (iv) \$441,000 with respect to promissory note contract number 21877-704; (v) \$630,148 with respect to promissory note contract number 21877- 705; (vi) \$441,000 with respect to promissory note contract number 21877-707; (vii) \$441,000 with respect to promissory note contract number 21877-708; (viii) \$621,648 with respect to promissory note contract number 21877-709; (ix) \$354,100 with respect to promissory note contract number 21877-710; (x) \$438,040 with respect to promissory note contract number 21877-711; and (xi) \$4,334,296 with respect to promissory note contract number 21877-712; (b) that certain construction equipment schedule number 024 to the GE Master Lease Agreement, sold, transferred and assigned to Wells Fargo Equipment Finance, Inc., in an original aggregate principal amount of \$3,052,707 and (c) that certain Forbearance Agreement by and among Wells Fargo Bank, National Association and Wells Fargo Equipment Finance, Inc. as lenders, Brundage-Bone Concrete Pumping, Inc. as borrower and the guarantors party thereto dated July 24, 2009, as each of the above documents listed or referred to in (a) and (b) has been or may be further amended, restated, supplemented, or otherwise modified from time to time, including all agreements, documents, guarantees, notes, instruments, security agreements, financing statements, and any other agreements delivered pursuant thereto or in connection therewith.

267. “Wells Fargo Real Estate” means the real estate located at 2410 East Gowan Road, North Las Vegas, NV 89030; 1893 Brown Avenue, Riverside, CA 92509; 1037 and 1055 4<sup>th</sup> Avenue North, Kent, WA 98032; 301 North Cloverdale Road, Boise, ID 83713; and 1627 N.E. Argyle Drive, Portland, OR 97211 .

268. “Wells Fargo Real Estate Lender” means each successor or incumbent lender, as applicable, currently a party to a Wells Fargo Real Estate Loan Document, by assignment or otherwise.

269. “Wells Fargo Real Estate Lender Additional Secured Claim” means any claim derived from, based upon or arising under the Wells Fargo Credit Facility against the Wells Fargo Additional Real Estate.

270. “Wells Fargo Real Estate Lender Claim” means any Claim derived from, based upon, or arising under any Wells Fargo Real Estate Loan Document.

271. “Wells Fargo Real Estate Lender Term Loan C Secured Claim” means any Claim derived from, based upon, or arising under any Wells Fargo Real Estate Loan Documents, which is secured by that certain real estate collateral located at 2410 East Gowan Road, North Las Vegas, NV 89030.

272. “Wells Fargo Real Estate Lender Term Loan D Secured Claim” means any Claim derived from, based upon, or arising under any Wells Fargo Real Estate Loan Documents, which is secured by that certain real estate collateral located at 1893 Brown Avenue, Riverside, CA 92509.

273. “Wells Fargo Real Estate Lender Term Loan E Secured Claim” means any Claim derived from, based upon, or arising under any Wells Fargo Real Estate Loan Documents, which is secured by that certain real estate collateral located at 1037 and 1055 4<sup>th</sup> Avenue North, Kent, WA 98032.

274. “Wells Fargo Real Estate Lender Term Loan F Secured Claim” means any Claim derived from, based upon, or arising under any Wells Fargo Real Estate Loan Documents, which is secured by that certain real estate collateral located at 301 North Cloverdale Road, Boise, ID 83713.

275. “Wells Fargo Real Estate Lender Term Loan G Secured Claim” means any Claim derived from, based upon, or arising under any Wells Fargo Real Estate Loan Documents, which is secured by that certain real estate collateral located at 1627 N.E. Argyle Drive, Portland, OR 97211.

276. “Wells Fargo Real Estate Loan Documents” means each of (a) that certain Term Loan C, in the original principal amount of \$2,100,000, evidenced by that certain promissory note with attached addendum executed by Brundage-Bone Concrete Pumping, Inc., as borrower in favor of Wells Fargo dated as of January 5, 2006, secured by that certain real estate collateral located at 2410 E. Gowan Rd., North Las Vegas, NV 89030; (b) that certain Term Loan D in the original principal amount of \$1,177,500, evidenced by that certain promissory note with attached addendum executed by Brundage-Bone Concrete Pumping, Inc., as borrower in favor of Wells Fargo dated as of June 25, 2008, secured by that certain real estate collateral located at 1893 Brown Ave., Riverside, CA 92509; (c) that certain Term Loan E in the original principal amount of \$1,104,000, evidenced by that certain promissory note with attached addendum executed by Brundage-Bone Concrete Pumping, Inc., as borrower in favor of Wells Fargo dated as of June 25, 2008, secured by that certain real estate collateral located at 1037 and 1055 4th Ave. North, Kent, WA 98032; (d) that certain Term Loan F in the original principal amount of \$795,000, evidenced by that certain promissory note with attached addendum executed by Brundage-Bone Concrete Pumping, Inc., as borrower in favor of Wells Fargo dated as of February 12, 2007, secured by that certain real estate collateral located at 301 North Cloverdale Rd., Boise ID 83713; and (e) that certain Term Loan G in the original principal amount of \$1,650,000, evidenced by that certain promissory note with attached addendum executed by Brundage-Bone Concrete Pumping, Inc., as borrower in favor of Wells Fargo dated as of February 18, 2008, secured by that certain real estate collateral located at 1627 N.E. Argyle Dr., Portland, OR 97211, as each of the above documents listed or referred to in (a), (b), (c), (d), and (e), has been or may be further amended, restated, supplemented, or otherwise modified from time to time, including all agreements, documents, guarantees, notes, instruments, and any other agreements delivered pursuant thereto or in connection therewith.

## **B. Rules of Interpretation, Computation of Time, Governing Law, and Reference to Monetary Figures**

1. Rules of Interpretation: For purposes of the Plan: (a) whenever from the context it is appropriate, each term, whether stated in 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 the neuter gender; (b) unless otherwise specified, 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; (c) unless otherwise specified, any reference in the Plan to an existing document, schedule, or exhibit, whether or not Filed, shall mean such document, schedule, or exhibit, as it may have been or may be amended, modified, or supplemented; (d) any reference to an Entity as a Holder of a Claim or Interest includes that Entity's successors and assigns; (e) unless otherwise specified, all references in the Plan to Articles are references to Articles of the Plan or to the Plan; (f) unless otherwise specified, all references in the Plan to exhibits are references to exhibits in the Disclosure Statement; (g) the words "herein," "hereof," and "hereto" refer to the Plan in its entirety rather than to a particular portion of the Plan and the words "include," "includes," and "including" shall be deemed to be followed by the words "without limitation"; (h) subject to the provisions of any contract, certificate of incorporation, bylaw, instrument, release, or other agreement or document entered into in connection with the Plan, the rights and obligations arising pursuant to the Plan shall be governed by, and construed and enforced in accordance with applicable federal law, including the Bankruptcy Code and Bankruptcy Rules; (i) captions and headings to Articles are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan; (j) unless otherwise set forth in the Plan, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (k) any term used in capitalized form in the Plan that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to such term in the Bankruptcy Code or the Bankruptcy Rules, as applicable; (l) all references to docket numbers of documents Filed in the Chapter 11 Cases are references to the docket numbers under the Bankruptcy Court's CM/ECF system; (m) all references to statutes, regulations, orders, rules of courts, and the like shall mean as amended from time to time, as applicable to the Chapter 11 Cases, unless otherwise stated; and (n) any immaterial effectuating provisions may be interpreted by the Reorganized Debtors in such a manner that is consistent with the overall purpose and intent of the Plan all without further notice to or action, order, or approval of the Bankruptcy Court or any other Entity. Additionally, except as otherwise specifically provided in the Plan to the contrary, references in the Plan to the Debtors or to the Reorganized Debtors shall mean the Debtors and the Reorganized Debtors, as applicable, to the extent the context requires.

2. Computation of Time: In computing any period of time prescribed or allowed, the provisions of Bankruptcy Rule 9006(a) shall apply. If the date on which a transaction may occur pursuant to the Plan shall occur on a day that is not a Business Day, then such transaction shall instead occur on the next succeeding Business Day.

3. Reference to Monetary Figures: All references in the Plan to monetary figures shall refer to currency of the United States of America, unless otherwise expressly provided.

## **ARTICLE II.**

### **ADMINISTRATIVE CLAIMS AND PRIORITY CLAIMS**

In accordance with section 1 123(a)(1) of the Bankruptcy Code, DIP Facility Claims, Administrative Claims, and Priority Tax Claims have not been classified and thus are excluded from the Classes of Claims and Interests set forth in Article III.

#### **A. DIP Facility Claim**

Allowed DIP Facility Claim shall be paid in full in Cash on the Effective Date and the standby letters of credit issued under the DIP Credit Agreement shall be cancelled and returned to Wells Fargo in full, final, and complete satisfaction of such Claim, the DIP Lenders shall release any security interests that it may have pursuant to the DIP Credit Agreement.

#### **B. Administrative Claims**

On the later of the Effective Date or the date on which an Administrative Claim becomes an Allowed Administrative Claim, or, in each such case, as soon as practicable thereafter, each Holder of an Allowed Administrative Claim shall be paid in full in Cash for the unpaid portion of such Allowed Administrative Claim, in full, final, and complete satisfaction of such Claims; provided that Allowed Administrative Claims with respect to liabilities incurred by the Debtors in the ordinary course of business during the Chapter 11 Cases or assumed by the Debtors prior to the Effective Date shall be paid or performed in the ordinary course of business in accordance with the terms and conditions of any controlling agreements, course of dealing, course of business, or industry practice.

All requests for payment of an Administrative Claim must be Filed with the Notice, Claims and Solicitation Agent and served upon counsel to the Debtors or the Reorganized Debtors, as applicable, on or before the Administrative Claim Bar Date. Any request for payment of an Administrative Claim that is not timely Filed shall be disallowed automatically, forever barred from assertion, and shall not be enforceable against any Reorganized Debtor without the need for any objection by the Reorganized Debtors or further notice to or action, order, or approval of the Bankruptcy Court or other Entity. The Reorganized Debtors may settle and pay any Administrative Claim in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Court or any other Entity. In the event that any party with standing objects to an Administrative Claim, the Bankruptcy Court shall determine the Allowed amount of such Administrative Claim. Notwithstanding the foregoing, no request for payment of an Administrative Claim need be Filed with respect to an Administrative Claim previously Allowed by Final Order.

Except as otherwise specifically provided in the Plan, any Entity who requests compensation or expense reimbursement for making a substantial contribution in the Chapter 11 Cases pursuant to section 503(b)(3), (4), and (5) of the Bankruptcy Code must File an



application and serve such application on counsel for the Debtors or the Reorganized Debtors, as applicable, and as otherwise required by the Bankruptcy Court and the Bankruptcy Code on or before the Administrative Claim Bar Date or be forever barred from seeking such compensation or expense reimbursement.

### **C. Priority Tax Claims**

On the later of the Effective Date or the date on which a Priority Tax Claim becomes an Allowed Priority Tax Claim, or, in each such case, as soon as practicable thereafter, each Holder of an Allowed Priority Tax Claim due and payable on or prior to the Effective Date shall receive, in full, final, and complete satisfaction of such Claims, one of the following to be determined in the sole discretion of the Debtors, or the Reorganized Debtors, as applicable: (a) Cash in an amount equal to the amount of such Allowed Priority Tax Claim; (b) Cash in an amount agreed to by the Debtors or the Reorganized Debtors, as applicable, and such Holder; provided that such parties may further agree for the payment of such Allowed Priority Tax Claim at a later date; (c) in the sole discretion of the Debtors or the Reorganized Debtors, as applicable, and in accordance with section 1129(a)(9)(C) of the Bankruptcy Code, Cash in an aggregate amount of such Allowed Priority Tax Claim payable in regular installment payments over a period ending not more than five years after the Petition Date; or (4) such other treatment as the Debtors or the Reorganized Debtors, as applicable, and the Holder of a Priority Tax Claim may otherwise agree; provided further that to the extent a Priority Tax Claim that is fully secured by equipment or real property that is not retained by the Reorganized Debtor or transferred to the BB Equipment Trust, the Holder of the Priority Tax Claim will be entitled to assert its Claim against the surrendered collateral and will not receive any cash in accordance with this Section C on account of its Priority Tax Claim.

## **ARTICLE III.**

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

#### **A. Summary**

All Claims and Interests against Brundage-Bone and JLS, except DIP Facility Claims, Administrative Claims, and Priority Tax Claims, are classified in the Classes set forth in this Article III. A Claim or Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest qualifies within the description of such other Classes. A Claim or Interest against Brundage-Bone or JLS, as applicable, is also classified in a particular Class for the purpose of receiving distributions pursuant to the Plan only to the extent that such Claim or Interest is an Allowed Claim or Allowed Interest against Brundage-Bone or JLS, as applicable, in that Class and has not been paid, released, or otherwise satisfied prior to the Effective Date.



**B. Summary of Classification and Treatment of Classified Claims and Interests against Brundage-Bone.**

<b>Class</b>	<b>Claim Against Brundage Bone</b>	<b>Status</b>	<b>Voting Right</b>
1-A	AIG Equipment Lender Claim	Impaired	Entitled to vote
1-B	Comerica Equipment Lender Claim	Impaired	Entitled to vote
1-C	GE Commercial Finance Equipment Lender Claim	Impaired	Entitled to vote
1-D	KeyBank Equipment Lender Claim	Impaired	Entitled to vote
1-E	Key Equipment Finance Claim	Impaired	Entitled to vote
1-F	People's Capital Equipment Lender Claim	Impaired	Entitled to vote
1-G	Wachovia Equipment Lender Claim	Impaired	Entitled to vote
1-H	Wells Fargo Credit Facility Claims	Impaired	Entitled to vote
1-I	WFEFI Lender Claim	Impaired	Entitled to vote
2-A	BofA Equipment Lender Secured Claim	Unimpaired	Deemed to accept
2-B	CBI Leasing Equipment Lender Secured Claim	Unimpaired	Deemed to accept
2-C	PNC Equipment Lender Secured Claim	Unimpaired	Deemed to accept
2-D	RBS Equipment Lender Secured Claim	Unimpaired	Deemed to accept
2-E	SunTrust Equipment Lender Secured Claim	Unimpaired	Deemed to accept
3-A	GE Commercial Finance Real Estate Lender Secured Claim	Impaired	Entitled to Vote
3-B	Loan Star Real Estate Lender Claim	Impaired	Entitled to Vote
3-C	M&I Marshall Real Estate Lender Claim	Impaired	Entitled to Vote
3-D	Wells Fargo Real Estate Lender Term Loan C Secured Claim	Unimpaired	Deemed to Accept
3-E	Wells Fargo Real Estate Lender Term Loan D Secured Claim	Unimpaired	Deemed to Accept
3-F	Wells Fargo Real Estate Lender Term Loan E Secured Claim	Impaired	Entitled to Vote

3-G	Wells Fargo Real Estate Lender Term Loan F Secured Claim	Unimpaired	Deemed to Accept
3-H	Wells Fargo Real Estate Lender Term Loan G Secured Claim	Impaired	Entitled to Vote
3-I	Wells Fargo Real Estate Lender Additional Secured Claim	Impaired	Entitled to Vote
4	GMAC Equipment Lender Claim	Unimpaired	Deemed to Accept
5	General Unsecured Claims	Impaired	Entitled to vote
6	Inter-company Claims	Impaired	Deemed to Reject
7	Section 510(b) Claims	Impaired	Deemed to reject
8	Equity Interests	Impaired	Deemed to reject

**C. Summary of Classification and Treatment of Classified Claims and Interests against JLS.**

Class	Claim against JLS	Status	Voting Right
9	Secured Claims	Impaired	Entitled to vote
10	General Unsecured Claims	Impaired	Entitled to vote
11	Inter-company Claims	Impaired	deemed to reject
12	Equity Interests	Impaired	Deemed to reject

**D. Classification and Treatment of Claims and Interests against Brundage-Bone**

1. Class 1-A AIG Equipment Lender Claim Against Brundage-Bone

a. Classification: Class 1-A consists of AIG Equipment Lender Claim against Brundage-Bone.

b. Treatment: Class 1-A, as evidenced by the Consent attached to this Plan as Exhibit \_\_\_\_\_, has agreed as treatment of the AIG Equipment Lender Claim to receive in exchange for full and final satisfaction, settlement, release and discharge of the AIG Equipment Lender Claim against Brundage-Bone the following:

- (i) A \$8,144,500 Lender Senior Term Note secured by a first priority security interest in the AIG Retained Equipment and payable in accordance with the definition of Lender Secured Notes;
- (ii) A \$1,000,000 Lender Secured Trust Equipment Note secured by a first priority security interest in the AIG Excess Equipment and payable in accordance with the definition of Lender Secured Trust Note;
- (iii) A \$5,663,394 Lender Trust Deficiency Note secured by a pro rata share of the Reorganized Debtor Trust Warrants;
- (iv) Pro rata share of the Reorganized Debtor Secured Lender Warrants;
- (v) Pro rata share of the Reorganized Debtor Trust Warrants; and
- (vi) A release from the Debtors and Reorganized Debtor of all Avoidance Actions against the Holder of the Class 1-A Claim.

2. Class 1-B Comerica Equipment Lender Claim Against Brundage-Bone

a. Classification: Class 1-B consists of Comerica Equipment Lender Claim against Brundage-Bone.

b. Treatment: Class 1-B, as evidenced by the Consent attached to this Plan as **Exhibit**, has agreed as treatment of the Comerica Equipment Lender Claim to receive in exchange for full and final satisfaction, settlement, release and discharge of the Comerica Equipment Lender Claim against Brundage-Bone the following:

- (i) A \$3,857,500 Lender Senior Term Note secured by a first priority security interest in the Comerica Retained Equipment and payable in accordance with the definition of Lender Secured Notes;
- (ii) A \$2,374,535 Lender Trust Deficiency Note secured by a pro rata share of the Reorganized Debtor Trust Warrants;
- (iii) Pro rata share of the Reorganized Debtor Secured Lender Warrants;
- (iv) Pro rata share of the Reorganized Debtor Trust Warrants; and
- (v) A release from the Debtors and Reorganized Debtor of all Avoidance Actions against the Holder of the Class 1-B Claim.

