

**IN RE:**

## Debtors.

**Case No. 09-\_\_\_\_\_ ( )**

### Joint Administration Requested

## 068301.1001

## INTRODUCTION

Building Materials Holding Corporation, BMC West Corporation, SelectBuild Construction, Inc., SelectBuild Northern California, Inc., Illinois Framing, Inc., C Construction, Inc., TWF Construction, Inc., H.N.R. Framing Systems, Inc., SelectBuild Southern California, Inc., SelectBuild Nevada, Inc., SelectBuild Arizona, LLC, and SelectBuild Illinois, LLC, as debtors and debtors in possession (collectively, the "**Debtors**"), respectfully propose the following Joint Plan of Reorganization pursuant to section 1121(a) of the Bankruptcy Code for the resolution of outstanding Claims against and Interests in each of the Debtors (the "**Plan**").

Reference is made to the Disclosure Statement with respect to the Plan, distributed contemporaneously herewith, for a discussion of the Debtors' history, businesses, properties, operations, risk factors, a summary and analysis of the Plan, and certain related matters including the securities to be issued under the Plan. Subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, the Debtors respectfully reserve the right to alter, amend, modify, revoke, or withdraw the Plan prior to consummation of the Plan. The Debtors are the proponents of the Plan within the meaning of section 1129 of the Bankruptcy Code.

NO SOLICITATION MATERIALS, OTHER THAN THE DISCLOSURE STATEMENT AND RELATED MATERIALS TRANSMITTED THEREWITH AND APPROVED BY THE BANKRUPTCY COURT, HAVE BEEN AUTHORIZED BY THE BANKRUPTCY COURT FOR USE IN SOLICITING ACCEPTANCE OR REJECTION OF THE PLAN.

### I.

#### DEFINED TERMS, RULES OF INTERPRETATION, AND COMPUTATION OF TIME

1.1. **Definitions.** As used in the Plan, capitalized terms not otherwise defined herein shall have the meanings specified in Appendix A. Unless the context otherwise requires, any capitalized term used and not defined in the Plan, but that is defined in the Bankruptcy Code, shall have the meaning assigned to that term in the Bankruptcy Code. Unless otherwise specified, all section, article, schedule, or exhibit references in the Plan are to the respective section in, article of, or schedule or exhibit to, the Plan, as the same may be amended, waived, or modified from time to time.

1.2. **Rules of Construction.** For purposes of the Plan, unless otherwise provided herein: (i) any reference in the Plan to a contract, instrument, release, indenture, or other agreement, whether existing or contemplated, 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, (ii) unless otherwise specified, all references in the Plan to the Introduction, Articles, and Sections are references to the Introduction, Articles, and Sections of or to the Plan, (iii) captions and headings to Articles and Sections are intended for convenience of reference only and are not intended to be part of or to affect interpretation of the Plan, (iv) the words "herein," "hereof," "hereunder," "hereto," and other words of similar import refer to the Plan in its entirety rather than to a particular portion of the Plan, (v) whenever it appears appropriate from the context, each pronoun stated in the masculine, feminine, or neuter includes the masculine, feminine, and neuter, and (vi) the rules of construction set forth in section 102 of the Bankruptcy Code and in the Bankruptcy Rules shall apply.

1.3. **Computation of Time.** In computing time prescribed or allowed by the Plan, unless otherwise expressly provided, Bankruptcy Rule 9006(a) shall apply.

## II. TREATMENT OF ADMINISTRATIVE EXPENSE CLAIMS, PRIORITY TAX CLAIMS AND PROFESSIONAL COMPENSATION CLAIMS AGAINST THE DEBTORS

2.1. **Administrative Expense Claims.** On the later of (i) the Effective Date or (ii) if the Administrative Expense Claim is not Allowed as of the Effective Date, 30 days after the date on which an Administrative Expense Claim becomes Allowed, the Disbursing Agent shall either (x) pay to each Holder of an Allowed Administrative Expense Claim, in Cash, the full amount of such Allowed Administrative Expense Claim, or (y) satisfy and discharge such Administrative Expense Claim in accordance with such other terms that the Debtors and such Holder shall have agreed upon; *provided, however*, that such agreed-upon treatment shall not be more favorable than the treatment provided in clause (x). Notwithstanding the foregoing, if the Allowed Administrative Expense Claims are based on liabilities incurred in the ordinary course of business during the Postpetition Period, such Holders of an Allowed Administrative Expense Claim shall receive Cash pursuant to the terms and conditions of the particular transaction giving rise to such Allowed Administrative Expense Claims without any further action by the Holders of such Allowed Administrative Expense Claims.

2.2. **Professional Compensation Claims.** Notwithstanding any other provision of the Plan dealing with Administrative Expense Claims, any Person seeking a Professional Compensation Claim shall, no later than thirty (30) days after the Confirmation Date, file a final application for allowance of compensation for services rendered and reimbursement of expenses incurred through the Confirmation Date. To the extent that such an award is granted by the Bankruptcy Court, the requesting Person shall receive: (i) payment of Cash in an amount equal to the amount Allowed by the Bankruptcy Court less all interim compensation paid to such Professional during the Chapter 11 Cases, such payment to be made within the later of (a) the Effective Date or (b) three (3) business days after the Order granting such Person's final fee application becomes a Final Order; (ii) payment on such other terms as may be mutually agreed upon by the Holder of the Professional Compensation Claim and BMHC or Reorganized BMHC, as applicable (but in no event shall the payment exceed the amount Allowed by the Bankruptcy Court); or (iii) payment in accordance with the terms of any applicable administrative procedures orders entered by the Bankruptcy Court, including the Interim Compensation Order, dated [\_\_\_\_], 2009. All Professional Compensation Claims for services rendered after the Confirmation Date shall be paid by Reorganized BMHC (or the Debtors prior to the Effective Date) upon receipt of an invoice therefor, or on such other terms as Reorganized BMHC (or the Debtors prior to the Effective Date) and the Professional may agree, without the requirement of any order of the Bankruptcy Court.

2.3. **Priority Tax Claims.** Except to the extent that a Holder of an Allowed Priority Tax Claim agrees to a less favorable treatment, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Priority Tax Claim, each Holder of such Allowed Priority Tax Claim shall be treated in accordance with the terms set forth in section 1129(a)(9)(C) of the Bankruptcy Code.

2.4. **DIP Facility.** Notwithstanding any other provision of the Plan dealing with Administrative Expense Claims, Administrative Expense Claims arising under the DIP Facility shall be Allowed Administrative Expense Claims on the Effective Date and shall be paid in full in Cash on the Effective Date, and all excess Cash in the Cash Collateral Account shall remain with Reorganized BMHC.

2.5. **U.S. Trustee Fees.** U.S. Trustee Fees incurred by the U.S. Trustee prior to the Effective Date shall be paid on the Distribution Date in accordance with the applicable schedule for payment of such fees. Until each of the Chapter 11 Cases is closed by entry of a final decree of the Bankruptcy Court, the Liquidating Trust shall pay additional U.S. Trustee Fees incurred in accordance with the

applicable schedule for the payment of such fees if the Liquidating Trust Existence Condition Precedent occurs; otherwise, such additional U.S. Trustee Fees shall be paid by the Reorganized Debtors.

### III.

#### CLASSIFICATION OF CLAIMS AGAINST AND INTERESTS IN DEBTORS

3.1. **Classification of Claims.** Pursuant to section 1122 of the Bankruptcy Code, set forth below is a designation of Classes of Claims against and Interests in the Debtors. A Claim or Interest is placed in a particular Class for the purposes of voting on the Plan and receiving Distributions pursuant to the Plan only to the extent that such Claim or Interest is an Allowed Claim or Allowed Interest in that Class and such Claim or Interest has not been paid, released, withdrawn, or otherwise settled prior to the Effective Date. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims and Priority Tax Claims of the kinds specified in sections 507(a)(2) and 507(a)(8), respectively, of the Bankruptcy Code have not been classified and their treatment is set forth in Article II.

The Plan constitutes a separate chapter 11 plan of reorganization for BMHC. The Plan also constitutes a single chapter 11 plan of reorganization for each of (i) the BMC West Debtors and (ii) the SelectBuild Debtors, which, respectively, shall be substantively consolidated for the purposes of voting, Distribution, and Confirmation, but not for corporate organizational or operational purposes except to the extent described in the Restructuring Transactions Memorandum. In the event that the Bankruptcy Court does not authorize substantive consolidation of the BMC West Debtors and/or the SelectBuild Debtors, the Plan shall constitute a separate plan of reorganization for each of the BMC West Debtors and/or the SelectBuild Debtors, as applicable. Pursuant to section 1122 of the Bankruptcy Code, set forth below is a designation of Classes of Claims against and Interests in the Debtors.