3. Class 1-C GE Commercial Finance Equipment Lender Claim Against Brundage-Bone

a. Classification: Class 1-C consists of GE Commercial Finance Equipment Lender Claim against Brundage-Bone.

b. Treatment Option 1: Class 1-C, subject to receipt of the Consent attached to this Plan as **Exhibit**, has agreed as treatment of the GE Commercial Finance Equipment Lender Claim to receive in exchange for full and final satisfaction, settlement, release and discharge of the GE Commercial Finance Equipment Lender Claim against Brundage-Bone the following:

- (i) A \$4,207,300 Lender Senior Term Note secured by a first priority security interest in the GE Commercial Finance Retained Equipment and payable in accordance with the definition of Lender Secured Notes;
- (ii) A \$2,360,200 Lender Secured Trust Equipment Note secured by a first priority security interest in the GE Commercial Finance Excess Equipment and payable in accordance with the definition of Lender Secured Trust Note; and
- (iii) A \$2,602,001 Lender Trust Deficiency Note secured by a pro rata share of the Reorganized Debtor Trust Warrants;
- (iv) Pro rata share of the Reorganized Debtor Secured Lender Warrants;
- (v) Pro rata share of the Reorganized Debtor Trust Warrants; and
- (vi) A release from the Debtors and Reorganized Debtor of all Avoidance Actions against the Holder of the Class 1-C Claim.

c. Treatment Option 2: In the event Class 1-C does not consent to Treatment Option 1, the Class 1-C Holder of the GE Commercial Finance Equipment Lender Secured Claim shall, except to the extent it agrees to a less favorable treatment, receive in exchange for the full and final satisfaction, settlement, release and discharge of the GE Commercial Finance Equipment Lender Secured Claim against Brundage-Bone, the following:

- (i) The surrender of the GE Commercial Finance Equipment securing such Holder's Allowed GE Commercial Finance Equipment Lender Secured Claim; or
- (ii) To the extent there is a deficiency resulting from the treatment provided for in subsection (i), the deficiency shall be paid as a Class 5 General Unsecured Claim and shall be entitled to vote as a Class 5 Claim.

#### 4. Class 1-D KeyBank Equipment Lender Claim Against Brundage-Bone

a. Classification: Class 1-D consists of KeyBank Equipment Lender Claim against Brundage-Bone.

b. Treatment: Class 1-D, as evidenced by the Consent attached to this Plan as **Exhibit**, has agreed as treatment of the KeyBank Equipment Lender Claim to receive in

exchange for full and final satisfaction, settlement, release and discharge of the KeyBank Equipment Lender Claim against Brundage-Bone the following:

- (i) A \$9,267,300 Lender Senior Term Note secured by a first priority security interest in the KeyBank Equipment Finance Retained Equipment and payable in accordance with the definition of Lender Secured Notes;
- (ii) A \$3,225,500 Lender Secured Trust Equipment Note secured by a first priority security interest in the KeyBank Equipment Finance Excess Equipment and payable in accordance with the definition of Lender Secured Trust Note;
- (iii) A \$11,244,001 Lender Trust Deficiency Note secured by a pro rata share of the Reorganized Debtor Trust Warrants;
- (iv) Pro rata share of the Reorganized Debtor Secured Lender Warrants;
- (v) Pro rata share of the Reorganized Debtor Trust Warrants; and
- (vi) A release from the Debtors and Reorganized Debtor of all Avoidance Actions against the Holder of the Class 1-D Claim.

5. Class 1-E Key Equipment Finance Equipment Lender Claim Against Brundage-Bone

a. Classification: Class 1-E consists of Key Equipment Finance Equipment Lender Claim against Brundage-Bone.

b. Treatment: Class 1-E, as evidenced by the Consent attached to this Plan as **Exhibit**, has agreed as treatment of the Key Equipment Finance Equipment Lender Claim to receive in exchange for full and final satisfaction, settlement, release and discharge of the Key Equipment Finance Equipment Lender Claim against Brundage-Bone the following:

- (i) A \$4,170,600 Lender Senior Term Note secured by a first priority security interest in the Key Equipment Finance Retained Equipment and payable in accordance with the definition of Lender Secured Notes;
- (ii) A \$1,872,200 Lender Secured Trust Equipment Note secured by a first priority security interest in the Key Equipment Finance Excess Equipment and payable in accordance with the definition of Lender Secured Trust Note;
- (iii) A \$3,840,355 Lender Deficiency Note secured by a pro rata share of the Reorganized Debtor Trust Warrants;
- (iv) Pro rata share of the Reorganized Debtor Secured Lender Warrants;

- (v) Pro rata share of the Reorganized Debtor Trust Warrants; and
- (vi) A release from the Debtors and Reorganized Debtor of all Avoidance Actions against the Holder of the Class 1-E Claim.

6. Class 1-F People's Capital Equipment Lender Claim Against Brundage-Bone

a. Classification: Class 1-F consists of People's Capital Equipment Lender Claim against Brundage-Bone.

b. Treatment: Class 1-F, as evidenced by the Consent attached to this Plan as **Exhibit**, has agreed as treatment of the People's Capital Equipment Lender Claim to receive in exchange for full and final satisfaction, settlement, release and discharge of the People's Capital Equipment Lender Claim against Brundage-Bone the following:

- (i) A \$2,703,300 Lender Senior Term Note secured by a first security priority interest in the People's Capital Retained Equipment and payable in accordance with the definition of Lender Secured Notes;
- (ii) A \$1,121,677 Lender Deficiency Note secured by a pro rata share of the Reorganized Debtor Trust Warrants;
- (iii) Pro rata share of the Reorganized Debtor Secured Lender Warrants;
- (iv) Pro rata share of the Reorganized Debtor Trust Warrants; and
- (v) A release from the Debtors and Reorganized Debtor of all Avoidance Actions against the Holder of the Class 1-F Claim.

7. Class 1-G Wachovia Equipment Lender Claim Against Brundage-Bone

a. Classification: Class 1-G consists of Wachovia Equipment Lender Claim against Brundage-Bone.

b. Treatment: Class 1-G, as evidenced by the Consent attached to this Plan as **Exhibit**, has agreed as treatment of the Wachovia Equipment Lender Claim to receive in exchange for full and final satisfaction, settlement, release and discharge of the Wachovia Equipment Lender Claim against Brundage-Bone the following:

- (i) A \$5,728,100 Lender Senior Term Note secured by a first priority security interest in the Wachovia Retained Equipment and payable in accordance with the definition of Lender Secured Notes;
- (ii) A \$2,197,600 Lender Secured Trust Equipment Note secured by a first priority security interest in the Wachovia Excess Equipment and payable in accordance with the definition of Lender Secured Trust Note;



- (iii) A \$5,536,352 Lender Deficiency Note secured by a pro rata share of the Reorganized Debtor Trust Warrants;
- (iv) Pro rata share of the Reorganized Debtor Secured Lender Warrants;
- (v) Pro rata share of the Reorganized Debtor Trust Warrants; and
- (vi) A release from the Debtors and Reorganized Debtor of all Avoidance Actions against the Holder of the Class 1-G Claim.

8. Class 1-H Wells Fargo Credit Facility Claim Against Brundage-Bone

a. Classification: Class 1-H consists of Wells Fargo Credit Facility Claim against Brundage-Bone.

b. Treatment: Class 1-H, as evidenced by the Consent attached to this Plan as **Exhibit**, has agreed as treatment of the Wells Fargo Credit Facility Claim to receive in exchange for full and final satisfaction, settlement, release and discharge of the Wells Fargo Credit Facility Claim against Brundage-Bone the following:

- (i) A \$8,834,100 Lender Senior Term Note secured by a first priority security interest in the Wells Fargo Credit Facility Retained Equipment and payable in accordance with the definition of Lender Secured Notes;
- (ii) A \$7,862,000 Lender Secured Trust Equipment Note secured by a first priority security interest in the Wells Fargo Credit Facility Excess Equipment and payable in accordance with the definition of Lender Secured Trust Note;
- (iii) A \$18,831,548 Lender Deficiency Note secured by a pro rata share of the Reorganized Debtor Trust Warrants;
- (iv) Pro rata share of the Reorganized Debtor Secured Lender Warrants;
- (v) Pro rata share of the Reorganized Debtor Trust Warrants; and
- (vi) A release from the Debtors and Reorganized Debtor of all Avoidance Actions against the Holder of the Class 1-H Claim.

9. Class 1-I WFEFI Equipment Lender Claim Against Brundage-Bone

a. Classification: Class 1-I consists of WFEFI Equipment Lender Claim against Brundage-Bone.

b. Treatment: Class 1-I, as evidenced by the Consent attached to this Plan as **Exhibit**, has agreed as treatment of the WFEFI Equipment Lender Claim to receive in

exchange for full and final satisfaction, settlement, release and discharge of the WFEFI Equipment Lender Claim against Brundage-Bone the following:

- (i) A \$30,978,000 Lender Senior Term Note secured by a first priority security interest in the WFEFI Retained Equipment and payable in accordance with the definition of Lender Secured Notes;
- (ii) A \$16,577,700 Lender Secured Trust Equipment Note secured by a first priority security interest in the WFEFI Excess Equipment and payable in accordance with the definition of Lender Secured Trust Note;
- (iii) A \$25,883,592 Lender Deficiency Note secured by a pro rata share of the Reorganized Debtor Trust Warrants;
- (iv) Pro rata share of the Reorganized Debtor Secured Lender Warrants;
- (v) Pro rata share of the Reorganized Debtor Trust Warrants; and
- (vi) A release from the Debtors and Reorganized Debtor of all Avoidance Actions against the Holder of the Class 1-I Claim.

10. Class 2-A BofA Equipment Lender Secured Claim Against Brundage-Bone

a. Classification: Class 2-A consists of BofA Equipment Lender Secured Claim against Brundage-Bone.

b. Treatment: The Class 2-A Holder of the BofA Equipment Lender Secured Claim shall, except to the extent it agrees to a less favorable treatment, receive in exchange for the full and final satisfaction, settlement, release and discharge of the BofA Equipment Lender Secured Claim against Brundage-Bone, the following:

- (i) The surrender of the BofA Equipment securing such Holder's Allowed BofA Equipment Lender Secured Claim; or
- (ii) To the extent there is a deficiency resulting from the treatment provided for in subsection (i), the deficiency shall be paid as a Class 5 General Unsecured Claim and shall be entitled to vote as a Class 5 Claim.

11. Class 2-B CBI Leasing Equipment Lender Secured Claim Against Brundage-Bone

a. Classification: Class 2-B consists of CBI Leasing Equipment Lender Secured Claim against Brundage-Bone.

b. Treatment: The Class 2-B Holder of the CBI Leasing Equipment Lender Secured Claim shall, except to the extent it agrees to a less favorable treatment, receive in

exchange for the full and final satisfaction, settlement, release and discharge of the CBI Leasing Equipment Lender Secured Claim against Brundage-Bone, the following:

- (i) The surrender of the CBI Leasing Equipment securing such Holder's Allowed CBI Leasing Equipment Lender Secured Claim; or
- (ii) To the extent there is a deficiency resulting from the treatment provided for in subsection (i), the deficiency shall be paid as a Class 5 General Unsecured Claim and shall be entitled to vote as a Class 5 Claim.

12. Class 2-C PNC Equipment Lender Secured Claim Against Brundage-Bone

a. Classification: Class 2-C consists of PNC Equipment Lender Secured Claim against Brundage-Bone.

b. Treatment: The Class 2-C Holder of the PNC Equipment Lender Secured Claim shall, except to the extent it agrees to a less favorable treatment, receive in exchange for the full and final satisfaction, settlement, release and discharge of the PNC Equipment Lender Secured Claim against Brundage-Bone, the following:

- (i) The surrender of the PNC Equipment securing such Holder's Allowed PNC Equipment Lender Secured Claim; or
- (ii) To the extent there is a deficiency resulting from the treatment provided for in subsection (i), the deficiency shall be paid as a Class 5 General Unsecured Claim and shall be entitled to vote as a Class 5 Claim.

13. Class 2-D RBS Equipment Lender Secured Claim Against Brundage-Bone

a. Classification: Class 2-D consists of RBS Equipment Lender Secured Claim against Brundage-Bone.

b. Treatment: The Class 2-D Holder of the RBS Equipment Lender Secured Claim shall, except to the extent it agrees to a less favorable treatment, receive in exchange for the full and final satisfaction, settlement, release and discharge of the RBS Equipment Lender Secured Claim against Brundage-Bone, the following:

- (i) The surrender of the RBS Equipment securing such Holder's Allowed RBS Equipment Lender Secured Claim; or
- (ii) To the extent there is a deficiency resulting from the treatment provided for in subsection (i), the deficiency shall be paid as a Class 5 General Unsecured Claim and shall be entitled to vote as a Class 5 Claim.

14. Class 2-E SunTrust Equipment Lender Claim Against Brundage-Bone

a. Classification: Class 2-E consists of SunTrust Equipment Lender Claim against Brundage-Bone.

b. Treatment: The Class 2-E Holder of the SunTrust Equipment Lender Claim shall, except to the extent it agrees to a less favorable treatment, receive in exchange for the full and final satisfaction, settlement, release and discharge of the SunTrust Equipment Lender Claim against Brundage-Bone, the following:

- (i) The surrender of the SunTrust Equipment securing such Holder's Allowed SunTrust Equipment Lender Secured Claim; or
- (ii) To the extent there is a deficiency resulting from the treatment provided for in subsection (i), the deficiency shall be paid as a Class 5 General Unsecured Claim and shall be entitled to vote as a Class 5 Claim.

15. Class 3-A GE Commercial Finance Real Estate Lender Secured Claim Against Brundage-Bone

a. Classification: Class 3-A consists of the GE Commercial Finance Real Estate Lender Secured Claim against Brundage-Bone.

b. Treatment: On the later of the Effective Date or the date on which GE Commercial Finance Real Estate Lender Secured Claim against Brundage-Bone becomes an Allowed GE Commercial Finance Real Estate Lender Secured Claim, or, in each such case, as soon as practicable thereafter, except to the extent that a Holder of a GE Commercial Finance Real Estate Lender Secured Claim against Brundage-Bone agrees to a less favorable treatment for such Holder, in exchange for full and final satisfaction, settlement, release and discharge of each GE Commercial Finance Real Estate Lender Secured Claim against Brundage-Bone, each Holder of a GE Commercial Finance Real Estate Lender Secured Claim shall receive the following:

- (i) The Allowed GE Commercial Finance Real Estate Lender Secured Claim shall be paid in accordance with the GE Commercial Finance Real Estate Loan Documents; provided that in the event the Promissory Note that is secured by the GE Commercial Finance Real Estate is due to be paid in full at any time during the pendency of the Plan, the Promissory Note shall be extended at the same interest rate and the principal balance due thereon shall be fully amortized over 30 years.

16. Class 3-B Loan Star Real Estate Lender Claim Against Brundage-Bone

a. Classification: Class 3-B consists of the Loan Star Real Estate Lender Claim against Brundage-Bone.

b. Treatment: On the later of the Effective Date or the date on which Loan Star Real Estate Lender Claim against Brundage-Bone becomes an Allowed Loan Star Real Estate Lender Claim, or, in each such case, as soon as practicable thereafter, except to the extent that a Holder of a Loan Star Real Estate Lender Claim against Brundage-Bone agrees to a less favorable treatment for such Holder, in exchange for full and final satisfaction, settlement, release and discharge of each Loan Star Real Estate Lender Claim against Brundage-Bone, each Holder of a Loan Star Real Estate Lender Claim shall receive the following:

- (i) The Allowed Loan Star Real Estate Lender Claim shall be paid in accordance with the Loan Star Real Estate Loan Documents; provided that in the event the Promissory Note that is secured by the Loan Star Real Estate is due to be paid in full at any time during the pendency of the Plan, the Promissory Note shall be extended at the same interest rate and the principal balance due thereon shall be fully amortized over 30 years.

17. Class 3-C M&I Marshall Real Estate Lender Claim Against Brundage-Bone

a. Classification: Class 3-C consists of the M&I Marshall Real Estate Lender Claim against Brundage-Bone.

b. Treatment: On the later of the Effective Date or the date on which M&I Marshall Real Estate Lender Claim against Brundage-Bone becomes an Allowed M&I Marshall Real Estate Lender Claim, or, in each such case, as soon as practicable thereafter, except to the extent that a Holder of a M&I Marshall Real Estate Lender Claim against Brundage-Bone agrees to a less favorable treatment for such Holder, in exchange for full and final satisfaction, settlement, release and discharge of each M&I Marshall Real Estate Lender Claim against Brundage-Bone, each Holder of a M&I Marshall Real Estate Lender Claim shall receive the following:

- (i) The Allowed M&I Marshall Real Estate Lender Claim shall be paid in accordance with the M&I Marshall Real Estate Loan Documents; provided that in the event the Promissory Note that is secured by the M&I Marshall Real Estate is due to be paid in full at any time during the pendency of the Plan, the Promissory Note shall be extended at the same interest rate and the principal balance due thereon shall be fully amortized over 30 years.

18. Class 3-D Wells Fargo Real Estate Lender Term Loan C Secured Claim Against Brundage-Bone

a. Classification: Class 3-D consists of the Wells Fargo Real Estate Lender Term Loan C Secured Claim against Brundage-Bone.

b. Treatment: The Class 3-D Holder of the Wells Fargo Real Estate Lender Term Loan C Secured Claim shall, except to the extent it agrees to a less favorable treatment, receive in exchange for the full and final satisfaction, settlement, release and discharge of the Wells Fargo Real Estate Lender Term Loan C Secured Claim against Brundage-Bone, the following:

- (i) The surrender of 2410 East Gowan Road, North Las Vegas, NV 89030; or
- (ii) To the extent there is a deficiency resulting from the treatment provided for in subsection (i), the deficiency shall be paid as a Class 5 General Unsecured Claim and shall be entitled to vote as a Class 5 Claim.

19. Class 3-E Wells Fargo Real Estate Lender Term Loan D Secured Claim Against Brundage-Bone

- a. Classification: Class 3-E consists of the Wells Fargo Real Estate Lender Term Loan D Secured Claim against Brundage-Bone.
- b. Treatment: The Class 3-E Holder of the Wells Fargo Real Estate Lender Term Loan D Secured Claim shall, except to the extent it agrees to a less favorable treatment, receive in exchange for the full and final satisfaction, settlement, release and discharge of the Wells Fargo Real Estate Lender Term Loan D Secured Claim against Brundage-Bone, the following:

- (i) The surrender of 1893 Brown Avenue, Riverside, CA 92509; or
- (ii) To the extent there is a deficiency resulting from the treatment provided for in subsection (i), the deficiency shall be paid as a Class 5 General Unsecured Claim and shall be entitled to vote as a Class 5 Claim.

20. Class 3-F Wells Fargo Real Estate Lender Term Loan E Secured Claim Against Brundage-Bone

- a. Classification: Class 3-F consists of the Wells Fargo Real Estate Lender Term Loan E Secured Claim against Brundage-Bone.
- b. Treatment: On the later of the Effective Date or the date on which Wells Fargo Real Estate Lender Term Loan E Secured Claim against Brundage-Bone becomes an Allowed Wells Fargo Real Estate Lender Term Loan E Secured Claim, or, in each such case, as soon as practicable thereafter, except to the extent that a Holder of a Wells Fargo Real Estate Lender Term Loan E Secured Claim against Brundage-Bone agrees to a less favorable treatment for such Holder, in exchange for full and final satisfaction, settlement, release and discharge of each Wells Fargo Real Estate Lender Term Loan E Secured Claim against Brundage-Bone, each Holder of a Wells Fargo Real Estate Lender Term Loan E Secured Claim shall receive the following:

- (i) The Allowed Wells Fargo Real Estate Lender Term Loan E Secured Claim shall be paid in accordance with the Wells Fargo Real Estate Lender Term Loan E Documents; provided that in the event the Promissory Note that is secured by the Wells Fargo Real Estate located at 1037 and 1055 4<sup>th</sup> Ave. North, Kent, WA 98032 is due to be paid in full at any time during the pendency of the Plan, the Promissory Note shall be extended at the same interest rate and the principal balance due thereon shall be fully amortized over 30 years.



21. Class 3-G Wells Fargo Real Estate Lender Term Loan F Secured Claim Against Brundage-Bone

a. Classification: Class 3-G consists of the Wells Fargo Real Estate Lender Term Loan F Secured Claim against Brundage-Bone.

b. Treatment: The Class 3-G Holder of the Wells Fargo Real Estate Lender Term Loan F Secured Claim shall, except to the extent it agrees to a less favorable treatment, receive in exchange for the full and final satisfaction, settlement, release and discharge of the Wells Fargo Real Estate Lender Term Loan F Secured Claim against Brundage-Bone, the following:

- (i) The surrender of 301 North Cloverdale Road, Boise, ID 83713; or
- (ii) To the extent there is a deficiency resulting from the treatment provided for in subsection (i), the deficiency shall be paid as a Class 5 General Unsecured Claim and shall be entitled to vote as a Class 5 Claim.

22. Class 3-H Wells Fargo Real Estate Lender Term Loan G Secured Claim Against Brundage-Bone

a. Classification: Class 3-H consists of the Wells Fargo Real Estate Lender Term Loan G Secured Claim against Brundage-Bone.

b. Treatment: On the later of the Effective Date or the date on which Wells Fargo Real Estate Lender Term Loan G Secured Claim against Brundage-Bone becomes an Allowed Wells Fargo Real Estate Lender Term Loan G Secured Claim, or, in each such case, as soon as practicable thereafter, except to the extent that a Holder of a Wells Fargo Real Estate Lender Term Loan G Secured Claim against Brundage-Bone agrees to a less favorable treatment for such Holder, in exchange for full and final satisfaction, settlement, release and discharge of each Wells Fargo Real Estate Lender Term Loan G Secured Claim against Brundage-Bone, each Holder of a Wells Fargo Real Estate Lender Term Loan G Secured Claim shall receive the following:

- (i) The Allowed Wells Fargo Real Estate Lender Term Loan G Secured Claim shall be paid in accordance with the Wells Fargo Real Estate Lender Term Loan G Loan Documents; provided that in the event the Promissory Note that is secured by the Wells Fargo Real Estate located at 1627 N.E. Argyle Drive, Portland, OR 97211 is due to be paid in full at any time during the pendency of the Plan, the Promissory Note shall be extended at the same interest rate and the principal balance due thereon shall be fully amortized over 30 years.

23. Class 3-I Wells Fargo Real Estate Lender Additional Secured Claim Against Brundage-Bone

a. Classification: Class 3-1 consists of the Wells Fargo Real Estate Lender Additional Secured Claims against Brundage-Bone.

b. Treatment: Class 3-I, as evidenced by the Consent attached to this Plan as Exhibit \_\_\_\_\_, has agreed as treatment of the Wells Fargo Real Estate Lender Additional Secured Claim to receive for full and final satisfaction, settlement, release and discharge of the Wells Fargo Real Estate Lender Additional Secured Claim against Brundage-Bone the following:

- (i) A \$\_\_\_ Secured Note (representing the fair market value of the property as of the Confirmation Date) with interest payable monthly in arrears at the rate of 4% per annum, plus principal, amortized over 30 years with a balloon payment of the remaining principal balance due on the 5<sup>th</sup> anniversary of the Effective Date. The new Secured Note will be secured by the Wells Fargo Additional Real Estate located at 1025 S. 48<sup>th</sup> Street, Tempe, AZ.
- (ii) A \$\_\_\_ Secured Note (representing the fair market value of the property as of the Confirmation Date) with interest payable monthly in arrears at the rate of 4% per annum, plus principal, amortized over 30 years with a balloon payment of the remaining principal balance due on the 5<sup>th</sup> anniversary of the Effective Date. The new Secured Note will be secured by the Wells Fargo Additional Real Estate located at 786 N. Miller Avenue, Springfield, MO.
- (iii) A \$\_\_\_ Secured Note (representing the fair market value of the property as of the Confirmation Date) with interest payable monthly in arrears at the rate of 4% per annum, plus principal, amortized over 30 years with a balloon payment of the remaining principal balance due on the 5<sup>th</sup> anniversary of the Effective Date. The new Secured Note will be secured by the Wells Fargo Real Additional Estate located at 2001 Hinton Drive, Irving, TX.

24. Class 4 GMAC Equipment Lender Claim Against Brundage-Bone

a. Classification: Class 4 consists of GMAC Equipment Lender Claim against Brundage-Bone.

b. Treatment: The Class 4 Holder of the GMAC Equipment Lender Claim shall, except to the extent it agrees to a less favorable treatment, receive in exchange for the full and final satisfaction, settlement, release and discharge of the GMAC Equipment Lender Claim against Brundage-Bone, the following:

- (i) The surrender of the GMAC Equipment securing such Holder's Allowed GMAC Equipment Lender Secured Claim; or
- (ii) To the extent there is a deficiency resulting from the treatment provided for in subsection (i), the deficiency shall be paid as a Class 5 General Unsecured Claim and shall be entitled to vote as a Class 5 Claim.

25. Class 5 General Unsecured Claims Against Brundage-Bone

a. Classification: Class 5 consists of all General Unsecured Claims against Brundage-Bone.

b. Treatment:

- (i) Each Allowed Class 5 Claim shall receive its pro rata share of the BB Unsecured Trust Note, which payments shall be disbursed quarterly by the BB Unsecured Trustee to the Holders of the Allowed Class 5 Claims. The first quarterly distribution to the Holders of the Class 5 Claims shall commence on the first day of the first calendar quarter that is 90 days after the Effective Date. To the extent the Debtor has a claim to avoid a preferential transfer against a Holder of a Class 5 Claim under Section 547 of the Bankruptcy Code and the Holder of such Class 5 Claim votes in favor of this Plan and agrees to give the Reorganized Debtor payment terms on substantially the same terms as provided during the year prior to the bankruptcy, the Debtor shall waive any claim it may have to avoid the preferential transfer, provided the foregoing shall not apply to any Deficiency Claim or to ADR Tort Claims.
- (ii) If the Holder of an ADR Tort Claim after satisfying the provisions of the ADR Procedure is determined to have an Allowed ADR Tort Claim, the Allowed ADR Tort Claim, to the extent it is not otherwise paid pursuant to Insurance Policy Documents, shall constitute an Allowed Class 5 Claim and shall be treated in the same manner as other Allowed Class 5 Claims.

26. Class 6 Intercompany Claims Against Brundage-Bone

a. Classification: Class 6 consists of the Intercompany Claims against Brundage-Bone.

b. Treatment: Holders of Intercompany Claims against Brundage-Bone shall receive no distributions on account of their Intercompany Claims against Brundage-Bone.

c. Voting: Class 6 is Impaired, and Class 6 will be conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, Holders of Class 6 Claims will not be entitled to vote to accept or reject the Plan.

27. Class 7 Section 510(b) Claims Against Brundage-Bone

a. Classification: Class 7 consists of all Section 510(b) Claims against Brundage-Bone.

b. Treatment: Holders of Section 510(b) Claims against Brundage-Bone will receive no distribution on account of such Claims.

c. Voting: Class 7 is Impaired, and the Holders of Class 7 Claims will be conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, Holders of Class 7 Claims will not be entitled to vote to accept or reject the Plan.

28. Class 8 Equity Interests in Brundage-Bone

a. Classification: Class 8 consists of all Equity Interests in Brundage-Bone.

b. Treatment: On the Effective Date, all Equity Interests in Brundage-Bone shall be deemed canceled and extinguished, and shall be of no further force and effect, whether surrendered for cancellation or otherwise.

c. Voting: Holders of Equity Interests in Brundage-Bone are Impaired, and the Holders of Class 8 Interests will be conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, Holders of Class 8 Equity Interests will not be entitled to vote to accept or reject the Plan.

**E. Classification and Treatment of Claims and Interests Against JLS**

29. Class 9 Secured Claims Against JLS

a. Classification: Class 9 consists of all Secured Claims against JLS, which are limited to the Class 1, Class 2, Class 3 and Class 4 Claims against Brundage-Bone.

b. Treatment: To the extent Class 9 Claims exist against JLS, they constitute Claims against Brundage-Bone and to the extent they are Allowed, they shall be treated and paid as Allowed Claims against Brundage-Bone in accordance with the treatment provided for Brundage-Bone Claims.

30. Class 10 General Unsecured Claims Against JLS

a. Classification: Class 10 consists of all General Unsecured Claims against JLS.

b. Treatment:

- (i) Each Allowed Class 10 Claim shall receive its pro rata share of the BB Unsecured Trust Note in the same manner as provided to the Holders of Allowed Class 5 Claims. To the extent the Debtor has a claim to avoid a

preferential transfer against a Holder of a Class 10 Claim under Section 547 of the Bankruptcy Code and the Holder of such Class 10 Claim votes in favor of this Plan and agrees to give the Reorganized Debtor payment terms on substantially the same terms as provided during the year prior to the bankruptcy, the Debtor shall waive any claim it may have to avoid the preferential transfer, provided the foregoing shall not apply to any Deficiency Claim or to ADR Tort Claims.

- (ii) If the Holder of an ADR Tort Claim after satisfying the provisions of the ADR Procedure is determined to have an Allowed ADR Tort Claim, the Allowed ADR Tort Claim, to the extent it is not otherwise paid by the insurance company, shall constitute an Allowed Class 10 Claim and shall be treated in the same manner as Allowed Class 5 Claims.

31. Class 11 Intercompany Claims Against JLS

- a. Classification: Class 11 consists of the Intercompany Claims against JLS.
- b. Treatment: Holders of Intercompany Claims against JLS shall receive no distributions on account of their Intercompany Claims against JLS.
- c. Voting: Class 11 is Impaired, and Class 11 will be conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, Holders of Class 11 Claims will not be entitled to vote to accept or reject the Plan.

32. Class 12 Equity Interests in JLS

- a. Classification: Class 12 consists of all Equity Interests in JLS.
- b. Treatment: On the Effective Date, all Equity Interests in JLS shall be deemed canceled and extinguished, and shall be of no further force and effect, whether surrendered for cancellation or otherwise.
- c. Voting: Holders of Equity Interests in JLS are Impaired, and the Holders of Class 12 Interests will be conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, Holders of Class 12 Equity Interests will not be entitled to vote to accept or reject the Plan.

**F. Acceptance or Rejection of the Plan**

1. Presumed Acceptance of Plan: Classes 2-A, 2-B, 2-C, 2-D, 2-E, 3-D, 3-E, 3-G and 4 are Unimpaired under the Plan and are, therefore, presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code and such Classes are not entitled to vote on the Plan and the vote of such Holders of Claims shall not be solicited.

2. Voting Classes: Each Holder of an Allowed Claim in each of Classes 1-A, 1-B, 1-C, 1-D, 1-E, 1-F, 1-G, 1-H, 3-A, 3-B, 3-C, 3-F, 3-H and 5 shall be entitled to vote to accept or reject the Plan; provided if a Holder of a Class 4-A Claim does not accept

the Plan, such Holder shall receive a distribution that leaves such Claim Unimpaired (other than Class 4-A-13), and such Holder of such Class 4-A Claim will be deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code.

3. Presumed Rejection of the Plan: Holders of Class 11 Intercompany Claims against JLS, Class 6 Intercompany Claims against Brundage-Bone, Class 7 Section 510(b) Claims against Brundage-Bone, and Class 8 Equity Interests in Brundage-Bone shall receive no distributions under the Plan on account of their Claims or Interests and are, therefore, presumed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, Holders of Class 11 Intercompany Claims against JLS, Class 6 Intercompany Claims against Brundage-Bone, Class 7 Section 510(b) Claims against Brundage-Bone, and Class 8 Equity Interests in Brundage-Bone are not entitled to vote on the Plan and the vote of such Holders shall not be solicited.

4. Acceptance by Impaired Classes of Claims: Pursuant to section 1126(c) of the Bankruptcy Code and except as otherwise provided in section 1126(e) of the Bankruptcy Code, an Impaired Class of Claims has accepted the Plan if the Holders of at least two-thirds in dollar amount and more than one-half in number of the Allowed Claims in such Class actually voting have voted to accept the Plan.

5. Elimination of Vacant Classes: Any Class of Claims that has no Holders of any Allowed Claims of any Claims temporarily Allowed under Bankruptcy Rule 3018 due to no ballots having been cast in such Class entitled to vote on the Plan shall be deemed eliminated from the Plan for purposes of voting and for purposes of determining acceptance or rejection of the Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

6. Tabulation of Ballots: The Debtors will tabulate all votes on the Plan for the purpose of determining whether the Plan satisfies section 1129(a)(8) and (10) of the Bankruptcy Code. All votes on account of Allowed Claims shall be counted as if Filed against a single Estate.

7. Confirmation Pursuant to Section 1129(a)(10) and 1129(b) of the Bankruptcy Code: Section 1129(a)(10) of the Bankruptcy Code shall be satisfied for purposes of Confirmation by acceptance of the Plan by an Impaired Class of Claims. The Debtors shall seek Confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code with respect to any rejecting Class of Claims or Interests.

8. Controversy Concerning Impairment: If a controversy arises as to whether any Claims or Interests, or any Class of Claims or Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.



## **ARTICLE IV.**

### **PROVISIONS FOR IMPLEMENTATION OF THE PLAN**

#### **A. Operations Between the Confirmation Date and the Effective Date**

During the period from the Confirmation Date through and until the Effective Date, the Debtors shall continue to operate their businesses as debtors in possession, subject to the oversight of the Bankruptcy Court as provided in the Bankruptcy Code, the Bankruptcy Rules, all orders of the Bankruptcy Court that are then in full force and effect, and as set forth herein.

#### **B. Sources of Consideration for Plan Distributions**

The Reorganized Debtors shall fund distributions under the Plan with Cash on hand, including Cash from operations, existing assets, proceeds from the Exit Facility.

#### **C. Exit Facility**

On the Effective Date, the Reorganized Debtors will enter into the Exit Facility. In accordance with the Exit Facility Agreement, the Reorganized Debtors will use proceeds of the Exit Facility Agreement to satisfy (a) the DIP Facility Claims, including the standby letters of credit issued under the DIP Credit Agreement (b) the Fee Claims and (c) the Administrative Claims, to the extent such Claims are not otherwise satisfied pursuant to the terms of the Plan. The Reorganized Debtors shall make payments of principal and interest in accordance with the terms of the Exit Facility Agreement. The Confirmation Order shall constitute an order of the Bankruptcy Court approving the Exit Facility and, upon the Effective Date, the Exit Facility shall be deemed to become valid, binding, and enforceable in accordance with its terms.

#### **D. New Notes**

On the Effective Date, the Reorganized Debtors will enter into the Lender Senior Term Notes, the BB Liquidating Subsidiary will enter into Lender Secured Trust Equipment Notes, and the BB Liquidating Trust shall enter into Lender Trust Deficiency Notes. If appropriate and necessary, the Reorganized Debtor shall enter into Secured Notes with each Real Estate Lender. Each of the Notes referenced herein shall be deemed to become valid, binding, and enforceable in accordance with its terms.

#### **E. Restated Articles of Incorporation**

Pursuant to C.R.S. Section 7-110-[108], in connection with the Confirmation of the Plan, Reorganized Brundage-Bone will amend and restate its Articles of Incorporation, in their entirety, by filing with the Colorado Secretary of State its Restated Articles of Incorporation, which will provide all information required by C.R.S. Section 7-101-101 *et. seq.* Reorganized Brundage-Bone will be permitted to engage in any lawful act or activity for which corporations may be organized under the Colorado Business Corporation Act, and will have perpetual existence.