3.2. **Classes.** The Claims against and Interests in the Debtors are classified as follows:

##### 3.2.1. *Classes 1(a)-(c): Priority Non-Tax Claims.*

Class	Claims and Interests	Status	Voting Rights
Class 1(a)	Priority Non-Tax Claims against BMHC	Unimpaired	Not entitled to vote (Deemed to accept)
Class 1(b)	Priority Non-Tax Claims against the BMC West Debtors	Unimpaired	Not entitled to vote (Deemed to accept)
Class 1(c)	Priority Non-Tax Claims against the SelectBuild Debtors	Unimpaired	Not entitled to vote (Deemed to accept)

##### 3.2.2. *Classes 2(a)-(c): Funded Lender Claims.*

Class	Claims and Interests	Status	Voting Rights
Class 2(a)	Funded Lender Claims against BMHC	Impaired	Entitled to vote
Class 2(b)	Funded Lender Claims against the BMC West Debtors	Impaired	Entitled to vote
Class 2(c)	Funded Lender Claims against the SelectBuild Debtors	Impaired	Entitled to vote

3.2.3. *Classes 3(a)-(c): L/C Lender Claims.*

Class	Claims and Interests	Status	Voting Rights
Class 3(a)	Funded Lender Claims against BMHC	Impaired	Entitled to vote
Class 3(b)	Funded Lender Claims against the BMC West Debtors	Impaired	Entitled to vote
Class 3(c)	Funded Lender Claims against the SelectBuild Debtors	Impaired	Entitled to vote

3.2.4. *Classes 4(a)-(c): Other Secured Claims.*

Class	Claims and Interests	Status	Voting Rights
Class 4(a)	Other Secured Claims against BMHC	Unimpaired	Not entitled to vote (Deemed to accept)
Class 4(b)	Other Secured Claims against the BMC West Debtors	Unimpaired	Not entitled to vote (Deemed to accept)
Class 4(c)	Other Secured Claims against the SelectBuild Debtors	Unimpaired	Not entitled to vote (Deemed to accept)

3.2.5. *Classes 5(a)-(c): L/C General Unsecured Claims.*

Class	Claims and Interests	Status	Voting Rights
Class 5(a)	L/C General Unsecured Claims against BMHC	Unimpaired	Not entitled to vote (Deemed to accept)
Class 5(b)	L/C General Unsecured Claims against the BMC West Debtors	Unimpaired	Not entitled to vote (Deemed to accept)
Class 5(c)	L/C General Unsecured Claims against the SelectBuild Debtors	Unimpaired	Not entitled to vote (Deemed to accept)

3.2.6. *Classes 6(a)-(c): General Unsecured Claims.*

Class	Claims and Interests	Status	Voting Rights
Class 6(a)	BMHC General Unsecured Claims	Impaired	Entitled to vote
Class 6(b)	BMC West General Unsecured Claims	Impaired	Entitled to vote
Class 6(c)	SelectBuild General Unsecured Claims	Impaired	Entitled to vote

**3.2.7. Classes 7(a)-(c): Intercompany Claims.**

<b>Class</b>	<b>Claims and Interests</b>	<b>Status</b>	<b>Voting Rights</b>
Class 7(a)	Intercompany Claims against BMHC	Unimpaired	Not entitled to vote (Deemed to accept)
Class 7(b)	Intercompany Claims against the BMC West Debtors	Unimpaired	Not entitled to vote (Deemed to accept)
Class 7(c)	Intercompany Claims against the SelectBuild Debtors	Unimpaired	Not entitled to vote (Deemed to accept)

**3.2.8. Classes 8(a)-(c): Small Unsecured Claims.**

<b>Class</b>	<b>Claims and Interests</b>	<b>Status</b>	<b>Voting Rights</b>
Class 8(a)	Small Unsecured Claims against BMHC	Impaired	Entitled to vote
Class 8(b)	Small Unsecured Claims against the BMC West Debtors	Impaired	Entitled to vote
Class 8(c)	Small Unsecured Claims against the SelectBuild Debtors	Impaired	Entitled to vote

**3.2.9. Classes 9(a)-(c): Interests.**

<b>Class</b>	<b>Claims and Interests</b>	<b>Status</b>	<b>Voting Rights</b>
Class 9(a)	Interests in BMHC	Impaired	Not entitled to vote (Deemed to reject)
Class 9(b)	Intercompany Interests in BMC West Debtors	Unimpaired	Not entitled to vote (Deemed to accept)
Class 9(c)	Intercompany Interests in the SelectBuild Debtors	Unimpaired	Not entitled to vote (Deemed to accept)

**3.2.10. Class 10(a)-(c): Section 510(b) Claims.**

<b>Class</b>	<b>Claims and Interests</b>	<b>Status</b>	<b>Voting Rights</b>
Class 10(a)	Section 510(b) Claims against BMHC	Impaired	Not entitled to vote (Deemed to reject)
Class 10(b)	Section 510(b) Claims against BMC West Debtors	Impaired	Not entitled to vote (Deemed to reject)
Class 10(c)	Section 510(b) Claims against the SelectBuild Debtors	Impaired	Not entitled to vote (Deemed to reject)

**3.3. Effect of Non-Voting; Modifications.** At the Confirmation Hearing, the Debtors will seek a ruling that if no Holder of a Claim or Interest eligible to vote in a particular Class timely votes to accept or reject the Plan, the Plan will be deemed accepted by the Holders of such Claims or Interests in such Class for the purposes of section 1129(b) of the Bankruptcy Code. Subject to section 1127 of the

Bankruptcy Code and Bankruptcy Rule 3019, the Debtors reserve the right to modify the Plan to the extent that Confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification, *provided* such modifications are consistent with Section 12.5 of the Plan.

#### IV. TREATMENT OF CLAIMS AND INTERESTS AND DESIGNATION WITH RESPECT TO IMPAIRMENT

##### 4.1. **Treatment of Classes 1(a)-(c): Other Priority Claims.**

4.1.1. ***Impairment and Voting.*** Classes 1(a)-(c) are Unimpaired by the Plan. Each Holder of an Allowed Other Priority Claim is conclusively presumed to have accepted the Plan and is not entitled to vote to accept or reject the Plan.

4.1.2. ***Treatment.*** On the Distribution Date, each Holder of an Allowed Other Priority Claim shall receive in full satisfaction, release, and discharge of and in exchange for such Claim: (i) payment of Cash in an amount equal to the unpaid portion of such Allowed Other Priority Claim, or (ii) such other treatment that the Debtors and such Holder shall have agreed upon in writing; *provided, however*, that such agreed-upon treatment shall not be more favorable than the treatment provided in clause (i).

##### 4.2. **Treatment of Classes 2(a)-(c): Funded Lender Claims.**

4.2.1. ***Impairment and Voting.*** Classes 2(a)-(c) are Impaired by the Plan. Each Holder of an Allowed Funded Lender Claim as of the Record Date is entitled to vote to accept or reject the Plan.

4.2.2. ***Treatment.*** Each Holder of an Allowed Funded Lender Claim shall, in full satisfaction, release, and discharge of and in exchange for such Claim, receive (i) the Funded Lender's Share of Sale Cash Collateral Excess Proceeds Account Effective Date Amount, (ii) a Term Note issued by the Reorganized BMHC under the Term Loan Credit Agreement in an original aggregate principal amount equal to \$135,000,000 (less the Sale Cash Collateral Excess Proceeds Account Effective Date Amount) multiplied by such Holder's Pro Rata share of Allowed Funded Lender Claims; and (iii) its Pro Rata share of the Reorganized BMHC Equity Interests, subject to dilution by (a) any Reorganized BMHC Equity Interests issued from time to time to the Holders of L/C Lender Claims up to the Reorganized BMHC Equity Interest L/C Lender Cap and (b) any Reorganized BMHC Equity Interests issued after the Effective Date in respect of the Long Term Incentive Plan.

##### 4.3. **Treatment of Classes 3(a)-(c): L/C Lender Claims.**

4.3.1. ***Impairment and Voting.*** Classes 3(a)-(c) are Impaired by the Plan. Each Holder of an Allowed L/C Lender Claim as of the Record Date is entitled to vote to accept or reject the Plan.

4.3.2. ***Treatment.*** Allowed L/C Lender Claims shall be treated as follows:

4.3.2.1. From and after the Effective Date, obligations of the Prepetition L/C Lenders (whether WFB, as the letter of credit issuer under the Prepetition Credit Agreement, or the Prepetition Revolving Lenders in respect of their several reimbursement obligations to WFB arising under the Prepetition Credit Agreement) shall continue to be governed by the lender reimbursement provisions of the Prepetition Credit Agreement. Reorganized BMHC shall have no obligations whatsoever in respect of the letter of credit reimbursement obligations arising in respect of the Prepetition Letters of

Credit, except (a) the Holders of Allowed L/C Lender Claims shall be entitled to the L/C Lender Fee and (b) as expressly set forth in the following Section 4.3.2.2, and all Liens with respect to the Prepetition Credit Agreement shall be released, discharged, and extinguished.

4.3.2.2. To the extent any Allowed L/C Lender Claim is liquidated on or after the Petition Date, each Holder of an Allowed L/C Lender Claim shall, in full satisfaction, release, and discharge of and in exchange for the Liquidated L/C Amount of such Claim, receive the following:

(A) a Term Note issued by Reorganized BMHC under the Term Loan Credit Agreement in an original aggregate principal amount equal to 50% of the Liquidated L/C Amount of the Allowed L/C Lender Claim; *provided, however*, that the maximum amount of the Term Notes issued in connection with Allowed L/C Lender Claims shall not exceed the Maximum L/C Lenders Term Notes Cap; *provided, however*, that the principal amount of any Term Note issued by Reorganized BMHC on the Effective Date to the Holder of an Allowed L/C Lender Claims in respect of the Liquidated L/C Amount of such Claim shall be reduced by the L/C Lender's Share of the Sale Cash Collateral Excess Proceeds Account Effective Date Amount; and

(B) Reorganized BMHC Equity Interests, rounded to the nearest whole number, equal to such L/C Lender's Pro Rata share of the aggregate Reorganized BMHC Equity Interest L/C Lender Cap multiplied by the ratio (expressed as a percentage) of the Liquidated L/C Amount to the Maximum L/C Lenders Term Note Cap, subject to dilution by any Reorganized BMHC Equity Interests issued after the Effective Date in respect of the Long Term Incentive Plan. The total Reorganized BMHC Equity Interests that shall be issued with respect to Allowed L/C Lender Claims shall not exceed the Reorganized BMHC Equity Interest L/C Lender Cap; and

(C) The L/C Lender's Share of the Sale Cash Collateral Excess Proceeds Account Effective Date Amount.

4.3.2.3. If, and only to the extent, a Prepetition L/C Lender fails to reimburse in full WFB in respect of its reimbursement obligation to WFB arising under the Prepetition Credit Agreement, WFB shall be entitled to receive the distribution described in the preceding Section 4.3.2.2 which would otherwise be payable to such defaulting Prepetition L/C Lender.

4.3.2.4. Prepetition Letters of Credit shall not be used by the Reorganized Debtors to collateralize obligations that do not exist as of the Effective Date, notwithstanding any provision of the Prepetition Letters of Credit to the contrary; *provided, however*, that obligations under insurance policies and/or performance bonds incurred prior to the Effective Date shall (i) survive the Effective Date and (ii) be collateralized by the Prepetition Letters of Credit until the earlier to occur of (a) the termination of such obligations or (b) the Maturity Date under the Term Loan Credit Agreement (as such term is defined therein).