The business and affairs of Reorganized Brundage-Bone will be managed by or under the direction of the New Board, which will have the number of directors as may be established in the Bylaws and the Shareholders Agreement. Subject to statutory power conferred on the shareholders, and subject to the Shareholders Agreement, the New Board will have the power to amend the Articles of Incorporation and the Bylaws from time to time. Directors will be entitled to indemnification to the fullest extent permitted under the Colorado Business Corporation Act. Dividends payable in cash or in stock may be declared and paid on the New Common Stock from funds lawfully available therefor as and when determined by the New Board.

#### **F. Amended and Restated Bylaws**

In connection with the Confirmation of the Plan, Reorganized Brundage-Bone will adopt and approve its Amended and Restated Bylaws, which will establish, among other things, (1) the time, place and notice requirements and quorum requirements for shareholder meetings, (2) proxy voting rules, (3) actions taken by shareholders without a meeting, (4) the election and removal of directors and filling New Board vacancies (each subject to the Shareholders Agreement), (5) the time, place and notice requirements and quorum requirements for New Board meetings, (6) actions taken by the New Board without a meeting, (7) the authority of the New Board to create committees, and the powers of such committees, (8) the prohibition on compensation payable to directors, (9) the election/appointment, removal, term and duties of corporate officers, including a president, secretary, treasurer, one or more vice presidents and such other officers as the New Board may determine, (10) certificates representing shares of capital stock (and allowing lost certificate affidavits in lieu thereof), (11) the payment of dividends declared on capital stock by the New Board, (12) indemnification of employees, officers, directors and agents of Reorganized Brundage-Bone, and payment of expenses in connection therewith, (13) provision of directors and officers insurance, (14) the fiscal year of Reorganized Brundage-Bone, and (15) the corporate seal of Reorganized Brundage-Bone. To the extent a provision or term of the Shareholders Agreement and the Amended and Restated Bylaws are in conflict, to the extent not prohibited by law, the provision or term set forth in the Shareholders Agreement will govern.

#### **G. New Common Stock**

The issuance by Reorganized Brundage-Bone of New Common Stock on or as soon as reasonably practicable following the Effective Date is hereby authorized without the need for any further corporate action or further order of the Bankruptcy Court.

The Restated Articles of Incorporation will create a single class of capital stock, which will be the New Common Stock. The number of shares of New Common Stock initially authorized in the Restated Articles for issuance will be sufficient to cover (1) the shares issuable on the Effective Date, (2) the shares issuable upon exercise of the Reorganized Debtor Secured Lender Warrant, (3) the shares issuable upon exercise of the Reorganized Debtor Trust Warrants (together with the Reorganized Debtor Secured Lender Warrants, the "Warrants") and (4) the shares issuable pursuant to any Employee Equity Incentive Plan. The holders of New Common Stock will have the exclusive right to vote for the election of directors and on all other matters requiring shareholder action, and will be entitled to one vote for each share of New Common Stock held on all matters presented to the shareholders for their vote and/or approval, subject to

the voting requirements and director appointment rights granted to the Holder of the Warrants set forth in the Shareholders Agreement. Holders of shares of New Common Stock will vote together as a single class on all matters submitted to a vote of the shareholders; however, cumulative voting will not be permitted.

Preemptive rights will not exist with respect to capital stock or securities convertible into capital stock of Reorganized Brundage-Bone; provided, however, that Reorganized Brundage-Bone may, by contract, grant to some or all of Reorganized Brundage-Bone's security holders preemptive rights to acquire securities of Reorganized Brundage-Bone.

## **H. Reorganized Debtor Secured Lender Warrants**

The issuance by Reorganized Brundage-Bone of the Reorganized Debtor Secured Lenders Warrants on or as soon as reasonably practicable following the Effective Date is hereby authorized without the need for any further corporate action or further order of the Bankruptcy Court.

Reorganized Brundage-Bone will issue to the BB Liquidating Trust, for the benefit of the Holders of Secured Senior Term Notes, one or more Reorganized Debtor Secured Lenders Warrants to purchase up to 10% of the New Common Stock (on a fully diluted basis) (the "Secured Lender Warrant Shares"). The Reorganized Debtor Secured Lender Warrants will terminate five years after the date of their issuance, and may be exercised (i) at any time during the period beginning on the 45<sup>th</sup> day immediately prior to the fifth anniversary of the issue date and ending on the fifth anniversary of the issue date, (ii) any time beginning on the date of a major default under the Lender Secured Senior Term Notes and the fifth anniversary of the issue date and (iii) anytime beginning 20 days immediately prior to the consummation of a sale of Reorganized Brundage-Bone and ending on the closing date of such sale. The exercise price of the Reorganized Debtor Secured Lenders Warrants shall be \$.01 per share of New Common Stock (the "Lender Warrant Strike Price"). The number of Secured Lender Warrant Shares and the Lender Warrant Strike Price will be subject to anti-dilution adjustments for (i) stock splits and combinations, (ii) dividends and distributions and (iii) recapitalizations and similar transactions, as set forth in the Reorganized Debtor Secured Lenders Warrants. The Reorganized Debtor Secured Lenders Warrants, when exercised, may be exercised for cash or by surrendering a portion of the Reorganized Debtor Secured Lender Warrants in lieu of cash pursuant to a standard cashless exercise formula set forth in the Reorganized Debtor Secured Lenders Warrants. The Reorganized Debtor Secured Lenders Warrants will be subject to restrictions on transfer pursuant to state and federal securities laws, and subject to restrictions on transfer and other restrictions, rights and privileges pursuant to the Shareholders Agreement.

## **I. Reorganized Debtor Trust Warrants**

The issuance by Reorganized Brundage-Bone of the Reorganized Debtor Trust Warrants on or as soon as reasonably practicable following the Effective Date is hereby authorized without the need for any further corporate action or further order of the Bankruptcy Court.

Reorganized Brundage-Bone will issue to the BB Liquidating Trust, for the benefit of the Holders of Lender Trust Deficiency Notes, one or more Reorganized Debtor Trust Warrants to purchase up to 80% of the New Common Stock (on a fully diluted basis) (the "Trust Warrant Shares"). The Reorganized Debtor Trust Warrants will terminate five years after the date of their issuance, and may be exercised (i) at any time during the period beginning on the 45<sup>th</sup> day immediately prior to the fifth anniversary of the issue date and ending on the fifth anniversary of the issue date, (ii) any time beginning on the date of a major default under the Lender Trust Deficiency Notes and the fifth anniversary of the issue date and (iii) anytime beginning 20 days immediately prior to the consummation of a sale of Reorganized Brundage-Bone and ending on the closing date of such sale. The exercise price of Reorganized Debtor Trust Warrants shall be \$.01 per share of New Common Stock. The other material terms of the Reorganized Debtor Trust Warrants will be substantially the same as the material terms of the Reorganized Debtor Secured Lenders Warrants, except that Reorganized Brundage-Bone shall have the right to reacquire and cancel/terminate the Reorganized Debtor Trust Warrants at the rate of .1% of the Reorganized Debtor Trust Warrants for each piece of Excess Equipment that is purchased by Reorganized Brundage-Bone or BB Operating Subsidiary. Reorganized Brundage-Bone or BB Operating Subsidiary shall have the right to reacquire the Reorganized Debtor Trust Warrants at the rate of .05% of the Reorganized Debtor Trust Warrants for each piece of Excess Equipment sold to third parties for a minimum of 80% of the Excess Equipment's then Annual Revised Fair Market Value. The Reorganized Debtor Trust Warrant, like the Reorganized Debtor Secured Lender Warrant, will subject to restrictions on transfer pursuant to state and federal securities laws, and subject to restrictions on transfer and other restrictions, rights and privileges pursuant to the Shareholders Agreement.

## **J. Shareholders Agreement**

The Holder(s) of the Warrants, all Holders of New Common Stock and Holders of rights to acquire New Common Stock (each, a "Shareholder Party") and Reorganized Brundage-Bone will enter into a Shareholders Agreement, which will provide for, among other things, (i) restrictions on transfer of the Warrants and the New Common Stock (or rights to receive or purchase New Common Stock) (collectively, the "Covered Securities"), (ii) a right of first offer to purchase Covered Securities offered for a proposed sale by a Shareholder Party, (iii) tag-along rights to sell a commensurate portion of its Covered Securities if a Shareholder Party desires to sell more than a specified percentage of its Covered Securities, (iv) drag-along obligations imposed on Shareholder Parties to sell a commensurate portion of its Covered Securities if a Shareholder Party desires to sell more than a specified percentage of its Covered Securities, (v) preemptive rights, (vi) fixing the size of the New Board of directors at seven members, (vii) grant of the right of Holders of the Warrants to designate five members to New Board, of the right of management to appoint two members of management to the New Board, and the obligation of Shareholder Parties to vote their shares of capital stock accordingly, while the BB Liquidating Trust remains in existence, (viii) upon termination or resignation of a member of management, the right of Reorganized Brundage-Bone to repurchase any Covered Securities awarded to him pursuant to any Employee Equity Incentive Program, and the right of such member of management to put his Covered Securities to Reorganized Brundage-Bone in the event the Company does not exercise its call on such Covered Securities, and (ix) registration rights, including piggy-back registration rights, each with applicable cut backs.

**K. Tax Reimbursement and Indemnification Agreement**

Reorganized Brundage-Bone and certain shareholders of Brundage-Bone will enter into a Tax Reimbursement and Indemnification Agreement pursuant to which Reorganized Brundage-Bone will agree to reimburse and indemnify such former shareholders for up to a maximum of \$2,200,000 of state and federal income tax liabilities (including a tax gross up thereon) with respect to gain or ordinary income, if any, allocated to them with respect to transfers of the equipment by the Debtors to the BB Operating Subsidiary or the BB Liquidating Subsidiary or back to the Lenders prior to, or in connection with, the Confirmation of the Plan. Immediately following the Confirmation of the Plan, Reorganized Brundage-Bone will establish and fund into escrow the funds necessary to secure its obligations under the Tax Reimbursement and Indemnification Agreement. The escrow will remain in existence and shall be fully funded until the expiration of the applicable statute of limitations for the assessment of federal income taxes for calendar year 2010. After the expiration of such statute of limitations, the escrow will terminate, and all funds remaining in the escrow at such time will be returned to Reorganized Brundage-Bone.

**L. Management Employment Agreements**

Reorganized Brundage-Bone will enter into employment agreements with certain members of executive management promptly following the Confirmation of the Plan. The New Board will determine which members of management will be offered employment agreements and the terms and conditions of such employment agreements. It is anticipated that that terms of such employment agreements (which are subject to change by the New Board, in its discretion) will include the following: (i) designation of title, duties and reporting responsibility, (ii) seat on the New Board, if applicable, (iii) base salary, (iv) annual cash bonus, if applicable, (v) participation in the Employee Equity Incentive Program, if applicable, (vi) employee benefits, (vii) directors and officers insurance coverage, (viii) termination (by the Company for cause, by the Company not for cause, death, disability or termination by the executive) and severance, if applicable, (ix) restrictive covenants applicable to the executive (e.g., covenant not to compete, non-solicitation of customers, employees, etc., non-disparagement, confidentiality, etc.), (x) dispute resolution procedures, (xi) non-assignability and (xii) general provisions (e.g., notice, governing law, withholding taxes, etc.).

**M. Section 1145 and Other Exemptions**

Pursuant to section 1145 of the Bankruptcy Code, the offering, issuance, and distribution of any Securities contemplated by the Plan and any and all settlement agreements incorporated herein, including the New Common Stock and Warrants, shall be exempt from, among other things, the registration requirements of section 5 of the Securities Act and any other applicable law requiring registration prior to the offering, issuance, distribution, or sale of Securities. To the extent that section 1145 of the Bankruptcy Code is not available, the New Common Stock will be issued without registration under the Securities Act or any similar federal, state, or local law in reliance on the private placement exemption under section 4(2) of the Securities Act or Regulation D promulgated there under.



In addition, under section 1145 of the Bankruptcy Code, any Securities contemplated by the Plan and any and all settlement agreements incorporated therein, including the New Common Stock, will be freely tradable by the recipients thereof, subject to (a) the provisions of section 1145(b)(1) of the Bankruptcy Code relating to the definition of an underwriter in section 2(a)(1) of the Securities Act, and compliance with any rules and regulations of the Securities and Exchange Commission, if any, applicable at the time of any future transfer of such Securities or instruments; (b) the restrictions, if any, on the transferability of such Securities and instruments; and (3) applicable regulatory approval.

#### **N. Corporate Existence**

On the Effective Date, the following corporate changes shall occur:

(a) Brundage-Bone and JLS shall be merged and Reorganized Brundage-Bone shall be the surviving corporate entity under the laws of the State of Colorado.

(b) Brundage-Bone shall terminate its election to be treated as an S Corporation under the Internal Revenue Code and Reorganized Brundage-Bone shall thereafter be treated as a C Corporation for income tax purposes; and

(c) The Reorganized Debtor shall form two new wholly-owned subsidiary corporations organized under the laws of the State of Colorado, BB Operating Subsidiary, Inc. and BB Liquidating Subsidiary, Inc., which corporations shall be treated as C Corporations for income tax purposes and the boards of directors for each shall be selected by the New Board of the Reorganized Brundage-Bone.

#### **O. BB Liquidating Trust**

On the Effective Date, the Reorganized Brundage-Bone shall cause the formation of the BB Liquidating Trust, the Trustee of which shall be Wilmington Trust Corporation. The BB Liquidating Trust shall be formed for the purpose of issuing the Trust Deficiency Notes and holding the Reorganized Debtor Secured Lenders Warrants and the Reorganized Debtor Trust Warrants. The BB Liquidating Trust shall be managed by three managers, two of whom shall be appointed by the Holders of the Trust Deficiency Notes and one of whom shall be appointed by the management of the Reorganized Brundage-Bone.

#### **P. BB Unsecured Trust**

On the Effective Date, the Reorganized Brundage-Bone shall cause the formation of the BB Unsecured Trust, the Trustee of which shall be selected by the Unsecured Creditors Committee. The BB Unsecured Trust shall be formed for the purpose of holding the BB Unsecured Trust Note and making distributions to the Allowed Class 5 Claims.

#### **Q. Vesting of Assets in the Reorganized Debtors**

Except for the security interests of the Holders of Class 1 Claims and Class 3 Claims and as otherwise provided in the Plan or any agreement, instrument, or other document incorporated therein, on the Effective Date, all property in each Estate, all Causes of Action, and any property acquired by any of the Debtors pursuant to the Plan shall vest in each respective Reorganized Debtor, free and clear of all Liens, Claims, charges, or other



encumbrances. On and after the Effective Date, except as otherwise provided in the Plan, each Reorganized Debtor may operate its business and may use, acquire, or dispose of property and compromise or settle any Claims or Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules.

#### **R. Cancellation of Interests**

On the Effective Date, except to the extent otherwise provided herein, all notes, stock, instruments, certificates and other documents evidencing any Interests shall be canceled, and the obligations of the Debtors thereunder or in any way related thereto shall be fully released and discharged.

#### **S. Corporate Action**

Each of the matters provided for by the Plan involving the corporate structure of the Debtors or corporate or related actions to be taken by or required of the Reorganized Debtors shall, as of the Effective Date, be deemed to have occurred and be effective as provided in the Plan (except to the extent otherwise indicated), and shall be authorized, approved, and, to the extent taken prior to the Effective Date, ratified in all respects without any requirement of further action by Holders of Claims or Interests, directors or managers of the Debtors or any other Entity (including the BB Operating Subsidiary, the BB Liquidating Subsidiary and the BB Liquidating Trust). Without limiting the foregoing, such actions may include: (1) the adoption, approval and filing of Reorganized Brundage-Bone's Restated Articles of Incorporation; (2) the adoption and approval of Reorganized Brundage-Bone's Amended and Restated Bylaws; (3) adoption, approval, execution and delivery of the Shareholders Agreement; (4) the appointment of directors to the New Board and appointment and approval of the new officers of Reorganized Brundage-Bone; (5) execution and delivery of the Reorganized Debtor Secured Lenders Warrants; (6) execution and delivery of the Reorganized Debtor Trust Warrants; (7) execution and delivery of the Exit Facility Agreement and related documents; (8) execution and delivery of the Lender Secured Senior Term Notes and related documents; (9) execution and delivery of the Lender Secured Trust Equipment Notes and related documents; (10) the execution and delivery of the Tax Reimbursement and Indemnification Agreement; (11) the execution and delivery of such certificates or other documents necessary to form the BB Operating Subsidiary; (12) the execution and delivery of such certificates or other documents necessary to form the BB Liquidating Subsidiary; (13) the execution and delivery of the Asset Management Agreement; (14) the execution and delivery of the BB Liquidating Trust formation and funding documents and related documents; (15) the execution and delivery of the Lender Trust Deficiency Notes and related documents; (16) the execution and delivery of the BB Unsecured Trust documents and related documents; and (17) such other documents, agreements, certificates and instruments as may be necessary or desirable to fully implement and effect the terms and conditions of the Plan.

#### **T. Effectuating Documents and Further Transactions**

On and after the Effective Date, the Reorganized Debtors, and the officers and members of the New Board, are authorized to effect any transaction described in, approved by, contemplated by, or necessary to effectuate the Plan, without further notice to or action, order,

or approval of the Bankruptcy Court or any other Entity except for those expressly required pursuant to the Plan, including: (1) issuance, execution, delivery, filing, or recording such contracts, securities, instruments, releases, and other agreements or documents as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of the Plan; (2) execution and delivery of appropriate agreements or other documents of merger, consolidation, or reorganization containing terms necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of the Plan; (3) execution and delivery of appropriate instruments of transfer, assignment, assumption or delegation of any property, right, liability, duty, or obligation necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of the Plan; (4) the filing of appropriate certificates of incorporation, merger, consolidation, or reorganization with the appropriate governmental authorities pursuant to applicable law; (5) approval, execution and delivery of employment agreements and the Employee Equity Incentive Program; and (6) all other actions that the Reorganized Debtors determined are necessary or appropriate.