4.3.2.5. Allowed L/C Lender Claims or any portions thereof that are not liquidated prior to the occurrence of the Maturity Date of the Term Loan Credit



Agreement (as such term is defined in the Term Loan Credit Agreement), shall be extinguished, and any outstanding Prepetition Letters of Credit at that time shall be cancelled and replaced by the Reorganized Debtors as and to the extent necessary in accordance with their business judgment.

4.4. **Treatment of Classes 4(a)-(c) – Other Secured Claims.**

4.4.1. **Impairment and Voting.** Classes 4(a)-(c) are Unimpaired by the Plan. Each Holder of an Allowed Other Secured Claim is conclusively presumed to have accepted the Plan and is not entitled to vote to accept or reject the Plan.

4.4.2. **Treatment.** Except to the extent that a Holder of an Other Secured Claim agrees to a less favorable treatment, in full satisfaction, settlement, release, and discharge of and in exchange for each Other Secured Claim, each Allowed Other Secured Claim shall be reinstated or otherwise rendered Unimpaired.

4.5. **Treatment of Classes 5(a)-(c): L/C General Unsecured Claims.**

4.5.1. **Impairment and Voting.** Classes 5(a)-(c) are Unimpaired by the Plan. Each Holder of an Allowed L/C General Unsecured Claim is conclusively presumed to have accepted the Plan and is not entitled to vote to accept or reject the Plan.

4.5.2. **Treatment.** Except to the extent that a Holder of an L/C General Unsecured Claim agrees to a less favorable treatment, in full satisfaction, settlement, release, and discharge of an in exchange for each L/C General Unsecured Claim, each Allowed L/C General Unsecured Claim shall be reinstated, paid in full, or otherwise rendered Unimpaired.

4.6. **Treatment of Classes 6(a)-(c): General Unsecured Claims.**

4.6.1. **Impairment and Voting.** Classes 6(a)-(c) are Impaired by the Plan. Each Holder of an Allowed General Unsecured Claim as of the Record Date is entitled to vote to accept or reject the Plan.

4.6.2. **Treatment.**

4.6.2.1. **Class 6(a) if Such Class Votes to Accept the Plan.** On the Distribution Date, each Holder of an Allowed BMHC General Unsecured Claim shall, in full satisfaction, release, and discharge of and in exchange for such Claim, receive its Pro Rata share of the BMHC Beneficial Interests in the Liquidating Trust, which shall entitle such Holder to distributions from the Liquidating Trust of the Liquidating Trust Assets as and to the extent set forth in the Plan and the Liquidating Trust Agreement. Notwithstanding the foregoing, each Holder of an Allowed BMHC General Unsecured Claim shall be entitled, by exercise of the election set forth on the Ballot with respect to such General Unsecured Claim, to make the Small Unsecured Claims Class Election.

4.6.2.2. **Class 6(a) if Such Class Votes to Reject the Plan.** On the Distribution Date, each Holder of an Allowed BMHC General Unsecured Claim shall, in full satisfaction, release, and discharge of and in exchange for such Claim, receive its Pro Rata share of the BMHC Rejection Distribution.

4.6.2.3. **Class 6(b) if Such Class Votes to Accept the Plan.** On the Distribution Date, each Holder of an Allowed BMC West General Unsecured Claim shall, in full satisfaction, release, and discharge of and in exchange for such Claim, receive its Pro Rata share of the BMC West Beneficial Interests in the Liquidating Trust, which shall entitle such Holder to distributions from the Liquidating Trust of the Liquidating Trust Assets as and to the extent set forth in the Plan and the Liquidating Trust Agreement. Notwithstanding the foregoing, each Holder of an Allowed BMC West General Unsecured Claim shall be entitled, by exercise of the election set forth on the Ballot with respect to such Allowed General Unsecured Claim, to make the Small Unsecured Claims Class Election.

4.6.2.4. **Class 6(b) if such Class Votes to Reject the Plan.** On the Distribution Date, each Holder of an Allowed BMC West General Unsecured Claim shall, in full satisfaction, release, and discharge of and in exchange for such Claim, receive its Pro Rata share of the BMC West Rejection Distribution.

4.6.2.5. **Class 6(c) if Such Class Votes to Accept the Plan.** On the Distribution Date, each Holder of an Allowed SelectBuild General Unsecured Claim shall, in full satisfaction, release, and discharge of and in exchange for such Claim, receive its Pro Rata share of the SelectBuild Beneficial Interests in the Liquidating Trust, which shall entitle such Holder to distributions from the Liquidating Trust of the Liquidating Trust Assets as and to the extent set forth in the Plan and the Liquidating Trust Agreement. Notwithstanding the foregoing, each Holder of an Allowed SelectBuild General Unsecured Claim shall be entitled, by exercise of the election set forth on the Ballot with respect to such Allowed General Unsecured Claim, to make the Small Unsecured Claims Class Election.

4.6.2.6. **Class 6(c) if Such Class Votes to Reject the Plan.** On the Distribution Date, each Holder of an Allowed SelectBuild General Unsecured Claim shall, in full satisfaction, release, and discharge of and in exchange for such Claim, receive its Pro Rata share of the SelectBuild Rejection Distribution.

#### 4.7. **Treatment of Classes 7(a)-(c): Intercompany Claims.**

4.7.1. **Impairment and Voting.** Classes 7(a)-(c) are Unimpaired by the Plan. Each Holder of an Allowed Intercompany Claim is conclusively presumed to have accepted the Plan and is not entitled to vote to accept or reject the Plan.

4.7.2. **Treatment.** To preserve the Debtors' corporate structure, Intercompany Claims may be reinstated as of the Effective Date or, at the Debtors' or Reorganized Debtors' option, be cancelled, and no distributions shall be made on account of such Claims.

#### 4.8. **Treatment of Classes 8(a)-(c) – Small Unsecured Claims.**

4.8.1. **Impairment and Voting.** Classes 8(a)-(c) are Impaired by the Plan. Each Holder of a Small Unsecured Claim as of the Record Date is entitled to vote to accept or reject the Plan.

4.8.2. **Treatment.** On the Distribution Date, each Holder of a Small Unsecured Claim shall receive, in full satisfaction, release, and discharge of and in exchange for such Claim, Cash equal to the lesser of (i) 100% of the Allowed Amount of such Claim (excluding any interest) or (ii) \$5,000 in

Cash; *provided, however*, that the Small Unsecured Claims Class Election shall only be effective upon entry of the Confirmation Order and the occurrence of the Effective Date.

**4.9. Treatment of Classes 9(a)-(c): Interests.**

**4.9.1. *Impairment and Voting.***

4.9.1.1. **Class 9(a).** Class 9(a) is Impaired by the Plan. Each Holder of an Interest in BMHC is conclusively presumed to have rejected the Plan and is not entitled to vote to accept or reject the Plan.

4.9.1.2. **Classes 9(b)-(c).** Classes 9(b)-(c) are Unimpaired by the Plan. Each Holder of an Intercompany Interest in any BMC West Debtor or SelectBuild Debtor is conclusively presumed to have accepted the Plan and is not entitled to vote to accept or reject the Plan.

**4.9.2. *Treatment.***

4.9.2.1. **Class 9(a).** On the Effective Date, all Interests in BMHC shall be cancelled without further distribution.

4.9.2.2. **Classes 9(b)-(c).** In full and final satisfaction, settlement, release, and discharge of and in exchange for each Intercompany Interest, Intercompany Interests in each of the BMC West Debtors and the SelectBuild Debtors shall be reinstated for the benefit of the Holders thereof.

**4.10. Treatment of Classes 10(a)-(c): Section 510(b) Claims.**

4.10.1. ***Impairment and Voting.*** Classes 10(a)-(c) are Impaired by the Plan. Each Holder of a Section 510(b) claim is conclusively presumed to have rejected the Plan and is not entitled to vote to accept or reject the Plan.

4.10.2. ***Treatment.*** On the Effective Date, all Section 510(b) Claims shall be cancelled and discharged without any distribution.

**V.**

**PROVISIONS REGARDING VOTING, EFFECT OF REJECTION BY IMPAIRED CLASSES,  
AND CONSEQUENCES OF NON-CONFIRMABILITY**

5.1. ***Voting Rights.*** Each Holder of an Allowed Claim as of the Voting Deadline in an Impaired Class of Claims or Interests that is not deemed to have rejected the Plan shall be entitled to vote separately to accept or reject the Plan as provided in the order entered by the Bankruptcy Court establishing certain procedures with respect to the solicitation and tabulation of votes to accept or reject the Plan.

5.2. ***Acceptance Requirements.*** An Impaired Class of Claims shall have accepted the Plan if votes in favor of the Plan have been cast by at least two-thirds in amount and more than one-half in number of the Allowed Claims in such Class that have voted on the Plan. An Impaired Class of Interests shall have accepted the Plan if votes in favor of the Plan have been cast by at least two-thirds in amount of the Interests in such Class that have voted on the Plan.

5.3. **Cramdown.** If all applicable requirements for Confirmation of the Plan are met as set forth in section 1129(a)(1) through (13) of the Bankruptcy Code, except subsection (8) thereof, the Plan shall be treated as a request that the Bankruptcy Court confirm the Plan in accordance with section 1129(b) of the Bankruptcy Code, notwithstanding the failure to satisfy the requirements of section 1129(a)(8), on the basis that the Plan is fair and equitable and does not discriminate unfairly with respect to each Class of Claims that is Impaired under, and has not accepted, the Plan.

5.4. **Tabulation of the Votes.** BMHC shall tabulate all votes on its Plan on a non-consolidated basis for the purpose of determining whether the Plan satisfies sections 1129(a)(8) and/or (10) of the Bankruptcy Code. The BMC West Debtors shall tabulate all votes on the Plan on a consolidated basis by Class for the purpose of determining whether the Plan has satisfied sections 1129(a)(8) and/or (10) of the Bankruptcy Code. The SelectBuild Debtors shall tabulate all votes on the Plan on a consolidated basis by Class for the purpose of determining whether the Plan has satisfied sections 1129(a)(8) and/or (10) of the Bankruptcy Code. If no Impaired Classes accept the Plan, the Debtors may modify the Plan to appropriately address the rights of the Holders of Allowed Claims.

5.5. **Non-Confirmability.** If the Plan has not been accepted by the requisite majorities and the Debtors determine that the Plan cannot be confirmed under section 1129(b) of the Bankruptcy Code, or if the Bankruptcy Court, upon consideration, declines to approve Confirmation of the Plan, the Debtors may in their sole discretion seek to either (i) propose a new plan or plans of reorganization, (ii) seek to amend the current Plan to satisfy all objections, if any, or (iii) seek to convert or dismiss the Chapter 11 Cases.

## VI. EXECUTORY CONTRACTS AND UNEXPIRED LEASES

6.1. **Assumption and Rejection of Contracts and Unexpired Leases.** Except as otherwise provided herein or pursuant to the Confirmation Order, all Executory Contracts and Unexpired Leases that exist between the Debtors and any person, including, but not limited to, all Intercompany Contracts, shall be assumed pursuant to section 365(a) of the Bankruptcy Code as of the Effective Date, except for any such contract or lease (i) that has been assumed or rejected, or renegotiated and either assumed or rejected on renegotiated terms, pursuant to an order of the Bankruptcy Court entered prior to the Effective Date, (ii) that has been entered into by the Debtors during the pendency of the Chapter 11 Cases in the ordinary course of business or pursuant to an order of the Bankruptcy Court, (iii) that is the subject of a motion to reject, or a motion to approve renegotiated terms and to assume or reject on such renegotiated terms, that has been filed and served prior to the Effective Date, or (iv) that is identified on the Rejected Executory Contract and Unexpired Lease List; *provided, however*, that the Debtors shall assume the Collective Bargaining Agreements on the Effective Date. Entry of the Confirmation Order shall constitute approval, pursuant to section 365(a) of the Bankruptcy Code, of the assumption of Executory Contracts and Unexpired Leases provided for herein. Each Executory Contract and Unexpired Lease assumed pursuant to this Section 6.1 or by any order of the Bankruptcy Court, which has not been assigned to a third party prior to the Confirmation Date, shall revert in and be fully enforceable by the Reorganized Debtors in accordance with its terms, except as such terms are modified by the provisions of the Plan or any order of the Bankruptcy Court authorizing and providing for its assumption under applicable federal law.

6.2. **Claims Based on Rejection of Executory Contracts or Unexpired Leases.** All Proofs of Claim with respect to Claims arising from the rejection of Executory Contracts or Unexpired Leases, pursuant to the Plan or the Confirmation Order, if any, must be filed with the Bankruptcy Court within 30 days after the date of entry of an order of the Bankruptcy Court (including the Confirmation Order) approving such rejection. Any Claims arising from the rejection of an Executory Contract or Unexpired Lease not filed with the Bankruptcy Court within such time will be automatically disallowed, forever

barred from assertion, and shall not be enforceable against the Debtors or the Reorganized Debtors, the Estates, or their property without the need for any objection by the Reorganized Debtors or further notice to, or action, order, or approval of the Bankruptcy Court. All Allowed Claims arising from the rejection of the Debtors' Executory Contracts or Unexpired Leases shall be classified as General Unsecured Claims and shall be treated in accordance with Section 4.5 or 4.6 of the Plan, whichever may be applicable.

6.3. ***Cure of Defaults.*** Any monetary defaults under each Executory Contract and Unexpired Lease to be assumed pursuant to the Plan shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment of the Cure Claim in Cash on the Effective Date, subject to the limitation described below, or on such other terms as the parties to such Executory Contracts or Unexpired Leases may otherwise agree. In the event of a dispute regarding (i) the Cure Claim, (ii) 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) under the Executory Contract or Unexpired Lease to be assumed, or (iii) any other matter pertaining to assumption, the payments required by section 365(b)(1) of the Bankruptcy Code in respect of Cure Claims shall be made following the entry of a Final Order or orders resolving the dispute and approving the assumption. At least [20 days] prior to the Confirmation Hearing, the Debtors shall provide for notices of proposed assumption and proposed Cure Claims to be sent to applicable third parties. Any objection by a counterparty to an Executory Contract or Unexpired Lease to a proposed assumption or related Cure Claim must be filed and served in accordance with, and otherwise comply with, the provisions of the Disclosure Statement Approval Order related to assumption of Executory Contracts and Unexpired Leases. Any counterparty to an Executory Contract or Unexpired Lease that fails to object timely to the proposed assumption or Cure Claim will be deemed to have assented to such assumption or Cure Claim.

Assumption of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall result in the full 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. 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.

6.4. ***Contracts and Leases Entered into after the Petition Date.*** Contracts and leases entered into during the Postpetition Period by any Debtor, including any Executory Contracts and Unexpired Leases assumed by such Debtor, will be performed by the Debtor or Reorganized Debtor liable thereunder in the ordinary course of its business. Accordingly, such contracts and leases (including any assumed Executory Contracts and Unexpired Leases) will survive and remain unaffected by entry of the Confirmation Order.

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

Modifications, amendments, supplements, and restatements to any prepetition 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.

6.6. **Reservation of Rights.** Neither the exclusion nor inclusion of any Executory Contract or Unexpired Lease on the Rejected Executory Contract and Unexpired Lease List, 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 Reorganized Debtors, as applicable, shall have 30 days following entry of a Final Order resolving such dispute to alter their treatment of such contract or lease.

## VII. MEANS OF IMPLEMENTATION OF THE PLAN

7.1. **Substantive Consolidation.** The BMC West Debtors and the SelectBuild Debtors are, respectively, substantively consolidated for all purposes and actions associated with consummation of the Plan, including, without limitation, for purposes of voting, Distribution and Confirmation, but not for corporate organizational or operational purposes except to the extent described in the Restructuring Transactions Memorandum. Without limiting the generality of the foregoing, (i) all Assets and liabilities of the BMC West Debtors and the SelectBuild Debtors shall, respectively, be treated as though they were merged into one Estate solely for purposes of the Plan, (ii) for all purposes associated with Confirmation, including, without limitation, for purposes of tallying acceptances and rejections of the Plan, the Estates of the BMC West Debtors and the SelectBuild Debtors shall, respectively, be deemed to be one consolidated Estate, and (iii) each and every Claim filed or to be filed in the Chapter 11 Cases of the BMC West Debtors and the SelectBuild Debtors shall, respectively, be deemed filed against all the BMC West Debtors or all of the SelectBuild Debtors, respectively, and shall be Claims against and obligations of all of the BMC West Debtors or the SelectBuild Debtors, as applicable. As a result of the consolidation, any guaranty by one or more of (i) the BMC West Debtors of the obligations of another BMC West Debtor, and all intercompany claims of the BMC West Debtors, and (ii) the SelectBuild Debtors of the obligations of another SelectBuild Debtor, shall be eliminated.

Substantive consolidation shall not affect distributions from any insurance policies or proceeds of such policies. The Restructuring Transactions Memorandum describes the legal and organizational structure of the Reorganized Debtors from and after the Effective Date.

In the event that the Bankruptcy Court does not order substantive consolidation of the BMC West Debtors or the SelectBuild Debtors or both, then: (i) nothing in the Plan or the Disclosure Statement shall constitute or be deemed to constitute an admission that one of BMC West Debtors or SelectBuild Debtors, respectively, is subject to or liable for any Claim against any other BMC West Debtor or SelectBuild Debtor, respectively; (ii) Claims against multiple BMC West Debtors or SelectBuild Debtors shall be treated as separate Claims with respect to each BMC West Debtor's or SelectBuild Debtor's Estate, as applicable, for all purposes (including, without limitation, Distributions and voting), and such Claims shall be administered as provided in the Plan; and (c) the BMC West Debtors and the SelectBuild Debtors shall not, nor shall they be required to, resolicit votes with respect to the Plan, nor will the failure of the Bankruptcy Court to approve substantive consolidation of the BMC West Debtors and/or the SelectBuild Debtors materially alter the economics of the Distributions set forth in the Plan. In the event that the Bankruptcy Court does not order substantive consolidation of the BMC West Debtors or the SelectBuild Debtors or both, the Plan shall be deemed to provide for 12 subplans of reorganization. A vote to accept the Plan by the Holder of a Claim shall also be deemed a vote to accept a separate plan for each of the BMC West Debtors and/or the SelectBuild Debtors against whom such Holder has a Claim in the event that the Bankruptcy Court denies approval of the substantive consolidation of the BMC West Debtors and/or the SelectBuild Debtors, *provided* that the treatment of the Claim being voted would not be materially different in the absence of substantive consolidation.

7.2. ***General Settlement of Claims.*** As discussed in detail in the Disclosure Statement and as otherwise provided herein, pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, Distribution, releases, and other benefits provided under the Plan, upon the Effective Date, the provisions of the Plan shall constitute a good faith compromise and settlement of all Claims and Interests and controversies resolved pursuant to the Plan. Subject to [Article VIII], all Distributions made to Holders of Allowed Claims in any Class are intended to be and shall be final.

7.3. ***Sources of Consideration for Plan Distributions.***

7.3.1. ***The Exit Revolver.*** On the Effective Date, the Reorganized Debtors shall enter the Exit Revolver. Confirmation shall be deemed approval of the Exit Revolver (including the transactions contemplated thereby, and all actions to be taken, undertakings to be made, and obligations to be incurred by the Reorganized Debtors in connection therewith) and authorization for the Reorganized Debtors to enter into and execute the Exit Revolver documents, subject to such modifications as the Reorganized Debtors and the Exit Revolver Lenders may deem to be reasonably necessary to consummate such Exit Revolver. Proceeds from the Exit Revolver shall be used by the Reorganized Debtors to (i) pay in full in Cash all non-contingent obligations under the DIP Facility, (ii) fund exit costs, including, without limitation, the funding of (a) the Cash Claims Reserve, (b) the Allowed Professional Compensation Claims, and (c) the Unsecured Cash Fund, and (iii) fund ongoing operating expenses of the Reorganized Debtors.