#### **U. Discharge of Debtors**

Except as otherwise provided in the Plan, on the Effective Date and effective as of the Effective Date: (1) the rights afforded in the Plan and the treatment of all Claims and Interests shall be in exchange for and in complete satisfaction, discharge and release of all Claims and Interests of any nature whatsoever, including any interest accrued on such Claims from and after the Petition Date, against the Debtors, or any of their assets, property or Estates; (2) the Plan shall bind all Holders of Claims and Interests, notwithstanding whether any such Holders failed to vote to accept or reject the Plan or voted to reject the Plan; (3) all Claims against and Interests in the Debtors shall be satisfied, discharged and released in full, and the Debtors' liability with respect thereto shall be extinguished completely, including any liability of the kind specified under section 502(g) of the Bankruptcy Code; and (4) all Entities shall be precluded from asserting against the Debtors, the Debtors' Estates, the Reorganized Debtors, each of their successors and assigns, and each of their assets and properties, any other Claims or Interests based upon any documents, instruments or any act or omission, transaction or other activity of any kind or nature that occurred prior to the Effective Date. All debt under the Plan that shall be surrendered, redeemed, exchanged or cancelled shall be deemed for all purposes, including income tax purposes, to be outstanding until the Effective Date, and such debt shall not be deemed surrendered, redeemed, exchanged or cancelled on any date earlier than the Effective Date.

#### **V. Exemption from Certain Transfer Taxes and Recording Fees**

Pursuant to section 1146(a) of the Bankruptcy Code, any transfer from a Debtor to a Reorganized Debtor or to any Entity in accordance with, in contemplation of, in connection with the Plan, or pursuant to: (1) the issuance, distribution, transfer, or exchange of any debt, Equity Security, or other Interest in the Debtors or the Reorganized Debtors; (2) the creation, modification, consolidation, or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means; (3) the making, assignment, or recording of any lease or sublease; or (4) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including any deeds, bills of sale, assignments, or other instrument of transfer executed in

connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, or other similar tax or governmental assessment, and the appropriate state or local governmental officials or agents shall forgo the collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

#### **W. Directors and Officers of the Reorganized Debtors**

Pursuant to the Shareholders' Agreement and the Reorganized Brundage-Bone's Charter, its New Board shall consist of seven members. Five members of the New Board shall be selected by the Holders of the Class 1 Claims and two members shall be selected by the Reorganized Debtors' management, provided that at any time the Reorganized Brundage-Bone's management owns more than 40% of the Warrants, they shall be entitled to select three of the seven members of the Board. In accordance with section 1129(a)(5) of the Bankruptcy Code, the identities and affiliations of any Entity proposed to serve as a director or an officer of the Reorganized Brundage-Bone shall have been disclosed at or before the Confirmation Hearing, to the extent known.

From and after the Effective Date, the members of the board of directors of Reorganized Brundage-Bone and its Affiliates shall be selected and determined in accordance with the provisions of the respective Reorganized Debtors' Charter, the Reorganized Debtors' Bylaws, the Shareholders' Agreement and applicable law.

#### **X. Employee Equity Incentive Program**

The New Board will approve and adopt an Employee Equity Incentive Program promptly following the Confirmation of the Plan. The Reorganized Debtors shall adopt the Employee Equity Incentive Program as set forth in the Disclosure Statement. The New Board will determine which members of management will be eligible to participate in the Employee Equity Incentive Program and the terms and conditions of such Employee Equity Incentive Program. It is anticipated that that terms of such Employee Equity Incentive Program (which are subject to change by the New Board, in its discretion) will include the following: (i) the date of adoption and term/duration of the Employee Equity Incentive Program; (2) plan administration; (3) total numbers of shares of New Common Stock eligible for awards under the Employee Equity Incentive Program; (4) the person eligible to receive awards under the Employee Equity Incentive Program; (5) the nature, type, purchase price (if any) of such awards (e.g., , non qualified stock options, incentive stock options, restricted stock units, phantom stock awards, stock appreciation rights, etc.); (6) vesting restrictions and earn-out arrangements on awards; (7) forfeiture provisions; (8) repurchase restrictions and put/call provisions; (9) adjustments in the event of major corporate transactions; (10) other material terms of the Employee Equity Incentive Program and awards thereunder; and (11) amendment of the Employee Equity Incentive Program and awards thereunder.

## **Y. Employee and Retiree Benefits**

Except as otherwise set forth in the Plan, on and after the Effective Date, the Reorganized Debtors may: (1) honor, in the ordinary course of business, any contracts, agreements, policies, programs, and plans for, among other things, compensation (including equity based and bonus compensation), health care benefits, disability benefits, deferred compensation benefits, travel benefits, savings, severance benefits, retirement benefits, welfare benefits, workers' compensation insurance, and accidental death and dismemberment insurance for the directors, officers, and employees of any of the Debtors who served in such capacity at any time; (2) honor, in the ordinary course of business, Claims of employees employed as of the Effective Date for accrued vacation time arising prior to the Petition Date. Except as otherwise specifically provided in the Plan, nothing in the Plan shall limit, diminish, or otherwise alter the Reorganized Debtors' defenses, claims, Causes of Action, or other rights with respect to any such contracts, agreements, policies, programs, and plans. Notwithstanding the foregoing, pursuant to section 1129(a)(13) of the Bankruptcy Code, on and after the Effective Date, all Retiree Benefits, if any, shall continue to be paid in accordance with applicable law.

## **Z. Preservation of Rights of Action**

1. Except for Avoidance Actions related to Holders of Class 1 Claims that accept the treatment provided for their Class 1 Claims and Holders of Class 5 Claims that vote in favor of the Plan and agree to give the Reorganized Debtor payment terms on substantially the same terms as provided during the year prior to the Bankruptcy, the Reorganized Debtor may pursue, as appropriate, any and all Causes of Action, whether arising before or after the Petition Date, including any actions specifically enumerated in the Disclosure Statement, and the Reorganized Debtors' rights to commence, prosecute, or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date. Except as otherwise provided herein, the Reorganized Debtors may pursue such Causes of Action, as appropriate, in accordance with the best interests of the Reorganized Debtors. No Entity may rely on the absence of a specific reference in the Plan, the Disclosure Statement, or the Disclosure Statement to any Cause of Action against them as any indication that the Debtors or the Reorganized Debtors, as applicable, will not pursue any and all available Causes of Action against them. The Debtors and the Reorganized Debtors expressly reserve all rights to prosecute any and all Causes of Action against any Entity, except as otherwise expressly provided in the Plan. Unless any Causes of Action against an Entity are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or a Final Order, the Reorganized Debtors expressly reserve all Causes of Action for later adjudication, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of, the Confirmation or the Consummation.

2. Further, except for the actions released by the Debtors pursuant to Article VIII and Avoidance Actions related to Holders of Unsecured Ongoing Operations Claims, the Reorganized Debtors reserve and shall retain the foregoing Causes of Action notwithstanding the rejection of any Executory Contract or Unexpired Lease during the Chapter 11 Cases or pursuant to the Plan. In accordance with section 1123(b)(3) of the Bankruptcy Code, any Causes of Action

that a Debtor may hold against any Entity shall vest in the Reorganized Debtors, as the case may be. The Reorganized Debtor, through its authorized agents or representatives, shall retain and may exclusively enforce any and all such Causes of Action. The Debtors or the Reorganized Debtors, as applicable, shall have the exclusive right, authority, and discretion, to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action and to decline to do any of the foregoing without further notice to or action, order, or approval of the Bankruptcy Court or any other Entity.

## **ARTICLE V.**

### **TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

#### **A. Assumption and Rejection of Executory Contracts and Unexpired Leases**

1. Except as otherwise provided in the Plan, the Debtors' Executory Contracts or Unexpired Leases not assumed or rejected pursuant to a Final Order prior to the Effective Date shall be deemed rejected pursuant to sections 365 and 1123 of the Bankruptcy Code, except for those Executory Contracts or Unexpired Leases: (1) listed on the schedule of "Assumed Executory Contracts and Unexpired Leases" in the Disclosure Statement; (2) that are the subject of a motion to assume or reject pending on the Effective Date (in which case such assumption or rejection and the effective date thereof shall remain subject to a Final Order); (3) that are subject to a motion to reject with a requested effective date of rejection after the Effective Date; or (4) that are otherwise expressly assumed or rejected pursuant to the Plan.

2. Except as otherwise provided in the Plan, the Debtors Executory Contracts that constitute collective bargaining agreements not assumed, modified or rejected pursuant to a Final Order prior to the Effective Date shall be deemed assumed pursuant to Section 1113 of the Bankruptcy Code; provided that: (a) any such assumption, modification or rejection shall be accomplished in compliance with Section 1113 of the Bankruptcy Code and (b) any such collective bargaining agreement that is subject to a motion to assume or reject that is pending on the Effective Date, the assumption or rejection thereof shall remain subject to and shall become effective as set forth in the Final Order.

3. Except as expressly provided otherwise, the Plan shall give effect to any subordination rights as required by section 5 10(a) of the Bankruptcy Code.

4. Entry of the Confirmation Order shall constitute a Final Order approving the assumptions or rejections of such Executory Contracts or Unexpired Leases as set forth in the Plan, all pursuant to sections 365(a) and 1123 of the Bankruptcy Code. Unless otherwise indicated, all assumptions or rejections of Executory Contracts and Unexpired Leases in the Plan are effective as of the Effective Date. Each such Executory Contract and Unexpired Lease assumed pursuant to the Confirmation Order or other Final Order but not assigned to a third party prior to the Effective Date shall revest in, and be fully enforceable by, the applicable contracting Reorganized Debtor in accordance with its terms, except as such terms may have been modified by the Plan or such Final Order. Notwithstanding anything to the contrary in the Plan, the Debtors, or the Reorganized Debtors, as applicable, reserve the right to alter, amend, modify, or supplement the schedules of Executory Contracts or Unexpired Leases identified in Article V and in the Disclosure Statement at any time through and including the later of (a) 30



days after the Effective Date and (b) the entry of the Final Order or Confirmation Order assuming such Executory Contract or Unexpired Lease or entry of the Final Order or Confirmation Order establishing the Cure for such Executory Contract or Unexpired Lease.

## **B. Insurance Policies**

Notwithstanding anything contained in the Plan to the contrary, unless specifically listed on the schedule of “Rejected Insurance Policies” in the Disclosure Statement as being rejected or specifically rejected by order of the Bankruptcy Court, or unless subject to a motion for approval of rejection that has been Filed and served prior to the Confirmation Date, all Insurance Policy Documents that have not expired or terminated on or before the Effective Date are treated as Executory Contracts under the Plan and will be assumed pursuant to the Plan. Nothing contained in this Article V.C shall constitute or be deemed a waiver of any cause of action that the Debtors may hold against any entity, including, without limitation, the insurer, under any of the Debtors’ insurance policies. Nothing in the Disclosure Statement, the Plan, the Confirmation Order, any exhibit to the Plan or any other Plan document (including any provision that purports to be preemptory or supervening), shall in any way operate to, or have the effect of, impairing in any respect the legal, equitable or contractual rights and defenses, if any, of the Debtors or the Reorganized Debtors with respect to any Insurance Policy Documents. The rights and obligations of the Debtors, the Reorganized Debtors, and insurers shall be determined under the Insurance Policy Documents and under applicable non-bankruptcy law.

## **C. Cure of Defaults for Assumed Executory Contracts and Unexpired Leases**

1. With respect to each of the Debtors’ Executory Contracts or Unexpired Leases to be assumed pursuant to the Plan, the Debtors shall have designated a proposed Cure, and the assumption of such Executory Contract or Unexpired Lease may be conditioned upon the disposition of all issues with respect to such Cure. Any provisions or terms of the Debtors’ Executory Contracts or Unexpired Leases to be assumed pursuant to the Plan that are, or may be, alleged to be in default, shall be satisfied solely by Cure, or by an agreed-upon waiver of such Cure. Except with respect to Executory Contracts and Unexpired Leases in which the Debtors and the applicable counterparties have stipulated in writing to payment of Cure, all requests for payment of Cure that differ from the amounts proposed by the Debtors must be Filed with the Notice, Claims and Solicitation Agent on or before the Cure Bar Date. Any request for payment of Cure that is not timely Filed shall be disallowed automatically, forever barred from assertion, and shall not be enforceable against any Reorganized Debtor without the need for any objection by the Reorganized Debtors or further notice to or action, order, or approval of the Bankruptcy Court or any other Entity, and any Claim for Cure shall be deemed fully satisfied, released, and discharged upon payment of the amounts listed on the Debtors’ proposed Cure schedule, notwithstanding anything included in the Schedules or in any Proof of Claim to the contrary; provided that nothing shall prevent the Reorganized Debtors from paying any Cure despite the failure of the relevant counterparty to timely File such request for payment of such Cure. The Reorganized Debtors also may settle any Cure without further notice to or action, order, or approval of the Bankruptcy Court or any other Entity.

2. If the Debtors or the Reorganized Debtors, as applicable, object to any Cure, or any other matter related to assumption as disputed, the Bankruptcy Court shall determine the



Allowed amount of such Cure and any related issues. If there is a dispute regarding such Cure, the ability of the Reorganized Debtors or any assignee to provide “adequate assurance of future performance” within the meaning of section 365 of the Bankruptcy Code, or any other matter relating to assumption, then payment of the Cure shall occur as soon as reasonably practicable after entry of a Final Order resolving such dispute, approving such assumption (and, if applicable, assignment), or as may be agreed upon by the Debtors with Plan Sponsor Approval or the Reorganized Debtors, as applicable, and the counterparty to the Executory Contract or Unexpired Lease. Any counterparty to an Executory Contract and Unexpired Lease that fails to object timely to the proposed assumption of any Executory Contract or Unexpired Lease will be deemed to have consented to such assumption. The Debtors or the Reorganized Debtors, as applicable, reserve the right either to reject, or nullify the assumption of, any Executory Contract or Unexpired Lease no later than thirty days after a Final Order determining the Cure, any request for adequate assurance of future performance required to assume such Executory Contract or Unexpired Lease, and any other matter related to assumption.

3. Assumption of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall result in the full, final, and complete release and satisfaction of any Claims or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time prior to the effective date of assumption. Anything in the Schedules and any Proofs of Claim Filed with respect to an Executory Contract or Unexpired Lease that has been assumed shall be deemed disallowed and expunged, without further notice to or action, order, or approval of the Bankruptcy Court or any other Entity.

#### **D. Claims Based on Rejection of Executory Contracts and Unexpired Leases**

Unless otherwise provided by a Final Order of the Bankruptcy Court, any Proofs of Claim asserting Claims arising from the rejection of the Debtors’ Executory Contracts and Unexpired Leases pursuant to the Plan or otherwise must be Filed with the Notice, Claims and Solicitation Agent no later than thirty days after the later of the Effective Date and the effective date of rejection. Any Proofs of Claim arising from the rejection of the Debtors’ Executory Contracts or Unexpired Leases that are not timely Filed shall be disallowed automatically, forever barred from assertion, and shall not be enforceable against any Reorganized Debtor without the need for any objection by the Reorganized Debtors or further notice to or action, order, or approval of the Bankruptcy Court or any other Entity, and any Claim arising out of the rejection of the Executory Contract or Unexpired Lease shall be deemed fully satisfied, released, and discharged, notwithstanding anything in the Schedules or a Proof of Claim to the contrary. All Allowed Claims arising from the rejection of the Debtors’ Executory Contracts and Unexpired Leases shall be classified as Rejection Damages Claims and shall be treated in accordance with Article III of the Plan.

**E. Intercompany Contracts, Contracts, and Leases Entered into After the Petition Date and Executory Contracts and Unexpired Leases Assumed**

Intercompany Contracts, contracts, and leases entered into after the Petition Date by any Debtor, and any Executory Contracts and Unexpired Leases assumed by any Debtor may be performed by the applicable Reorganized Debtor in the ordinary course of business.

**F. Modifications, Amendments, Supplements, Restatements, or Other Agreements**

1. Unless otherwise provided in the Plan, each Executory Contract or Unexpired Lease that is assumed shall include all modifications, amendments, supplements, restatements, or other agreements that in any manner affect such Executory Contract or Unexpired Lease, and all Executory Contracts and Unexpired Leases related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests, unless any of the foregoing agreements has been previously rejected or repudiated or is rejected or repudiated under the Plan.

2. Modifications, amendments, supplements, and restatements to Executory Contracts and Unexpired Leases that have been executed by the Debtors during the Chapter 11 Cases shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease, or the validity, priority, or amount of any Claims that may arise in connection therewith.

**G. Reservation of Rights**

Neither the exclusion nor inclusion of any contract or lease in the Disclosure Statement, nor anything contained in the Plan, shall constitute an admission by the Debtors that any such contract or lease is in fact an Executory Contract or Unexpired Lease or that any Reorganized Debtor has any liability thereunder. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption or rejection, the Debtors or the Reorganized Debtors, as applicable, shall have thirty days following entry of a Final Order resolving such dispute to alter their treatment of such contract or lease.

**H. Non-Occurrence of the Effective Date**

Pending the occurrence of the Effective Date, the Bankruptcy Court shall retain jurisdiction with respect to any consensual request to extend the deadline for assuming or rejecting Unexpired Leases pursuant to section 365(d)(4) of the Bankruptcy Code.

**ARTICLE VI.**

**PROCEDURES FOR RESOLVING DISPUTED CLAIMS AND INTERESTS**

**A. Allowance of Claims**

1. After the Effective Date, each Reorganized Debtor shall have and retain any and all rights and defenses such Debtor had with respect to any Claim or Interest immediately prior to the Effective Date, including the Causes of Action, other than those expressly excluded under the Plan, referenced in Article IV. hereof.

2. Except as expressly provided herein or in any order entered in the Chapter 11 Cases prior to the Effective Date, including the Confirmation Order, no Claim or Interest shall be deemed Allowed unless and until such Claim or Interest is deemed Allowed under the Plan or the Bankruptcy Code or the Bankruptcy Court has entered a Final Order, including the Confirmation Order, in the Chapter 11 Cases allowing such Claim.

**B. Objections/Objection Deadline**

1. Objections to all Claims against the Debtors may be Filed and prosecuted only by the Debtors and the Reorganized Debtors, as applicable.