7.3.2. ***The Term Loan.*** On the Effective Date, the Reorganized Debtors shall enter into the Term Loan. Confirmation shall be deemed approval of the Term Loan (including the transactions contemplated thereby, and all actions to be taken, undertakings to be made, and obligations to be incurred by the Reorganized Debtors in connection therewith) and authorization for the Reorganized Debtors to enter into and execute the Term Loan documents, subject to such modifications as the Reorganized Debtors and the Term Loan Lenders may deem to be reasonably necessary to consummate such Term Loan. The Term Notes shall be issued to the Holders of Allowed Funded Lender Claims and L/C Lender Claims as provided in Sections 4.2 and 4.3 of the Plan. Holders of the Term Notes shall be entitled to receive, among other things, an amount equal to (i) 100% of the Excess Cash Flow, determined on an annual basis based upon delivery of audited financial statements by Reorganized BMHC, in any fiscal year in which the EBITDA of Reorganized BMHC does not exceed \$50,000,000, and (ii) 100% of Excess Cash Flow, determined on an annual basis based upon delivery of audited financial statements by Reorganized BMHC, less the Liquidating Trust Share of Excess Cash Flow, in any fiscal year in which the EBITDA of Reorganized BMHC equals or exceeds \$50,000,000.

7.3.3. ***Issuance of Reorganized BMHC Equity Interests.***

7.3.3.1. The issuance of the Reorganized BMHC Equity Interests, including options, or other equity awards, if any, reserved for the Long Term Incentive Plan, by Reorganized BMHC is authorized without the need for any further corporate action or without any further action by the Holders of Claims or Interests. An unlimited number of common shares shall be authorized under the New Certificate of Incorporation of Reorganized BMHC. On the Effective Date, the Reorganized BMHC Equity Interests will be issued to Holders of Allowed Funded Lender Claims and, if applicable and as and to the extent provided in Section 4.3 of the Plan, Holders of Allowed L/C Lender Claims.

7.3.3.2. All of the shares of Reorganized BMHC Equity Interests issued pursuant to the Plan shall be duly authorized, validly issued, fully paid, and non-assessable. Each distribution and issuance referred to in Article VIII hereof shall be

governed by the terms and conditions set forth in the Plan applicable to such distribution or issuance and by the terms and conditions of the instruments evidencing or relating to such distribution or issuance, which terms and conditions shall bind each Person receiving such distributions or issuance.

7.3.3.3. [Upon the Effective Date, in the event that Reorganized BMHC determines that a Shareholder Agreement is advisable, then Reorganized BMHC shall enter into such agreement with each Person that is to be a counter-party thereto and such agreement shall be deemed to be valid, binding, and enforceable in accordance with its terms.]

7.3.4. **Avoidance Actions.** Avoidance Actions are hereby expressly preserved and shall vest in Reorganized BMHC on the Effective Date.

7.3.5. **Unsecured Cash Fund.** On the Effective Date, or as soon thereafter as reasonably practicable, the Reorganized Debtors shall transfer, from the proceeds of the Exit Revolver, Cash sufficient to fund the Unsecured Cash Fund to the Liquidating Trust. The Reorganized Debtors shall not be required to make any payments under this Section 7.3.6 unless the Liquidating Trust Existence Condition Precedent occurs.

7.3.6. **Liquidating Trust Share of Excess Cash Flow.** On the first anniversary of the Effective Date through the Liquidating Trust Share of Excess Cash Flow Maturity Date, Reorganized BMHC shall pay to the Liquidating Trust for distribution to the Beneficiaries Cash in amount equal to the Liquidating Trust Share of Excess Cash Flow, if any. Reorganized BMHC shall not be required to make any payments under this Section 7.3.6 unless the Liquidating Trust Existence Condition Precedent occurs.

7.4. **Liquidating Trust.** This Section 7.4 of the Plan, and all of its related subsections set forth below, shall only be operative upon the occurrence of the Liquidating Trust Existence Condition Precedent. If the Liquidating Trust Existence Condition Precedent does not occur, Section 7.4 shall not be operative upon the Effective Date of the Plan, and no Liquidating Trust shall be created, or shall be deemed to have been created, hereunder.

7.4.1. **Establishment of the Liquidating Trust.** On the Effective Date, the Reorganized Debtors shall and, in any event, shall be deemed to: (i) enter into the Liquidating Trust Agreement, (ii) take all other steps necessary or appropriate to establish the Liquidating Trust, and (iii) transfer, assign, and deliver to the Liquidating Trust all of the Debtors' right, title, and interest in, to, under, and in connection with the Liquidating Trust Assets for the benefit of the Beneficiaries, in each case free and clear of any Lien in such property of any other Person. On the Effective Date, the Liquidating Trust shall be deemed created and effective pursuant to the terms of the Liquidating Trust Agreement without any further action by the Bankruptcy Court or any other Person, and the Liquidating Trustee will begin serving in accordance with the Liquidating Trust Agreement. Each of the foregoing transfers and releases shall be deemed to have occurred without any further action.

For federal income tax purposes, it is intended that the Liquidating Trust be classified as a liquidating trust under Section 301.77014-4 of the Treasury regulations and that the Liquidating Trust be owned by the Beneficiaries. Accordingly, for federal income tax purposes, the Debtors, the Liquidating Trustee, and the Beneficiaries agree to treat the Beneficiaries as grantors of the Liquidating Trust, and the transfer of such Liquidating Trust Assets to the Liquidating Trust shall be treated as a deemed distribution by the Debtors to the Beneficiaries of an undivided interest in each of the Liquidating Trust Assets followed by a deemed transfer of such Liquidating Trust Assets by the Beneficiaries to the Liquidating Trust.



**7.4.2. Purpose of the Liquidating Trust.** The Liquidating Trust will be organized for the sole purpose of distributing the Liquidating Trust Assets and resolving Disputed General Unsecured Claims in the manner set forth in Article VIII hereof, with no objective or authority to continue or engage in the conduct of trade or business. In particular, the Liquidating Trust shall (i) issue the Beneficial Interests to Holders of Allowed Claims in the Class 6 Classes that, because those Classes have voted to accept the Plan, are Beneficiaries of the Liquidating Trust, (ii) receive and distribute the Liquidating Trust Assets, and (iii) take such steps as are necessary or appropriate to accomplish these purposes, in each case as more fully provided in, and subject to the terms and conditions of, the Liquidating Trust Agreement.

**7.4.3. Powers and Obligations of the Liquidating Trust.** As provided in the Liquidating Trust Agreement, from and after the Effective Date, the Liquidating Trust shall protect, conserve, and distribute the Liquidating Trust Assets and resolve the Disputed General Unsecured Claims in the manner contemplated in Article VIII herein as quickly as reasonably practicable. As of the Effective Date, the Liquidating Trust shall be the successor to the Debtors in all proceedings then pending or thereafter commenced regarding any Disputed General Unsecured Claim, and shall have the exclusive power, as successor to and on behalf and in the name of the Debtors, to investigate, enforce, abandon, prosecute, resolve, defend against, compromise, and settle all Disputed General Unsecured Claims. The expenses of the Liquidating Trust shall be paid out of the Liquidating Trust Assets, as and to the extent provided in the Liquidating Trust Agreement.

**7.4.4. Liquidating Trustee; Liquidating Trustee Oversight Committee.** The Liquidating Trustee shall be designated by the Committee in accordance with the Plan and the Liquidating Trust Agreement. The Committee shall designate the initial three members of the Liquidating Trustee Oversight Committee on or before the 10th day prior to the Voting Deadline. The Liquidating Trustee shall administer the Liquidating Trust from and after the Effective Date in accordance with the Liquidating Trust Agreement and subject to the oversight of the Liquidating Trust Oversight Committee, as provided therein. For the avoidance of doubt, neither the Debtors nor the Reorganized Debtors shall have any authority concerning or relating to the administration of the Liquidating Trust or the distribution of the Liquidating Trust Assets.

**7.4.5. Issuance of Beneficial Interests.** On or before the Effective Date, the Debtors shall deliver to the Liquidating Trust a list of each Person to receive Beneficial Interests as of the Effective Date pursuant to the Plan and the Liquidating Trust Agreement, including the Allowed amounts of the General Unsecured Claims of, and the address of, each such Person. On the Effective Date, the Reorganized Debtors shall also deliver to the Liquidating Trust a list of each Holder, as of the Effective Date, of a Disputed General Unsecured Claim in a Class 6 Class that, because such Class has voted to accept the Plan, is a Beneficiary of the Liquidating Trust, including the Maximum Amount of each such Claim, and the address of the Holder thereof. The Liquidating Trustee shall maintain a record of the Holders of Beneficial Interests, and shall adjust the record of Holders of Beneficial Interests from time to time as such Disputed General Unsecured Claims become Allowed. Beneficial Interests shall be accounted for by amount of such General Unsecured Claims that become Allowed. The Liquidating Trust shall not issue to any Holder of Beneficial Interests any certificate of evidence of ownership of Beneficial Interests. Except as otherwise provided herein or in the Liquidating Trust Agreement, after the Effective Date, neither the Debtors nor the Reorganized Debtors shall have any further responsibilities concerning or relating to the administration of the Liquidating Trust. No Beneficial Interests shall be issued to any Holder in a Class 6 Class that has voted to reject the Plan.

**7.4.6. Reserve for Disputed General Unsecured Claims.** On the date of any Distribution, the Liquidating Trust shall establish, and maintain thereafter, a reserve from Cash for the benefit of Holders of General Unsecured Claims in Class 6 Classes that, because those Classes have voted to accept the Plan, are Beneficiaries of the Liquidating Trust. Such reserve shall consist of an amount of

Cash equal to the amount that would be distributable to all Holders of such Disputed General Unsecured Claims, in respect of all distributions made to that date, if those Claims were Allowed in the Maximum Amount. The Maximum Amount of such Disputed General Unsecured Claims for which the Liquidating Trust shall reserve according to this provision shall be set forth in the Confirmation Order. In the event any such Disputed General Unsecured Claim becomes an Allowed Claim, the amount of such Allowed Claim shall never exceed the Maximum Amount of such Disputed General Unsecured Claim, and the Liquidating Trust shall distribute to the Holder of such Allowed Claim from the reserve the aggregate amount of Cash and Beneficial Interests that such Holder would have received as of the date of such distribution in respect of such Allowed Claim had such Claim been an Allowed Claim as of the Effective Date.

**7.4.7. *Distributions of Liquidating Trust Assets.*** On or as soon as reasonably practicable after the Effective Date, but no later than the Initial Distribution Date, and after establishing appropriate expense and claim reserves in accordance with the Liquidating Trust Agreement and the Plan, the Liquidating Trust shall distribute all Available Cash in the Liquidating Trust to the Holders of the Beneficial Interests. The Liquidating Trust will make subsequent distributions to the Holders of the Beneficial Interests from time to time after the Effective Date, as and to the extent provided herein and in the Liquidating Trust Agreement.

**7.4.8. *Vesting of Liquidating Trust Assets.*** On the Effective Date, all Liquidating Trust Assets shall be deemed to vest in the Liquidating Trust, free and clear of all Liens, claims, and interests of any Person. Without limiting the foregoing, the Cash held in reserve pursuant to the Plan and the Liquidating Trust Agreement shall be maintained by the Liquidating Trust in a segregated, interest-bearing account.

**7.4.9. *Authority to Settle Liquidating Trust Share of Excess Cash Flow.*** On and after the Effective Date, in accordance with the authorization procedures set forth in the Liquidating Trust Agreement, the Liquidating Trust shall have the authority, without authorization from the Bankruptcy Court, to settle, resolve, or otherwise renegotiate the Liquidating Trust Share of Excess Cash Flow with Reorganized BMHC.

**7.4.10. *Implementation of Plan.*** The Liquidating Trust is hereby authorized and directed to take all necessary or desirable steps and execute any documents and perform all necessary or desirable acts to consummate the terms and conditions of the Plan on and after the Effective Date. On or after the Effective Date, the Liquidating Trust may file such agreements and other documents as may be necessary or desirable to effectuate or further evidence the terms and conditions of the Plan and the other agreements referred to herein.

**7.5. *Rule 2004 Examinations.*** The power of the Debtors to conduct examinations pursuant to Bankruptcy Rule 2004 shall be expressly preserved following the Effective Date, and, to the extent relating to the Disputed General Unsecured Claims in the Class 6 Classes that, because those Classes have voted to accept the Plan, are Beneficiaries of the Liquidating Trust, conferred upon the Liquidating Trust.

**7.6. *Continued Corporate Existence.*** Except as provided herein, each Debtor will continue to exist on or after the Effective Date as a separate corporate entity, with all the powers of a corporation or limited liability company, as the case may be, under applicable law and without prejudice to any right to alter or terminate such existence (whether by merger, dissolution, or otherwise) under applicable law.

**7.7. *Revesting of Assets.*** Except as expressly provided herein, the Assets of each Debtor's Estate shall revest with the respective Reorganized Debtor on the Effective Date. The Bankruptcy Court shall retain jurisdiction to determine disputes as to property interests created or vested by the Plan. From

and after the Effective Date, the Reorganized Debtors may operate their businesses, and may use, acquire, and dispose of property free of any restrictions of the Bankruptcy Code, except as provided herein. As of the Effective Date, all property of the Reorganized Debtors shall be free and clear of all Claims and Interests, except as, and to the extent, provided in the Plan.

7.8. ***Merger.*** On the Effective Date, the Reorganized Debtors may (i) effectuate the transactions described in the Restructuring Transactions Memorandum, (ii) merge, dissolve, transfer assets, or otherwise consolidate any of the Debtors in furtherance of the Plan or (iii) engage in any other transaction in furtherance of the Plan. Any such transaction may be effected on or subsequent to the Effective Date without any further action by Holders of Interests or the directors of any of the Debtors.

7.9. ***Cancellation of Securities and Agreements.*** On the Effective Date, except as otherwise specifically provided for in the Plan: (i) the obligations of the Debtors under the Prepetition Credit Agreement, DIP Facility, and any other Certificate, Interest, Equity Security, share, note, bond, indenture, purchase right, option, warrant, or other instrument or document directly or indirectly evidencing or creating any indebtedness or obligation of or ownership interest in the Debtors giving rise to any Claim, Interest, or Equity Security (except such Certificates, notes, or other instruments or document evidencing indebtedness or obligation of or ownership interest in the Debtors that are Reinstated pursuant to the Plan) shall be cancelled solely as to the Debtors and their affiliates, and the Reorganized Debtors shall not have any continuing obligations thereunder; and (ii) the obligations of the Debtors pursuant, relating, or pertaining to any agreements, indentures, certificates of designation, bylaws, or certificate or articles of incorporation or similar documents governing the shares, Certificates, notes, bonds, indentures, purchase rights, options, warrants, or other instruments or documents evidencing or creating any indebtedness or obligation of or ownership interest in the Debtors (except such agreements, Certificates, notes, or other instruments evidencing indebtedness or obligations of or ownership interest in the Debtors that are specifically reinstated pursuant to the Plan) shall be released and discharged; *provided, however*, that notwithstanding Confirmation or consummation, any such agreement that governs the rights of the Holder of a Claim shall continue in effect solely for purposes of allowing Holders to receive distributions under the Plan; *provided, further, however*, that the preceding proviso shall not affect the discharge of Claims or Interests pursuant to the Bankruptcy Code, the Confirmation Order, or the Plan, or result in any expense or liability to the Reorganized Debtors; and *provided, further, however*, that the foregoing shall not effect the cancellation of the Reorganized BMHC Equity Interests issued pursuant to the Plan in Reorganized BMHC, nor the Beneficial Interests in the Liquidating Trust issued pursuant to the Plan and the Liquidating Trust Agreement, nor any other shares held by one Debtor in another Debtor, except in connection with any Restructuring Transaction implemented by the Reorganized Debtors.

7.10. ***Reorganized BMHC.*** On the Effective Date, the New Board of Reorganized BMHC shall be established and Reorganized BMHC shall adopt its New Bylaws. As soon after the Effective Date as reasonably practicable, Reorganized BMHC shall adopt the Long Term Incentive Plan. Reorganized BMHC shall be authorized to adopt any other agreements, documents, and instruments and to take any other action contemplated by the Plan as necessary and desirable to consummate the Plan.

7.11. ***Post Effective Date Management.*** Except as expressly provided in the Plan and the Debtors' certificate of incorporation and the Reorganized BMHC Certificates of Incorporation, which may be amended from time to time, the operation, management, and control of the Reorganized Debtors shall be the general responsibility of its board of directors or managers and senior officers, which shall thereafter have the responsibility for the management, control, and operation of the Reorganized Debtors. Entry of the Confirmation Order shall ratify and approve all actions taken by each of the Debtors from the Petition Date through and until the Effective Date.

7.12. ***Directors and Officers of the Reorganized Debtors.*** On and after the Effective Date, the business and affairs of the Reorganized Debtors will be managed by the New Boards and the officers, directors or managers identified in the Plan Supplement. Biographical information regarding these proposed officers, directors, and managers will be set forth in the Plan Supplement. A schedule of the annual compensation to be paid to persons serving as executives, officers, and directors or managers as of the Effective Date will be set forth in the Plan Supplement.

7.13. ***New Certificates of Incorporation and New Bylaws of the Reorganized Debtors.*** As of the Effective Date, the New Certificates of Incorporation and the New Bylaws shall be substantially in the forms included in the Plan Supplement, with such changes as may be necessary to conform to the applicable laws of the state of incorporation. The New Certificates of Incorporation and New Bylaws, among other things, shall prohibit the issuance of nonvoting equity securities to the extent required by section 1123(a) of the Bankruptcy Code. After the Effective Date, the Reorganized Debtors may amend and restate their New Certificates of Incorporation and New Bylaws, as permitted under applicable state laws, subject to the terms and conditions of such documents.

7.14. ***New Employment, Retirement, Indemnification, and Other Related Agreements.*** As of the Effective Date, the Reorganized Debtors shall have the authority, as determined by its governing Persons, to: (i) maintain, amend, or revise existing employment, retirement, welfare, incentive, severance, indemnification, and other agreements with its active and retired directors or managers, officers, and employees, subject to the terms and conditions of any such agreement; and (ii) enter into new employment, retirement, welfare, incentive, severance, indemnification, and other agreements for active and retired employees.

7.15. ***Effectuating Documents; Further Transactions.*** On and after the Effective Date, Reorganized BMHC and the other Reorganized Debtors, and the officers and members of the New Boards, are authorized to and may issue, execute, deliver, file, or record such contracts, securities, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of the Plan and the securities issued pursuant to the Plan in the name of and on behalf of Reorganized BMHC and the other Reorganized Debtors, without the need for any approvals, authorization, or consents except for those expressly required pursuant to the Plan.

7.16. ***Corporate Action.*** Upon the Effective Date, all actions contemplated by the Plan shall be deemed authorized and approved in all respects, including: (i) the adoption or assumption, as applicable, of the agreements with existing management; (ii) the selection of the directors and officers for the Reorganized Debtors; (iii) the distribution of the Reorganized BMHC Equity Interests in accordance with the Plan; (iv) the execution and entry into the Revolving Credit Agreement and the Term Loan Credit Agreement; (v) the establishment of the Liquidating Trust and the appointment of the Liquidating Trustee in accordance with the Plan and the Liquidating Trust Agreement; (vi) the establishment of the Long Term Incentive Plan and the issuance of any Reorganized BMHC Equity Interests thereunder; and (vii) all other actions contemplated by the Plan (whether to occur before, on, or after the Effective Date). All matters provided for in the Plan involving the corporate structure of the Debtors or the Reorganized Debtors, and any corporate action required by the Debtors or the Reorganized Debtors in connection with the Plan shall be deemed to have occurred and shall be in effect without any requirement of further action by the security holders, directors, or officers of the Debtors or the Reorganized Debtors. On or (as applicable) prior to the Effective Date, the appropriate officers of the Debtors or the Reorganized Debtors, as applicable, shall be authorized and (as applicable) directed to issue, execute, and deliver the agreements, documents, securities, and instruments contemplated by the Plan (or necessary or desirable to effect the transactions contemplated by the Plan) in the name of and on behalf of the Reorganized Debtors, including the Revolving Credit Agreement, the Term Loan Credit Agreement, and the

Liquidating Trust Agreement, and any and all other agreements, documents, securities, and instruments relating to the foregoing. The authorizations and approvals contemplated herein shall be effective notwithstanding any requirements under non-bankruptcy law. The issuance of the Reorganized BMHC Equity Interests shall be exempt from the requirements of section 16(b) of the Securities Exchange Act of 1934 (pursuant to Rule 16b-3 promulgated thereunder) with respect to any acquisition of securities by an officer or director (or a director deputized for purposes thereof) as of the new Effective Date.