2. The Reorganized Debtors shall be entitled to object to any Claim through and after the Effective Date. Any objections to Claims shall be served and filed with the Bankruptcy Court on or before the later of (i) 180 days after the Effective Date, as such time may be extended by order of the Bankruptcy Court, and (ii) such later date as may be fixed by the Bankruptcy Court, whether fixed before or after the date specified in clause (i) above.

**C. Claims and Interests Administration Responsibilities**

Except as otherwise specifically provided in the Plan, after the Effective Date, the Reorganized Debtors shall have the sole and exclusive authority to: (1) to File, withdraw, or litigate to judgment, objections to Claims or Interests; (2) to settle or compromise any Disputed Claim without any further notice to or action, order, or approval of the Bankruptcy Court or any other Entity; and (3) to administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to or action, order, or approval of the Bankruptcy Court or any other Entity.

**D. Estimation of Claims**

Before or after the Effective Date, the Debtors or the Reorganized Debtors, as applicable, may (but are not required to) at any time request that the Bankruptcy Court estimate any Disputed Claim that is contingent or unliquidated pursuant to section 502(c) of the Bankruptcy Code for any reason, regardless of whether any Entity previously has objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any such Claim, including during the litigation of any objection to any Claim or during the appeal relating to such objection. Notwithstanding any provision otherwise in the Plan, a Claim that has been expunged from the Claims Register, but that either is subject to appeal or has not been the subject of a Final Order, shall be deemed to be estimated at zero dollars, unless otherwise ordered by the Bankruptcy Court. In the event that the Bankruptcy Court estimates any contingent or unliquidated Claim, that estimated amount shall constitute a maximum limitation on such Claim for all purposes under the Plan (including for purposes of distributions), and the relevant Reorganized Debtor may elect to pursue any supplemental proceedings to object to any ultimate distribution on such Claim.

**E. Adjustments to Claims Without Objection**

After the Effective Date, any Claim that has been paid or satisfied, or any Claim that has been amended or superseded, may be adjusted or expunged on the Claims Register by the

Reorganized Debtors without a Claims objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court or any other Entity. Additionally, any Claim that is duplicative or redundant with another Claim against the same Debtor may be adjusted or expunged on the Claims Register by the Reorganized Debtors without a Claims objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court or any other Entity.

#### **F. Disallowance of Claims or Interests**

Any Claims or Interests held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code or that are transferees of transfers avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and Holders of such Claims and Interests may not receive any distributions on account of such Claims and Interests until such time as such Causes of Action against that Entity have been settled or a Final Order with respect thereto has been entered and all sums due, if any, to the Debtors by that Entity have been turned over or paid. All Claims Filed on account of an employee benefit referenced in Article IV.X hereof shall be deemed satisfied and expunged from the Claims Register as of the Effective Date to the extent the Reorganized Debtors elect to honor such employee benefit, without any further notice to or action, order, or approval of the Bankruptcy Court or any other Entity.

**EXCEPT AS PROVIDED HEREIN OR OTHERWISE AGREED, ANY AND ALL PROOFS OF CLAIM FILED AFTER THE APPLICABLE BAR DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS ON OR BEFORE THE CONFIRMATION HEARING SUCH LATE CLAIM HAS BEEN DEEMED TIMELY FILED BY A FINAL ORDER.**

#### **G. Offer of Judgment**

The Reorganized Debtors are authorized to serve upon a Holder of a Claim an offer to allow judgment to be taken on account of such Claim, and, pursuant to Bankruptcy Rules 7068 and 9014, Rule 68 of the Federal Rules of Civil Procedure shall apply to such offer of judgment. To the extent the Holder of a Claim must pay the costs incurred by the Reorganized Debtors after the making of such offer, the Reorganized Debtors are entitled to setoff such amounts against the amount of any distribution to be paid to such Holder without any further notice to or action, order, or approval of the Bankruptcy Court or any other Entity.

#### **H. Amendments to Claims**

On or after the Effective Date, except as provided herein, a Claim may not be Filed or amended without the prior authorization of the Bankruptcy Court or the Reorganized Debtors, and any such new or amended Claim Filed shall be deemed disallowed in full and expunged

without any further notice to or action, order, or approval of the Bankruptcy Court or any other Entity.

#### **I. ADR Tort Claims**

ADR Tort Claims shall be allowed or disallowed in accordance with the ADR Procedure set forth in the Debtors' Motion Establishing Alternative Dispute Resolution Procedure for Resolution of Tort Claims approved by Order of the Bankruptcy Court dated \_\_\_\_\_, 2010.

### **ARTICLE VII.**

#### **PROVISIONS GOVERNING DISTRIBUTIONS**

##### **A. Distributions on Account of Claims Allowed as of the Effective Date**

Except as otherwise provided in the Plan, a Final Order, or as agreed to by the relevant parties, initial distributions under the Plan on account of Claims Allowed on or before the Effective Date shall be made on the Distribution Date and pursuant to the terms of the BB Liquidating Trust and BB Unsecured Trust.

##### **B. Distributions on Account of Claims Allowed After the Effective Date**

1. Payments and Distributions on Disputed Claims: Except as otherwise provided in the Plan, a Final Order, or as agreed to by the relevant parties, distributions under the Plan on account of Disputed Claims that become Allowed after the Effective Date shall be made within sixty days after the Disputed Claim becomes an Allowed Claim; provided that Disputed Administrative Claims with respect to liabilities incurred by the Debtors in the ordinary course of business during the Chapter 11 Cases or assumed by the Debtors on or before the Effective Date that become Allowed after the Effective Date shall be paid or performed in the ordinary course of business in accordance with the terms and conditions of any controlling agreements, course of dealing, course of business, or industry practice.

2. Special Rules for Distributions to Holders of Disputed Claims: Notwithstanding any provision in the Plan, except as otherwise agreed by the relevant parties: (a) no partial payments and no partial distributions shall be made with respect to a Disputed Claim until all such disputes in connection with such Disputed Claim have been resolved by settlement or Final Order; and (b) any Entity that holds both an Allowed Claim and a Disputed Claim shall not receive any distribution on any Allowed Claim unless and until all objections to the Disputed Claim have been resolved by settlement or Final Order and the Disputed Claim has been Allowed.

3. Reserve: On the Effective Date, the Reorganized Debtors shall maintain the Reorganized Debtors' Distribution Reserves to make distributions pursuant to the terms of the Plan. The amount withheld as a part of each Reorganized Debtors' Distribution Reserves for the benefit of a Holder of a Disputed Claim shall be equal to the lesser of the amount set forth in the following clause (a) and the amount set forth in the following clause (b): (a) (i) if no estimation is made by the Bankruptcy Court pursuant to Article VI.D hereof, the amount necessary to satisfy the distributions required to be made pursuant to the Plan based on the asserted amount of

the Disputed Claim or, if the Claim is contingent or unliquidated pursuant to section 502(c) of the Bankruptcy Code as of the Distribution Record Date, the amount that the Debtors or the Reorganized Debtors, as applicable, choose to withhold on account of such Claim in the Reorganized Debtors' Distribution Reserves; or (ii) the amount necessary to satisfy the distributions required to be made pursuant to the Plan for such Disputed Claim based on an amount as estimated by and set forth in a Final Order for purposes of allowance and distributions; and (b) the amount necessary to satisfy the distributions required to be made pursuant to the Plan based on an amount as may be agreed upon by the Holder of such Disputed Claim and the Reorganized Debtors. As Disputed Claims are Allowed, the Distribution Agent shall distribute, in accordance with the terms of the Plan, the appropriate consideration to Holders of Allowed Claims, and the appropriate Reorganized Debtors' Distribution Reserves shall be adjusted accordingly.

4. BB Liquidating Trust and BB Unsecured Trust: Notwithstanding anything in this Article VII, the BB Equipment Trust and BB Unsecured Trust shall be authorized to utilize the distribution procedures as set forth in this Article VII with respect to all Allowed Claims and Disputed Claims to be paid or withheld by the Trusts.

5. Tax Reporting Matters: Subject to definitive guidance from the Internal Revenue Service or an applicable court to the contrary (including the receipt by the Reorganized Debtors of a private letter ruling or the receipt of an adverse determination by the Internal Revenue Service upon audit, if not contested by the Reorganized Debtors), the Reorganized Debtors shall treat each Reorganized Debtors' Distribution Reserve as a single trust, consisting of separate and independent forms of consideration to be established with respect to each Disputed Claim, in accordance with the trust provisions of the Internal Revenue Code, and, to the extent permitted by law, shall report consistently with the foregoing for federal, state, and local tax purposes. All Holders of Claims shall report, for federal, state, and local tax purposes, consistently with the foregoing.

### **C. Delivery of Distributions**

1. Record Date for Distributions: On the Distribution Record Date, the Claims Register shall be closed and any Distribution Agent shall instead be authorized and entitled to recognize only those Holders of Claims listed on the Claims Register as of the close of business on the Distribution Record Date. If a Claim is transferred at any time or on any day that is after the day that is twenty days before the Distribution Record Date, and the relevant transfer form is provided to the Reorganized Debtors and the Distribution Agent at least five Business Days prior to any distribution and contains an unconditional and explicit certification and waiver of any objection to the transfer by the transferor, the Distribution Agent shall make distributions to the transferee.

2. Delivery of Distributions in General: Except as otherwise provided in the Plan, and notwithstanding any authority to the contrary, distributions to Holders of Allowed Claims shall be made to Holders of record as of the Distribution Record Date by the Distribution Agent: (a) in accordance with Federal Rule of Civil Procedure 4, as modified and made applicable by Bankruptcy Rule 7004; (b) to the signatory set forth on any of the Proofs of Claim Filed by such Holder or other representative identified therein (or at the last known addresses of such Holder if



no Proof of Claim is Filed or if the Debtors have been notified in writing of a change of address); (c) at the addresses set forth in any written notices of address changes delivered to the Distribution Agent after the date of any related Proof of Claim; (d) at the addresses reflected in the Schedules if no Proof of Claim has been Filed and the Distribution Agent has not received a written notice of a change of address; or (e) on any counsel that has appeared in the Chapter 11 Cases on the Holder's behalf; provided that distributions to Holders of Allowed Claims governed by a separate agreement and administered by a Servicer may be deposited by the Debtors with the appropriate Servicer, at which time such distributions shall be deemed complete, and the Servicer shall deliver such distributions in accordance with the Plan and the terms of the governing agreement. Except as set forth herein, distributions under the Plan on account of Allowed Claims shall not be subject to levy, garnishment, attachment, or like legal process, so that each Holder of an Allowed Claim shall have and receive the benefit of the distributions in the manner set forth in the Plan. The Debtors, the Reorganized Debtors, and the Distribution Agent, as applicable, shall not incur any liability whatsoever on account of any distributions under the Plan except for gross negligence or willful misconduct.

3. Distributions by Distribution Agents: The Debtors or the Reorganized Debtors, as applicable, shall have the authority, in their sole discretion, to enter into agreements with one or more Distribution Agents to facilitate the distributions required hereunder on conditions satisfactory to the Debtors, subject to Plan Sponsor Approval, or the Reorganized Debtors, applicable. As a condition to serving as a Distribution Agent, a Distribution Agent must: (a) affirm its obligation to facilitate the prompt distribution of any documents; (b) affirm its obligation to facilitate the prompt distribution of any recoveries or distributions required hereunder; and (c) waive any right or ability to setoff, deduct from, or assert any lien or encumbrance against the distributions required hereunder that are to be distributed by such Distribution Agent. The Reorganized Debtors shall pay to the Distribution Agents all reasonable and documented fees and expenses of the Distribution Agents without any further notice to or action, order, or approval by the Bankruptcy Court or any other Entity.

4. Compliance with Tax Requirements and Allocations: In connection with the Plan and all instruments issued in connection therewith and distributed thereon, any party issuing any instrument or making any distribution under the Plan, including any Disbursing Agent, shall comply with all applicable withholding and reporting requirements imposed by any federal, state or local taxing authority, and all distributions under the Plan shall be subject to any such withholding or reporting requirements. Notwithstanding the above, each Holder of an Allowed Claim that is to receive a distribution under the Plan shall have the sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any Governmental Unit, including income, withholding and other tax obligations, on account of such distribution. Any party issuing any instrument or making any distribution under the Plan has the right, but not the obligation, to not make a distribution until such Holder has made arrangements satisfactory to such issuing or disbursing party for payment of any such tax obligations. For tax purposes, distributions in full or partial satisfaction of Allowed Claims shall be allocated first to the principal amount of Allowed Claims, with any excess allocated to unpaid interest that accrued on such Claims.

5. Foreign Currency Exchange Rate: Except as otherwise provided in the Plan or a Final Order, as of the Effective Date, any General Unsecured Claim asserted in currency(ies)

other than U.S. dollars shall be automatically deemed converted to the equivalent U.S. dollar value using the exchange rate as of the Petition Date, as quoted at 4:00 p.m. (prevailing Eastern Time), mid-range spot rate of exchange for the applicable currency as published in *The Wall Street Journal, National Edition*, on the first Business Day after the Petition Date.

6. Fractional, De Minimis, Undeliverable, and Unclaimed Distributions:

- (a) Fractional Distributions: Notwithstanding any other provision of the Plan to the contrary, payments of fractions of dollars shall not be required. Whenever any payment of a fraction of a dollar under the Plan would otherwise be called for, the actual payment or distribution will reflect a rounding of such fraction to the nearest whole dollar, with half dollars being rounded down.
- (b) Minimum/De Minimis Distributions: Notwithstanding anything herein to the contrary, distributions or payments of less than \$100.00 (whether in Cash or otherwise) shall not be required.
- (c) Undeliverable Distributions of Cash and Cash Equivalents:
  - i. Holding of Certain Undeliverable Distributions: If any distribution to a Holder of an Allowed Claim made in accordance herewith is returned to a Distribution Agent as undeliverable, no further distributions shall be made to such Holder unless and until the Reorganized Debtors (or their Distribution Agent) are notified in writing of such Holder's then current address, at which time all currently due missed distributions shall be made to such Holder on the next Distribution Date. Undeliverable distributions shall remain in the possession of the Reorganized Debtors until such time as any such distributions become deliverable. Undeliverable distributions shall not be entitled to any interest, dividends, or other accruals of any kind.
  - ii. Failure to Claim Undeliverable Distributions: No later than ninety days after the first Distribution Date, the Reorganized Debtors shall File with the Bankruptcy Court a list of the Holders of undeliverable distributions. This list shall be maintained and updated periodically in the sole discretion of the Reorganized Debtors for as long as the Debtors' Chapter 11 Cases stay open. Any Holder of an Allowed Claim, irrespective of when a Claim becomes an Allowed Claim, that does not notify the Reorganized Debtors of such Holder's then current address in accordance herewith within the latest of (a) 180 days after the first Distribution Date, (b) 60 days after the attempted delivery of the undeliverable distribution, or (c) 180 days after the date such Claim becomes an Allowed Claim shall have its Claim for such undeliverable distribution discharged and expunged and shall be forever barred,

estopped, and enjoined from asserting any such Claim against the Reorganized Debtors or their property. In such cases, any Cash, Cash Equivalents, or otherwise held for distribution on account of such Allowed Claims shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code and become property of the Reorganized Debtors, free of any Claims of such Holder with respect thereto. Nothing contained herein shall require the Reorganized Debtors to attempt to locate any Holder of an Allowed Claim. The provisions of the Plan regarding undeliverable distributions and unclaimed distributions shall apply with equal force to distributions that are issued by the Debtors, made pursuant to any indenture or Certificate (but only with respect to the distribution to Holders that are entitled to be recognized under the relevant indenture or Certificate and not with respect to Entities to whom those recognized Holders distribute), notwithstanding any provision in such indenture or Certificate to the contrary and notwithstanding any otherwise applicable federal or state escheat, abandoned or unclaimed property law.

- iii. Failure to Present Checks: Checks issued by a Distribution Agent on account of Allowed Claims shall be null and void if not negotiated within 120 days after the issuance of such check. In an effort to ensure that all Holders of Allowed Claims receive their allocated distributions, no later than 120 days after the issuance of such checks, the Reorganized Debtors shall File with the Bankruptcy Court a list of the Holders of any un-negotiated checks. This list shall be maintained and updated periodically in the sole discretion of the Reorganized Debtors for as long as the Debtors' Chapter 11 Cases stay open. Requests for reissuance of any check shall be made directly to the Distribution Agent by the Holder of the relevant Allowed Claim with respect to which such check originally was issued. Any Holder of an Allowed Claim holding an un-negotiated check that does not request reissuance of such un-negotiated check within 180 days after the date of mailing or other delivery of such check shall have its Claim for such un-negotiated check discharged and expunged and be discharged and forever barred, estopped, and enjoined from asserting any such Claim against the Reorganized Debtors or their property. In such cases, any Cash held for payment on account of such Claims shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code and become property of the Reorganized Debtors, free of any Claims of such Holder or any such entity with respect thereto notwithstanding any otherwise applicable federal or state escheat, abandonment or unclaimed property law. Nothing contained herein shall require the Reorganized Debtors to attempt to locate any Holder of an Allowed Claim.

7. Manner of Payment Pursuant to the Plan: Any payment in Cash to be made pursuant to the Plan shall be made at the election of the Reorganized Debtors by check or by wire transfer.

8. Surrender of Canceled Instruments or Other Certificates: On the Effective Date or as soon as reasonably practicable thereafter, each Holder of a Certificate shall be deemed to have surrendered such Certificate to the Distribution Agent or a Servicer (to the extent the relevant Claim or Interest is governed by an agreement and administered by a Servicer). Such surrendered Certificate shall be cancelled solely with respect to the Debtors and the non-Debtor guarantors under the Loan Documents and Real Estate Loan Documents, and such cancellation shall not alter the obligations or rights of any non-Debtor third parties vis-à-vis one another with respect to such Certificate, other than as provided under the Plan. Notwithstanding anything to the contrary herein, this paragraph shall not apply to Certificates evidencing Claims that are rendered Unimpaired under the Plan.