7.17. **Section 1146 Exemption.** Pursuant to section 1146 of the Bankruptcy Code, any transfers of property pursuant hereto shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax, or other similar tax or governmental assessment, and upon entry of the Confirmation Order, 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, recordation fee, or governmental assessment.

7.18. **Preservation of Causes of Action.** In accordance with section 1123(b) of the Bankruptcy Code, the Reorganized Debtors shall retain and may enforce all rights to commence and pursue, as appropriate, any and all Causes of Action, whether arising before or after the Petition Date, including any actions specifically enumerated in the Plan Supplement, and the Reorganized Debtors' rights to commence, prosecute, or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date. The Reorganized Debtors may pursue such Causes of Action, as appropriate, in accordance with the best interests of the Reorganized Debtors. No Person may rely on the absence of a specific reference in the Plan, the Plan Supplement, or the Disclosure Statement to any Cause of Action against them as any indication that the Debtors or Reorganized Debtors, as applicable, will not pursue any and all available Causes of Action against them. The Debtors or Reorganized Debtors, as applicable, expressly reserve all rights to prosecute any and all Causes of Action against any Person, except as otherwise expressly provided in the Plan. Unless any Causes of Action against any Person are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or a Bankruptcy Court 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 consummation.

The Reorganized Debtors reserve and shall retain the Causes of Action notwithstanding the rejection or repudiation 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 Person shall vest in the Reorganized Debtors, as the case may be. The applicable Reorganized Debtor, through its authorized agents or representatives, shall retain and may exclusively enforce any and all such Causes of Action. The Reorganized Debtors 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 the consent or approval of any third party or further notice to or action, order, or approval of the Bankruptcy Court.

7.19. **Insurance Policies.** All of the Debtors' insurance policies and any agreements, documents, or instruments relating thereto, are treated as Executory Contracts under the Plan. On the Effective Date, the Debtors shall be deemed to have assumed all insurance policies and any agreements, documents, and instruments relating to coverage of all Insured Claims.

7.20. ***Nonoccurrence of Effective Date.*** In the event that the Effective Date does not occur, the Bankruptcy Court shall retain jurisdiction with respect to any request to extend the deadline for assuming or rejecting unexpired leases pursuant to section 365(d)(4) of the Bankruptcy Code.

7.21. ***Collective Bargaining Agreements.*** On the Effective Date, the Debtors intend to assume all of their Collective Bargaining Agreements.

## VIII.

### METHOD OF DISTRIBUTIONS UNDER THE PLAN AND CLAIMS RECONCILIATION

8.1. ***Occurrence of Liquidating Trust Existence Condition Precedent.*** Notwithstanding anything in this Article VIII of the Plan to the contrary, if the Liquidating Trust Condition Precedent does not occur, then the Liquidating Trust shall (i) not be a Disbursing Agent under Article VIII of the Plan, (ii) shall have no standing or right to object to any Disputed Claim, and (iii) not make any Distributions hereunder. If the Liquidating Trust Condition Precedent does not occur, then on the Effective Date, the Reorganized Debtors shall have the rights of the Liquidating Trust in Sections 8.9-8.11 in the Plan to object to Disputed General Unsecured Claims or to settle such Claims.

8.2. ***Disbursing Agent.*** The Debtors shall act as the Disbursing Agent under the Plan with respect to distributions of Cash made on the Effective Date, the Reorganized Debtors shall act as the Disbursing Agent after the Effective Date under the Plan with respect to distributions of Cash with respect to Allowed Cash Claims and Rejection Distributions (if any), and the Liquidating Trustee shall act as Disbursing Agent after the Effective Date under the Plan with respect to Distributions to Allowed General Unsecured Claims and allocations of Beneficial Interests pursuant to Section 7.4 of the Plan and the Liquidating Trust Agreement. The Disbursing Agent shall make all Distributions of Cash and Beneficial Interests (if any) required to be distributed under the applicable provisions of the Plan and, if applicable, the Liquidating Trust Agreement.

8.3. ***Distribution Record Date.*** For purposes of the Plan, as of the close of business on the Distribution Record Date, the records of ownership of Claims against the Debtors (including the claims register in the Chapter 11 Cases) will be closed. For purposes of the Plan, the Debtors, the Estates, the Reorganized Debtors, and the Liquidating Trust shall have no obligation to recognize the transfer of any of the Claims against the Debtors occurring after the Distribution Record Date, and shall be entitled for all purposes relating to the Plan to recognize and deal only with those Holders of record as of the close of business on the Distribution Record Date.

8.4. ***Cash Payments.*** Any Cash payments made pursuant to the Plan will be made in U.S. dollars. Cash payments made pursuant to the Plan in the form of a check shall be null and void if not cashed within 180 days of the date of issuance thereof.

8.5. ***Delivery of Distributions.*** If the Distribution to any Holder of an Allowed Claim is returned as undeliverable, the Disbursing Agent shall use commercially reasonable efforts to determine the current address of such Holder. Undeliverable Distributions shall be held, subject to Section 8.7.

8.6. ***Minimum Cash Distributions.*** No Cash payment less than fifty dollars shall be made to any Holder of a Claim unless a request therefor is made in writing to the Debtors.

8.7. ***Withholding Taxes.***

8.7.1. The Disbursing Agent shall comply with all withholding, reporting, certification, and information requirements imposed by any federal, state, local, or foreign taxing authority and all

distributions hereunder shall, to the extent applicable, be subject to any such withholding, reporting, certification, and information requirements.

8.7.2. Persons entitled to receive distributions hereunder shall, as a condition to receiving such distributions, provide such information and take such steps as the Disbursing Agent may reasonably require to ensure compliance with such withholding and reporting requirements, and to enable the Disbursing Agent to obtain the certifications and information as may be necessary or appropriate to satisfy the provisions of any tax law.

8.7.3. Any Person that does not provide the Disbursing Agent with requisite information after the Disbursing Agent has made at least three attempts (by written notice or request for such information, including on the ballots in these Chapter 11 Cases) to obtain such information, may be deemed to have forfeited such Person's right to such distributions, which shall be treated as unclaimed property under Section 8.7.

8.8. **Unclaimed Property.** Any Person that fails to claim any Distribution to be distributed hereunder within one year from the initial date for such distribution shall forfeit all rights to any such distributions under the Plan. Upon such forfeiture of Cash or other property, such Cash or property shall be the property of the applicable Disbursing Agent. Nothing herein shall require the Disbursing Agent to attempt to locate or notify any Person with respect to any forfeited property. Persons that fail to claim Cash or other property to be distributed under the Plan within such one-year period shall forfeit their rights thereto and shall have no claim whatsoever with respect thereto against the Debtors, their Estates, the Disbursing Agent, the Liquidating Trust, the Liquidating Trustee, the Liquidating Trust Oversight Committee, the Liquidating Trust Assets, or any Holder of an Allowed Claim to which distributions are made.

8.9. **Disputed Claims.** If the Debtors or any other party in interest disputes any Claim against the Debtors, such dispute shall be determined, resolved, or adjudicated, as the case may be, under applicable law by the Bankruptcy Court. Among other things, (i) the Debtors (on or before the Effective Date), (ii) the Reorganized Debtors (after the Effective Date) with respect to Disputed Cash Claims, Disputed Class Action Claims, and Disputed General Unsecured Claims, and (iii) if the Liquidating Trust Existence Condition Precedent occurs, the Liquidating Trust (after the Effective Date) with respect to Disputed General Unsecured Claims, other than the Disputed Class Action Claims, in Class 6 Classes that, because they have voted to accept the Plan, are Beneficiaries of the Liquidating Trust, may each elect, at their respective sole option, to object to or seek estimation under section 502 of the Bankruptcy Code with respect to any Proof of Claim filed by or on behalf of a Holder of a Claim against the Debtors.

8.10. **Objections to Claims.** Unless a later or different time is set by Final Order or otherwise established by other provisions of the Plan, all objections to Claims must be filed by the Claims Objection Bar Date; *provided, however*, that no such objection may be filed against any Claim after the Bankruptcy Court has determined by entry of a Final Order that such Claim is an Allowed Claim. The failure by any party in interest, including the Debtors and the Committee, to object to any Claim, whether or not unpaid, for purposes of voting shall not be deemed a waiver of such party's or the Disbursing Agent's rights to object to, or re-examine, any such Claim in whole or in part. After the Effective Date, no party in interest shall have the right to object to Claims against the Debtors or their Estates other than (i) the Reorganized Debtors with respect to Cash Claims, Class Action Claims, and General Unsecured Claims and (ii) if the Liquidating Trust Existence Condition Precedent occurs, the Liquidating Trust with respect to General Unsecured Claims, other than Class Action Claims, in Class 6 Classes that, because they have voted to accept the Plan, are Beneficiaries of the Liquidating Trust, each of which shall be deemed to have standing to object all such Claims, respectively.