9. Timing and Calculation of Amounts to Be Distributed: On the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim on the Effective Date, on the Periodic Distribution Date that is at least thirty days after the Disputed Claim becomes an Allowed Claim, or as soon as reasonably practicable thereafter), each Holder of a Claim Allowed as of the Effective Date shall receive the full amount of the distributions that the Plan provides for Allowed Claims in the applicable Class. If and to the extent that there are Disputed Claims, distributions on account of any such Disputed Claims shall be made pursuant to the provisions set forth in Article VII.C hereof. Except as otherwise provided herein, Holders of Claims shall not be entitled to interest, dividends, or accruals on the distributions provided for herein, regardless of whether such distributions are delivered on or at any time after the Effective Date.

#### **D. Claims Paid or Payable by Third Parties**

1. Claims Paid by Third Parties: The Notice, Claims and Solicitation Agent shall reduce, in full or in part, a Claim, and such Claim shall be disallowed or reduced, as applicable, without a Claim objection having to be Filed and without further notice to or action, order, or approval of the Bankruptcy Court or any other Entity, to the extent that the Holder of such Claim receives payment, either in full or in part, on account of such Claim from a party that is not a Debtor or a Reorganized Debtor. Subject to the last sentence of this paragraph, to the extent a Holder of a Claim receives a distribution on account of such Claim and receives payment from a party that is not a Debtor or a Reorganized Debtor on account of such Claim, such Holder shall, within two weeks of receipt thereof, repay or return the distribution to the applicable Reorganized Debtor, to the extent the Holder's total recovery on account of such Claim from the third party and under the Plan exceeds the amount of such Claim as of the date of any such distribution under the Plan. The failure of such Holder to timely repay or return such distribution shall result in the Holder owing the applicable Reorganized Debtor annualized interest at the Federal Judgment Rate at such time on such amount owed for each Business Day after the two-week grace period specified above until the amount is repaid.

2. Claims Payable by Third Parties: Except as provided herein, no distributions under the Plan shall be made on account of an Allowed Claim that is payable by a third party

(including, without limitation, insurance policies) until the Holder of such Allowed Claim has exhausted all remedies with respect to such third party. To the extent that one or more third parties agrees to satisfy, in full or in part, a Claim (if and to the extent adjudicated by a court of competent jurisdiction), then immediately upon such insurers' agreement, such Claim may be reduced or expunged, as applicable, to the extent of any agreed upon full or partial satisfaction on the Claims Register by the Notice, Claims and Solicitation Agent without a Claim objection having to be Filed and without further notice to or action, order, or approval of the Bankruptcy Court or any other Entity.

## **ARTICLE VIII.**

### **SETTLEMENT, RELEASE, INJUNCTION, AND RELATED PROVISIONS**

#### **A. Discharge of Claims and Termination of Interests**

Pursuant to section 1141(d) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan, the distributions, rights, and treatment that are provided in the Plan shall be in full and complete satisfaction, discharge, and release, effective as of the Effective Date, of Claims, Interests, and Causes of Action of any nature whatsoever, including any interest accrued on Claims or Interests from and after the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against, and Interests in, the Debtors or any of their assets or properties, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims and Interests, including demands, liabilities, and Causes of Action that arose before the Effective Date, any liability to the extent such Claims or Interests relate to services performed by employees of the Debtors prior to the Effective Date and that arise from a termination of employment or a termination of any employee or retiree benefit program, regardless of whether such termination occurred prior to or after the Effective Date, any contingent or non-contingent or liquidated or non-liquidated liability on account of representations or warranties issued on or before the Effective Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code, in each case whether or not: (1) a Proof of Claim based upon such debt or right is Filed or deemed Filed pursuant to section 501 of the Bankruptcy Code; (2) a Claim or Interest based upon such debt, right, or Interest is Allowed pursuant to section 502 of the Bankruptcy Code; or (3) the Holder of such a Claim or Interest failed to vote to accept or reject the Plan, voted to accept or reject the Plan, or was deemed to accept or reject the Plan. Any default by the Debtors with respect to any Claim or Interest that existed immediately prior to the Petition Date or on account of the filing of the Chapter 11 Cases shall be deemed Cured on the Effective Date. As provided in section 524 of the Bankruptcy Code, such discharge shall void any judgment against the Debtors, their Estates, or any successor thereto at any time obtained to the extent it relates to a Claim discharged. Upon the Effective Date, all persons shall be forever precluded and enjoined, pursuant to section 524 of the Bankruptcy Code, from prosecuting or asserting any discharged Claim against the Debtors, the Estates, or any successor thereto. The Confirmation Order shall be a judicial determination of the discharge of all Claims and Interests subject to the Effective Date occurring.

**B. Subordinated Claims**

The allowance, classification, and treatment of all Allowed Claims and Interests and the respective distributions and treatments under the Plan take into account and conform to the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Pursuant to section 510 of the Bankruptcy Code, the Reorganized Debtors reserve the right to re-classify any Allowed Claim or Interest in accordance with any contractual, legal, or equitable subordination relating thereto. Subject to the requirements of section 1129(b) of the Bankruptcy Code (as applicable), no Holder of a Section 510(b) Claim shall receive any distribution on account of such Section 510(b) Claim, and all Section 510(b) Claims shall be extinguished.

**C. Compromise and Settlement**

Pursuant to section 363 of the Bankruptcy Code and Bankruptcy Rule 9019 and in consideration for the distributions and other benefits provided pursuant to the Plan, the provisions of the Plan shall constitute a good faith compromise of all Claims, Interests, and controversies relating to the contractual, legal, and subordination rights that a Holder of a Claim may have with respect to any Allowed Claim or Interest, or any distribution to be made on account of such Allowed Claim or Interest. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise or settlement of all such Claims, Interests, and controversies, as well as a finding by the Bankruptcy Court that such compromise or settlement is in the best interests of the Debtors, their Estates, and Holders of Claims and Interests and is fair, equitable, and reasonable. In accordance with the provisions of the Plan, pursuant to section 363 of the Bankruptcy Code and Bankruptcy Rule 9019(a), without any further notice to or action, order, or approval of the Bankruptcy Court, after the Effective Date, the Reorganized Debtors may compromise and settle Claims against them and Causes of Action against other Entities.

**D. Term of Injunctions or Stays**

Unless otherwise provided, all injunctions or stays arising under or entered during the Chapter 11 Cases under section 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the later of the Effective Date and the date indicated in the order provided for such injunction or stay. All injunctions or stays contained in the Plan or the Confirmation Order shall remain in full force and effect in accordance with their terms.

**E. Debtor Release**

Notwithstanding anything contained herein to the contrary, on the Effective Date and effective as of the Effective Date, for the good and valuable consideration provided by each of the Debtor Releasees and the Third Party Releasees, including, but not limited to: (a) the discharge of debt and all other good and valuable consideration paid pursuant hereto; and (b) the services of the Debtors' present and former officers, directors, managers, and advisors in facilitating



the expeditious implementation of the restructuring contemplated hereby, each of the Debtors (in their own right and on behalf of their respective Estates, representatives, directors, officers, employees, independent contractors, attorneys and agents, and their successors and assigns) discharge and release and shall be deemed to have provided a full discharge and release to each Debtor Releasee and to each Third Party Releasee (and each such Debtor Releasee and Third Party Releasee so released shall be deemed fully released and discharged by the Debtors) and their respective property from any and all Causes of Action, whether known or unknown, foreseen or unforeseen, liquidated or unliquidated, contingent or non-contingent, existing as of the Effective Date in law, at equity, whether for tort, fraud, contract, violations of federal or state securities laws or otherwise, arising from or related in any way to the Debtors, including those that any of the Debtors would have been legally entitled to assert in their own right (whether individually or collectively) or that any Holder of a Claim or an Interest or other Entity would have been legally entitled to assert on behalf of any of the Debtors or any of their Estates, including Causes of Action arising under Chapter 5 of the Bankruptcy Code; provided that the foregoing “Debtor Release” shall not operate to waive or release any Causes of Action of any Debtor expressly set forth in and preserved by the Plan, the Disclosure Statement, or related documents. Notwithstanding anything contained herein to the contrary, the foregoing release shall not operate to waive or release any Causes of Action of any Releasing Party expressly set forth in and preserved by the Plan, the Disclosure Statement, or related documents.

Entry of the Confirmation Order shall constitute the Bankruptcy Court’s approval, pursuant to Bankruptcy Rule 9019, of the Debtor Release, which includes by reference each of the related provisions and definitions contained herein, and further, shall constitute the Bankruptcy Court’s finding that the Debtor Release is: (1) in exchange for the good and valuable consideration provided by the Debtor Releasees and the Third Party Releasees; (2) a good faith settlement and compromise of the claims released by the Debtor Release; (3) in the best interests of the Debtors and all Holders of Claims; (4) fair, equitable and reasonable; (5) given and made after due notice and opportunity for hearing; and (6) a bar to any of the Debtors or Reorganized Debtors asserting any Claim or Cause of Action released pursuant to the Debtor Release.

#### **F. Third Party Release**

1. Except as provided in Article VIII.F.2., on the Effective Date and effective as of the Effective Date, each of the Third Party Releasees (in their own right and on behalf of their respective, representatives, directors, officers, employees, independent contractors, attorneys and agents, and their successors and assigns) discharge and release and shall be deemed to have provided a full discharge and release to each Debtor Releasee and to each Third Party Releasee (and each such Debtor Releasee and Third Party Releasee so released shall be deemed fully released and discharged by the Third Party Releasees) and their respective property from any and all Causes of Action, whether known or unknown, foreseen or unforeseen, liquidated or unliquidated, contingent or non-contingent, existing as of the Effective Date in law, at equity, whether for tort, fraud, contract, violations of federal or state securities laws or otherwise, arising from or related in any way to the Debtors, including those in any way related to the Chapter 11 Cases or the Plan; provided that the foregoing “Third Party Release” shall not operate to waive

or release any Causes of Action of any Releasing Party expressly set forth in and preserved by the Plan, the Disclosure Statement, or related documents.

Entry of the Confirmation Order Shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the Third Party Release, which includes by reference each of the related provisions and definitions contained herein, and, further, shall constitute the Bankruptcy Court's finding that the Third Party Release is: (1) in exchange for the good and valuable consideration provided by the Debtor Releasees and the Third Party Releasees; (2) a good faith settlement and compromise of the claims released by the Third Party Release; (3) in the best interests of the Debtors and all Holders of Claims; (4) fair, equitable and reasonable; (5) given and made after due notice and opportunity for hearing; and (6) a bar to any of the Releasing Parties asserting any claim released pursuant to the Third Party Release.

2. Notwithstanding anything contained in Article VIII.F.1. to the contrary, in the event that a non-Debtor guarantor under the Loan Documents or any person or utility directly or indirectly controlled, controlled by or under common control with a non-Debtor guarantor, either directly or indirectly engage in the operation of a business that competes with the business of the Reorganized Debtors or engages in conduct that is materially detrimental or harmful to the Reorganized Debtor, the Third Party Release set forth in Article VIII.F.1. with respect to the non-Debtor guarantor who engages in such conduct shall be terminated and all such guarantees under the Loan Documents shall be reinstated as if they had never been released.

#### **G. Exculpation**

The Exculpated Parties shall neither have, nor incur any liability to any Entity for any prepetition or postpetition act taken or omitted to be taken in connection with, or related to formulating, negotiating, preparing, disseminating, implementing, administering, confirming, or effecting the Consummation of the Plan, the Disclosure Statement or any contract, instrument, release or other agreement or document created or entered into in connection with the Plan or any other prepetition or postpetition act taken or omitted to be taken in connection with or in contemplation of the restructuring of the Debtors; provided, that the foregoing "Exculpation" shall have no effect on the liability of any Entity that results from any such act or omission that is determined in a Final Order to have constituted gross negligence or willful misconduct; provided further that each Exculpated Party shall be entitled to rely upon the advice of counsel concerning his, her or its duties pursuant to, or in connection with, the Plan.

#### **H. Injunction**

Except as otherwise expressly provided in the Plan or for obligations issued pursuant to the Plan, all Entities who have held, hold, or may hold Claims or Interests that have been released, discharged, or subject to exculpation pursuant to the Plan are permanently enjoined, from and after the Effective Date, from taking any of the following actions against the Debtors or the Reorganized Debtors: (1) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests; (2) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Entities on account of or in connection with or with respect to any such Claims or Interests; (3) creating, perfecting, or enforcing any

encumbrance of any kind against such Entities or the property or estates of such Entities on account of or in connection with or with respect to any such Claims or Interests; (4) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from such Entities or against the property or Estates of such Entities on account of or in connection with or with respect to any such Claims or Interests except in accordance with Article VIII.K and Article L hereof; and (5) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests released or settled pursuant to the Plan. Such injunction shall extend to any successors of the Debtors and the Reorganized Debtors and their respective properties and interests in properties.

#### **I. Injunction Against Interference with Plan of Reorganization**

Upon entry of the Confirmation Order, all Holders of Claims and Interests and other parties-in-interest, along with their respective present or former employees, agents, officers, directors, or principals, shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan.

#### **J. Protections Against Discriminatory Treatment**

Consistent with section 525 of the Bankruptcy Code and the Supremacy Clause of the U.S. Constitution, all Entities, including Governmental Units, shall not discriminate against the Reorganized Debtors or deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, the Reorganized Debtors, or another Entity with whom such Reorganized Debtors have been associated, solely because one of the Debtors has been a debtor under chapter 11 of the Bankruptcy Code, has been insolvent before the commencement of the Chapter 11 Cases (or during the Chapter 11 Cases but before the Debtor is granted or denied a discharge), or has not paid a debt that is dischargeable in the Chapter 11 Cases.

#### **K. Setoffs**

Except as otherwise expressly provided for in the Plan, each Debtor or Reorganized Debtor, as applicable, pursuant to the Bankruptcy Code (including section 553 of the Bankruptcy Code), applicable non-bankruptcy law, or as may be agreed to by the Holder of a Claim, may setoff against any Allowed Claim (other than DIP Facility Claims) and the distributions to be made pursuant to the Plan on account of such Allowed Claim (before any distribution is made on account of such Allowed Claim), any Claims, rights, and Causes of Action of any nature that such Debtor or Reorganized Debtor, as applicable, may hold against the Holder of such Allowed Claim, to the extent such Claims, rights, or Causes of Action against such Holder have not been otherwise compromised or settled on or prior to the Effective Date (whether pursuant to the Plan or otherwise); provided that neither the failure to effect such a setoff nor the allowance of any Claim pursuant to the Plan shall constitute a waiver or release by such Reorganized Debtor of any such Claims, rights, and Causes of Action that such Reorganized Debtor may possess against such Holder. In no event shall any Holder of Claims be entitled to setoff any Claim against any Claim, right, or Cause of Action of the Debtor or the Reorganized Debtor, as applicable, unless such Holder has Filed a motion with the Bankruptcy Court requesting the authority to perform such setoff on or before the Confirmation Date, and notwithstanding any indication in any Proof

of Claim or otherwise that such Holder asserts, has, or intends to preserve any right of setoff pursuant to section 553 or otherwise.

**L. Recoupment**

In no event shall any Holder of Claims or Interests be entitled to recoup any Claim or Interest against any Claim, right, or Cause of Action of the Debtors or the Reorganized Debtors, as applicable, unless such Holder actually has performed such recoupment and provided notice thereof in writing to the Debtors on or before the Confirmation Date, notwithstanding any indication in any Proof of Claim or otherwise that such Holder asserts, has, or intends to preserve any right of recoupment.

**M. Document Retention**

On and after the Effective Date, the Reorganized Debtors may maintain documents in accordance with their current document retention policy, as may be altered, amended, modified, or supplemented by the Reorganized Debtors without further notice.

**N. Reimbursement or Contribution**

If the Bankruptcy Court disallows a Claim for reimbursement or contribution of an Entity pursuant to section 502(e)(1)(B) of the Bankruptcy Code, then to the extent that such Claim is contingent as of the time of allowance or disallowance, such Claim shall be forever disallowed and expunged notwithstanding section 502(j) of the Bankruptcy Code, unless prior to the Confirmation Date: (1) such Claim has been adjudicated as non-contingent; or (2) the relevant Holder of a Claim has Filed a non-contingent Proof of Claim on account of such Claim and a Final Order has been entered prior to the Confirmation Date determining such Claim as no longer contingent.

**ARTICLE IX.**

**ALLOWANCE AND PAYMENT OF CERTAIN ADMINISTRATIVE CLAIMS**

**A. Professional Claims**

1. Final Fee Applications: All final requests for payment of Professional Claims shall be Filed no later than the Administrative Claim Bar Date. After notice and a hearing in accordance with the procedures established by the Bankruptcy Code and prior Final Orders, the Allowed amounts of the Professional Claims shall be determined by the Bankruptcy Court.

2. Payment of Interim Amounts: Except as otherwise provided in the Plan and subject to Article IX.A. 1, Professionals shall be paid pursuant to the Interim Compensation Order.

3. Post-Effective Date Fees and Expenses: Except as otherwise specifically provided in the Plan, from and after the Effective Date, the Reorganized Debtors shall, in the ordinary course of business and without any further notice to or action, order, or approval of the Bankruptcy Court or any other Entity, pay in Cash the reasonable legal, professional, or

other fees and expenses related to implementation and Consummation incurred by the Reorganized Debtors. Upon the Effective Date, any requirement that Professionals comply with sections 327 through 331 and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Reorganized Debtors may employ and pay any Professional in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Court or any other Entity.

#### **B. Other Administrative Claims**

All requests for payment of an Administrative Claim must be Filed with the Notice, Claims and Solicitation Agent and served upon counsel to the Debtors or the Reorganized Debtors, as applicable, on or before the Administrative Claim Bar Date. Any request for payment of an Administrative Claim pursuant to Article II.B hereof that is not timely Filed and served shall be disallowed automatically without the need for any objection by the Debtors or the Reorganized Debtors. The Reorganized Debtors may settle and pay any Administrative Claim in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Court or any other Entity. In the event that any party with standing objects to an Administrative Claim, the Bankruptcy Court shall determine the Allowed amount of such Administrative Claim. Notwithstanding the foregoing, no request for payment of an Administrative Claim need be Filed with respect to an Administrative Claim previously Allowed by Final Order.

### **ARTICLE X.**

#### **CONDITIONS PRECEDENT TO EFFECTIVE DATE**

##### **A. Conditions Precedent to the Effective Date**

The following shall be satisfied or waived, in each case, subject to Plan Sponsor Approval, as conditions precedent to the Effective Date:

1. The Bankruptcy Court shall have entered a Final Order, in form and substance acceptable to the Debtors, approving the Disclosure Statement with respect to the Plan as containing adequate information within the meaning of section 1125 of the Bankruptcy Code.

2. All of the schedules, documents, and exhibits contained in the Disclosure Statement, and all schedules, documents, supplements, and exhibits to the Plan shall have been Filed in form and substance acceptable to the Debtors.

3. The Exit Facility shall have become effective contemporaneously with the Effective Date.

4. The New Board shall have been selected.

5. The Confirmation Order shall have become a Final Order in form and substance acceptable to the Debtors and there shall have been no modification or stay of the Confirmation Order or entry of other court order prohibiting transactions contemplated by the Plan from being consummated.

6. The Bankruptcy Court shall have entered one or more Final Orders (which may include the Confirmation Order) authorizing the assumption and rejection of Executory Contracts and Unexpired Leases by the Debtors as contemplated in Article V hereof.

7. All governmental, regulatory, and material third party approvals and consents, including Bankruptcy Court approval, necessary in connection with the transactions contemplated herein shall have been obtained and be in full force and effect, and all applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain, prevent or otherwise impose material adverse conditions on such transactions.

#### **B. Waiver of Conditions Precedent**

The Debtors or the Reorganized Debtors, as applicable, may waive any of the conditions to the Effective Date set forth in Article X.A hereof at any time, without any notice and without further notice to or action, order, or approval of the Bankruptcy Court or any other Entity, and without any formal action other than proceeding to confirm or consummate the Plan. A failure to satisfy or waive any condition to the Effective Date may be asserted as a failure of the Effective Date regardless of the circumstances giving rise to such failure (including any action or inaction by the Entity asserting such failure). The failure of the Debtors or the Reorganized Debtors, as applicable, to exercise any of the foregoing rights shall not be deemed a waiver of any other rights, and each such right shall be deemed an ongoing right, which may be asserted at any time.

#### **C. Effect of Non-Occurrence of Conditions to the Effective Date**

Each of the conditions to the Effective Date must be satisfied or waived pursuant to Article X.B hereof, and the Effective must occur within 180 days of Confirmation, or by such later date established by Final Order. If the Effective Date has not occurred within 180 days of Confirmation, then upon motion by a party in interest made before the Effective Date and a hearing, the Confirmation Order may be vacated by the Bankruptcy Court; provided that notwithstanding the filing of such motion to vacate, the Confirmation Order may not be vacated if the Effective Date occurs before the Bankruptcy Court enters a Final Order granting such motion. If the Confirmation Order is vacated pursuant to Article X.C hereof or otherwise, then except as provided in any Final Order vacating the Confirmation Order, the Plan will be null and void in all respects, including the discharge of Claims and termination of Interests pursuant to the Plan and section 1141 of the Bankruptcy Code and the assumptions, assignments, and rejections of Executory Contracts or Unexpired Leases pursuant to Article V, and nothing contained in the Plan or Disclosure Statement shall: (a) constitute a waiver or release of any Claims, Interests, or Causes of Action; (b) prejudice in any manner the rights of such Debtor or any other Entity; or (c) constitute an admission, acknowledgment, offer, or undertaking of any sort by such Debtor or any other Entity.



## **ARTICLE XI.**

### **MODIFICATION, REVOCATION, OR WITHDRAWAL OF THE PLAN**

#### **A. Modification and Amendments**

Except as otherwise specifically provided in the Plan, the Debtors reserve the right to modify the Plan and seek Confirmation consistent with the Bankruptcy Code. Subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 and those restrictions on modifications set forth in the Plan, each of the Debtors expressly reserves its respective rights to revoke or withdraw, or to alter, amend, or modify the Plan with respect to such Debtor, one or more times, after Confirmation, and, to the extent necessary, may initiate proceedings in the Bankruptcy Court to so alter, amend, or modify the Plan, or remedy any defect or omission, or reconcile any inconsistencies in the Plan, the Disclosure Statement, or the Confirmation Order, in such matters as may be necessary to carry out the purposes and intent of the Plan. Any such modification or supplement shall be considered a modification of the Plan and shall be made in accordance with this Article XI.

#### **B. Effect of Confirmation on Modifications**

Entry of a Confirmation Order shall mean that all modifications or amendments to the Plan since the solicitation thereof are approved pursuant to section 1127(a) of the Bankruptcy Code and do not require additional disclosure or resolicitation under Bankruptcy Rule 3019.

#### **C. Revocation or Withdrawal of Plan**

The Debtors reserve the right to revoke or withdraw the Plan prior to the Effective Date and to File subsequent chapter 11 plans. If the Debtors revoke or withdraw the Plan, or if Confirmation or Consummation does not occur, then: (1) the Plan shall be null and void in all respects; (2) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain of any Claim or Interest or Class of Claims or Interests), assumption, assignment, or rejection of Executory Contracts or Unexpired Leases effected by the Plan, and any document or agreement executed pursuant to the Plan, shall be deemed null and void; and (3) nothing contained in the Plan shall: (i) constitute a waiver or release of any Claims, Interests, or Causes of Action; (ii) prejudice in any manner the rights of such Debtor or any other Entity; or (iii) constitute an admission, acknowledgement, offer, or undertaking of any sort by such Debtor or any other Entity.

## **ARTICLE XII.**

### **RETENTION OF JURISDICTION**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain jurisdiction over all matters arising out of, or related to, the Chapter 11 Cases and the Plan pursuant to sections 105(a) and 1142 of the Bankruptcy Code, including jurisdiction to:

1. Allow, disallow, determine, liquidate, classify, estimate, or establish the priority, secured or unsecured status, or amount of any Claim or Interest, including the

resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the secured or unsecured status, priority, amount, or allowance of Claims or Interests;

2. Decide and resolve all matters related to the granting and denying, in whole or in part, any applications for allowance of compensation or reimbursement of expenses to Professionals authorized pursuant to the Bankruptcy Code or the Plan;

3. Decide and resolve all matters related to or arising out of the Plan Sponsor Agreement;

4. Resolve any matters related to: (a) the assumption, assumption and assignment, or rejection of any Executory Contract or Unexpired Lease to which a Debtor is party or with respect to which a Debtor may be liable and to hear, determine, and, if necessary, liquidate, any Cure or Claims arising therefrom, including Cure or Claims pursuant to section 365 of the Bankruptcy Code; (b) any potential contractual obligation under any Executory Contract or Unexpired Lease that is assumed; (c) the Reorganized Debtors amending, modifying, or supplementing, after the Effective Date, pursuant to Article V hereof, any Executory Contracts or Unexpired Leases to the list of Executory Contracts and Unexpired Leases to be assumed or rejected or otherwise; and (d) any dispute regarding whether a contract or lease is or was executory or expired;

5. Ensure that distributions to Holders of Allowed Claims and Interests are accomplished pursuant to the provisions of the Plan;

6. Adjudicate, decide, or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters, and grant or deny any applications involving a Debtor that may be pending on the Effective Date;

7. Adjudicate, decide, or resolve any and all matters related to Causes of Action;

8. Adjudicate, decide, or resolve any and all matters related to section 1141 of the Bankruptcy Code;

9. Enter and implement such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of the Plan and all contracts, instruments, releases, indentures, and other agreements or documents created in connection with the Plan or the Disclosure Statement;

10. Enter and enforce any order for the sale of property pursuant to sections 363, 1123, or 1146(a) of the Bankruptcy Code;

11. Resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with the Consummation, interpretation, or enforcement of the Plan or any Entity's obligations incurred in connection with the Plan;

12. Issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Entity with Consummation or enforcement of the Plan; Resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the releases, injunctions, and other provisions contained in Article VIII hereof, and enter such orders as may be necessary or appropriate to implement such releases, injunctions, and other provisions;

13. Resolve any and all cases, controversies, suits, disputes, or Causes of Action, with respect to the repayment or return of distributions and the recovery of additional amounts owed by the Holder of a Claim for amounts not timely repaid;

14. Enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;

15. Enter an order or Final Decree concluding or closing the Chapter 11 Cases;

16. Adjudicate any and all disputes arising from or relating to payments or distributions under the Plan;

17. Consider any and all modifications of the Plan, to cure any defect or omission, or to reconcile any inconsistency in any Final Order, including the Confirmation Order;

18. Hear and determine requests for the payment or distribution on account of Claims entitled to priority pursuant to section 507 of the Bankruptcy Code;

19. Hear and determine any and all disputes arising in connection with the interpretation, implementation, or enforcement of the Plan or the Confirmation Order, including disputes arising under agreements, documents, or instruments executed in connection with the Plan;

20. Hear and determine any and all disputes arising under sections 525 or 543 of the Bankruptcy Code;

21. Hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;

22. Hear and determine any and all disputes involving the existence, nature, or scope of the Debtors' discharge, including any dispute relating to any liability arising out of the termination of employment or the termination of any employee or retiree benefit program, regardless of whether such termination occurred prior to or after the Effective Date;

23. Determine any other matters that may arise in connection with or relate to the interpretation, implementation, or enforcement of the Plan, the Disclosure Statement, or the Confirmation Order, including disputes arising under agreements, contracts, instruments, releases, indentures, or other agreement or document created in connection with the Plan or the Disclosure Statement;

24. Enforce any orders previously entered by the Bankruptcy Court; and

25. Hear any and all other matter not inconsistent with the Bankruptcy Code.

### **ARTICLE XIII.**

#### **MISCELLANEOUS PROVISIONS**

##### **A. Immediate Binding Effect**

Notwithstanding Bankruptcy Rules 3020(e), 6004(g), or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan and the Disclosure Statement shall be immediately effective and enforceable and deemed binding upon the Debtors, the Reorganized Debtors, and any and all Holders of Claims or Interests (irrespective of whether any such Holders of Claims or Interests failed to vote to accept or reject the Plan, voted to accept or reject the Plan, or are deemed to accept or reject the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, discharges, and injunctions described in the Plan, each Entity acquiring property under the Plan, and any and all Non-Debtor parties to Executory Contracts and Unexpired Leases with the Debtors.

##### **B. Substantial Consummation**

On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101 and 1127(b) of the Bankruptcy Code.

##### **C. Additional Documents**

On or before the Effective Date, the Debtors may File with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Debtors or the Reorganized Debtors, as applicable, and all Holders of Claims receiving distributions pursuant to the Plan and all other parties in interest shall, from time to time, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

##### **D. Payment of Statutory Fees**

All fees payable pursuant to section 1930 of title 28 of the United States Code after the Effective Date shall be paid prior to the closing of the Chapter 11 Cases when due or as soon thereafter as practicable.

##### **E. Dissolution of Creditors Committee**

Upon the Effective Date, the Creditors Committee shall dissolve automatically, and members thereof shall be released and discharged from all rights, duties, responsibilities, and liabilities arising from, or related to, the Chapter 11 Cases and under the Bankruptcy Code.

##### **F. Reservation of Rights**

Except as expressly set forth in the Plan, the Plan shall have no force or effect unless the Bankruptcy Court shall enter the Confirmation Order. None of the filing of the Plan, any

statement or provision contained in the Plan, or the taking of any action by any Debtor with respect to the Plan or the Disclosure Statement shall be deemed to be an admission or waiver of any rights of any Debtor with respect to the Holders of Claims or Interests prior to the Effective Date.

**G. Successors and Assigns**

The rights, benefits, and obligations of any Entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor or assign, if any, of such Entity.

**H. Service of Documents**

1. After the Effective Date, any pleading, notice, or other document required by the Plan to be served on or delivered to the Debtors or Reorganized Debtors shall be sent by overnight mail, postage prepaid to:

Bruce F. Young  
President & CEO  
Brundage-Bone Concrete Pumping, Inc.  
6461 Downing Street  
Denver, Colorado 80229  
with a copy to:

Harvey Sender  
John B. Wasserman  
Sender & Wasserman, P.C.  
1660 Lincoln Street, Suite 2200  
Denver, Colorado 80264 Counsel to the Debtors

John L. Ruppert  
Michele J. Rowland  
Ballard Spahr LLP  
1225 17th Street, Suite 2300  
Denver, CO 80202-5596  
Special Counsel to the Debtors

After the Effective Date, the Reorganized Debtors have authority to send a notice to Entities that continue to receive documents pursuant to Bankruptcy Rule 2002, requesting that each such Entity must File a renewed request to receive documents pursuant to Bankruptcy Rule 2002. After the Effective Date, the Reorganized Debtors are authorized to limit the list of Entities receiving documents pursuant to Bankruptcy Rule 2002 to those Entities who have Filed such renewed requests.

2. In accordance with Bankruptcy Rules 2002 and 3020(c), no later than ten business days after the date of entry of the Confirmation Order, the Debtors shall serve the Notice of Confirmation by hand, by overnight courier service, or by United States mail, first

class postage prepaid, to all Entities having been served with the Confirmation Hearing Notice; provided that no notice or service of any kind shall be required to be mailed or made upon any Entity to whom the Debtors mailed a Confirmation Hearing Notice but received such notice returned marked “undeliverable as addressed,” “moved, left no forwarding address” or “forwarding order expired,” or similar reason, unless the Debtors have been informed in writing by such Entity, or are otherwise aware, of that Entity’s new address. To supplement the notice described in the preceding sentence, no later than twenty days after the date of the Confirmation Order, the Debtors shall publish the Notice of Confirmation once in *The Wall Street Journal (National Edition)*. Mailing and publication of the Notice of Confirmation in the time and manner set forth in this paragraph shall be good and sufficient notice under the particular circumstances and in accordance with the requirements of Bankruptcy Rules 2002 and 3020(c), and no further notice is necessary.

#### **I. Entire Agreement**

Except as otherwise indicated, the Plan and the Disclosure Statement supersede all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into the Plan.

#### **J. Governing Law**

Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and the Bankruptcy Rules) or unless otherwise specifically stated, the laws of the State of Colorado, without giving effect to the principles of conflict of laws, shall govern the rights, obligations, construction, and implementation of the Plan, any agreements, documents, instruments, or contracts executed or entered into in connection with the Plan (except as otherwise set forth in those agreements, in which case the governing law of such agreement shall control), and corporate governance matters; provided that corporate governance matters relating to the Debtors or the Reorganized Debtors, as applicable, not incorporated in Colorado shall be governed by the laws of the state of incorporation of the applicable Debtor or Reorganized Debtor, as applicable.

#### **K. Nonseverability of Plan Provisions**

If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is: (1) valid and enforceable pursuant to its terms; (2) integral to the Plan and may not be deleted or modified without the Debtors’ consent; and (3) nonseverable and mutually dependent.



**L. Votes Solicited in Good Faith**

Upon entry of the Confirmation Order, the Debtors will be deemed to have solicited votes on the Plan in good faith and in compliance with the Bankruptcy Code, and pursuant to section 1125(e) of the Bankruptcy Code, the Debtors and each of their respective Affiliates, subsidiaries, members, principals, shareholders, officers, directors, employees, representatives, agents, financial advisors, attorneys, accountants, investment bankers, consultants, and other professionals will be deemed to have participated in good faith and in compliance with the Bankruptcy Code in the offer, issuance, sale, and purchase of Securities offered and sold under the Plan, and, therefore, will have no liability for the violation of any applicable law, rule, or regulation governing the solicitation of votes on the Plan or the offer, issuance, sale, or purchase of the Securities offered and sold under the Plan.

**M. Closing of Chapter 11 Cases**

The Reorganized Debtor shall promptly after the full administration of its Chapter 11 Case, File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close its Chapter 11 Case. Upon the Reorganized Debtors sending notice of such dissolution to those Entities who have Filed renewed requests to receive documents pursuant to Bankruptcy Rule 2002, any Reorganized Debtor identified in such notice as being dissolved shall be deemed dissolved under state law without further action by the Reorganized Debtors and without any further notice to or action, order, or approval of the Bankruptcy Court or any other Entity.

**N. Waiver or Estoppel**

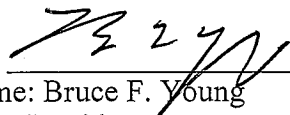
Each Holder of a Claim or an Interest shall be deemed to have waived any right to assert any argument, including the right to argue that its Claim or Interest should be Allowed in a certain amount, in a certain priority, secured, or not subordinated by virtue of an agreement made with the Debtors or their counsel, the Creditors Committee or its counsel, or any other Entity, if such agreement was not disclosed in the Plan, the Disclosure Statement, or papers Filed with the Bankruptcy Court prior to the Confirmation Date.

**O. Conflicts and Interpretation of Plan**

Except as set forth in the Plan, to the extent that any provision of the Disclosure Statement or any other order (other than the Confirmation Order) referenced in the Plan (or any exhibits, schedules, appendices, supplements, or amendments to any of the foregoing), conflict with or are in any way inconsistent with any provision of the Plan, the Plan shall govern and control. To the extent that a term in the Plan is ambiguous, the Debtors before the Effective Date and the Reorganized Debtors after the Effective Date, may jointly interpret such term in their exclusive discretion or seek clarification from the Bankruptcy Court. To the extent that there may be any inconsistencies between the terms of the Plan on the one hand and the Confirmation Order on the other, the terms of the Confirmation Order shall govern.

Dated: May 18, 2010

BRUNDAGE-BONE CONCRETE PUMPING, INC.

By:   
Name: Bruce F. Young  
Title: President

Dated: May 18, 2010

JLS CONCRETE PUMPING, INC.

By:   
Name: Jeffrey L. Switzer  
Title: President

Dated this 18th day of May, 2010.

SENDER & WASSERMAN, P.C.

/s/ John B. Wasserman

Harvey Sender, #7546

John B. Wasserman, #10011

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