8.11. ***Compromises and Settlements.*** From and after the Effective Date, and without any further approval by the Bankruptcy Court, the Reorganized Debtors or the Liquidating Trustee, as applicable, may compromise and settle Claims, as follows:

8.11.1. if the Reorganized Debtors, (i) Claims against the Debtors or their respective Estates, (ii) Causes of Action that the Reorganized Debtors have against other Persons, including, without limitation, any Avoidance Action, (iii) Disputed Cash Claims, (iv) Disputed Class Action Claims, and (v) Disputed General Unsecured Claims; *provided, however*, that if the Liquidating Trust Existence Condition Precedent is satisfied prior to the Effective Date, then the Reorganized Debtors shall only be able to compromise and settle a Disputed General Unsecured Claim in a Class 6 Class that, because it has voted to accept the Plan, is a beneficiary of the Liquidating Trust, if the Reorganized Debtors obtain (x) the prior written consent of the Liquidating Trustee or (y) an order of the Bankruptcy Court approving such compromise and settlement of such Disputed Unsecured Claim; *provided further, however*, that the Reorganized Debtors may settle any Disputed Cash Claims that are Class Action Claims without any further approval by the Bankruptcy Court or the Liquidating Trustee;

8.11.2. if the Liquidating Trust, Disputed General Unsecured Claims, other than a Disputed Class Action Claim, in the Class 6 Classes that, because they have voted to accept the Plan, are Beneficiaries of the Liquidating Trust; *provided, however*, that the Liquidating Trust shall only be able to compromise and settle such a Disputed General Unsecured Claim, other than a Disputed Class Action Claim, if the Liquidating Trust obtains either (x) the prior written consent of Reorganized BMHC or (y) an order of the Bankruptcy Court approving such compromise and settlement of such Disputed General Unsecured Claim.

8.12. ***Reservation of Debtors' Rights.*** Prior to the Effective Date, the Debtors expressly reserve the right to compromise and settle (subject to the approval of the Bankruptcy Court) Claims against them or other claims they may have against other Persons.

8.13. ***No Distributions Pending Allowance.*** If a Claim or any portion of a Claim is disputed, no payment or Distribution will be made on account of the disputed portion of such Claim (or the entire Claim, if the entire Claim is disputed), unless such Disputed Claim or portion thereof becomes an Allowed Claim.

8.14. ***No Postpetition Interest on Claims.*** Unless otherwise specifically provided for in the Plan, the Confirmation Order, or other Final Order of the Bankruptcy Court, or required by applicable bankruptcy law, postpetition interest shall not accrue or be paid on any Claims against the Debtors, and no Holder of a Claim against the Debtors shall be entitled to interest accruing on or after the Petition Date on any such Claim.

8.15. ***Claims Paid or Payable by Third Parties.***

8.15.1. ***Claims Paid by Third Parties.*** The Debtors or the Disbursing Agent, as applicable, shall reduce in full a Claim, and such Claim shall be disallowed without a Claims objection having to be Filed and without further notice to or action, order, or approval of the Bankruptcy Court, to the extent that the Holder of such Claim receives payment in full on account of such Claim from a party that is not a Debtor or the Disbursing Agent. 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 the Disbursing Agent on account of such Claim, such Holder shall, within two weeks of receipt thereof, repay or return the distribution to the applicable Disbursing Agent, 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 Disbursing Agent annualized interest at the Federal Judgment Rate on such amount owed for each Business Day after the two-week grace period specified above until the amount is repaid.

8.15.2. ***Claims Payable by Third Parties.*** Except with respect to Allowed Claims for the Debtors' portion of self-insured retention under insurance policies that are secured by Prepetition Letters of Credit, no Distributions under the Plan shall be made on account of an Allowed Claim that is payable pursuant to one of the Debtors' insurance policies until the Holder of such an Allowed Claim has exhausted all remedies with respect to such insurance policy. To the extent that one or more of the Debtors' insurers 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, the applicable portion of the Claim may be expunged without a Claims objection having to be Filed and without further notice to or action, order, or approval of the Bankruptcy Court.

8.15.3. ***Applicability of Insurance Policies.*** Except as otherwise provided in the Plan, distributions to Holders of Allowed Claims shall be in accordance with the provisions of any applicable insurance policy. Nothing contained in the Plan shall constitute or be deemed a waiver of any Cause of Action that the Debtors or any Person may hold against any other Person, including insurers under any policies of insurance, nor shall anything contained herein constitute or be deemed a waiver of such insurers of any defenses, including coverage defenses, held by such insurers.

## IX. EFFECT OF CONFIRMATION OF PLAN

### 9.1. ***Discharge.***

9.1.1. ***Discharge of Claims Against the Debtors and the Reorganized Debtors.*** Except as otherwise expressly provided in the Plan or the Confirmation Order, the Confirmation of the Plan shall, as of the Effective Date: (i) discharge the Debtors, the Reorganized Debtors or any of its or their Assets from all Claims, demands, liabilities, other debts and Interests that arose on or before the Effective Date, including all debts of the kind specified in sections 502(g), 502(h) or 502(i) of the Bankruptcy Code, whether or not (a) a Proof of Claim based on such debt is filed or deemed filed pursuant to section 501 of the Bankruptcy Code, (b) a Claim based on such debt is Allowed pursuant to section 502 of the Bankruptcy Code or (c) the Holder of a Claim based on such debt has accepted the Plan; and (ii) preclude all Persons from asserting against the Debtors, the Reorganized Debtors, the Liquidating Trust (if the Liquidating Trust Existence Condition Precedent has occurred), or any of its or their Assets, any other or further Claims or Interests based upon any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date, all pursuant to sections 524 and 1141 of the Bankruptcy Code. The discharge provided in this provision shall void any judgment obtained against any of the Debtors at any time, to the extent that such judgment relates to a discharged Claim or cancelled Interest.

9.1.2. ***Injunction Related to the Discharge.*** Except as otherwise provided in the Plan or the Confirmation Order, all entities that have held, currently hold, or may hold Claims or other debts or liabilities against the Debtors, or an Interest or other right of an Equity Security Holder in any or all of the Debtors, that are discharged pursuant to the terms of the Plan, are permanently enjoined, on and after the Effective Date, from taking any of the following actions on account of any such Claims, debts, liabilities or Interests or rights: (i) commencing or continuing in any manner any action or other proceeding of any kind with respect to any such Claim, debt, liability, Interest, or right, other than to enforce any right to a Distribution pursuant to the Plan; (ii) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree or order against the Debtors, the Reorganized Debtors, the Liquidating Trust (if the Liquidating Trust Existence Condition Precedent has occurred) or any of its or their Assets on account

of any such Claim, debt, liability, Interest, or right; (iii) creating, perfecting, or enforcing any Lien or encumbrance against the Debtors, the Reorganized Debtors, the Liquidating Trust (if the Liquidating Trust Existence Condition Precedent has occurred) or any of its or their Assets on account of any such Claim, debt, liability, Interest or right; (iv) asserting any right of setoff, subrogation, or recoupment of any kind against any debt, liability, or obligation due to the Debtors, the Reorganized Debtors, the Liquidating Trust (if the Liquidating Trust Existence Condition Precedent has occurred) or any of its or their Assets on account of any such Claim, debt, liability, Interest, or right; and (v) commencing or continuing any action, in any manner, in any place that does not comply with or is inconsistent with the provisions of the Plan or the Confirmation Order. Such injunction shall extend to any successor of the Debtors, the Reorganized Debtors, the Liquidating Trust (if the Liquidating Trust Existence Condition Precedent has occurred), or any of its or their Assets. Any Person injured by any willful violation of such injunction shall recover actual damages, including costs and attorneys' and experts' fees and disbursements, and, in appropriate circumstances, may recover punitive damages, from the willful violator.

9.2. ***Releases.***

9.2.1. ***Releases by the Debtors.*** As of the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, the Debtors in their individual capacity and as debtors in possession will be deemed to release and forever waive and discharge all Claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action, and liabilities whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise that are based in whole or part on any act, omission, transaction, event, or other occurrence taking place on or prior to the Effective Date (including prior to the Petition Date) in any way relating to the Debtors, the Chapter 11 Cases, the Plan, or the Disclosure Statement, the purchase, sale, or rescission of the purchase or sale of any security of the Debtors or the Reorganized Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between and Debtor and any Released Party, the restructuring of Claims and Interests prior to or in the Chapter 11 Cases, the negotiation, formulation, or preparation of the Plan, the Plan Supplement, the Disclosure Statement, or related agreements, instruments, or other documents, or upon any other act or omission, transaction, agreement, event, or other occurrence taking place before the Effective Date and that could have been asserted by or on behalf of the Debtors or their Estates at any time up to immediately prior to the Effective Date against the Released Parties, other than Claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes willful misconduct or gross negligence. Notwithstanding anything to the contrary in the foregoing, the release set forth above does not release any post-Effective Date obligations of any party under the Plan or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan.

9.2.2. ***Certain Waivers.*** Although the Debtors do not believe that California law is applicable to the Plan, nevertheless, in an abundance of caution, each Debtor hereby understands and waives the effect of Section 1542 of the California Civil Code to the extent that such section is applicable to the Debtors. Section 1542 of the California Civil Code provides:

**§1542. A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.**

EACH DEBTOR AGREES TO ASSUME THE RISK OF ANY AND ALL UNKNOWN, UNANTICIPATED OR MISUNDERSTOOD DEFENSES, CLAIMS, CAUSES OF ACTION, CONTRACTS, LIABILITIES, INDEBTEDNESS AND OBLIGATIONS WHICH ARE RELEASED BY THE PLAN AND EACH DEBTOR HEREBY WAIVES AND RELEASES ALL RIGHTS AND BENEFITS WHICH IT MIGHT OTHERWISE HAVE UNDER THE AFOREMENTIONED SECTION 1542 OF THE CALIFORNIA CIVIL CODE WITH REGARD TO THE RELEASE OF SUCH UNKNOWN, UNANTICIPATED OR MISUNDERSTOOD DEFENSES, CLAIMS, CAUSES OF ACTION, CONTRACTS, LIABILITIES, INDEBTEDNESS AND OBLIGATIONS. TO THE EXTENT (IF ANY) ANY OTHER LAWS SIMILAR TO SECTION 1542 OF THE CALIFORNIA CIVIL CODE MAY BE APPLICABLE, EACH DEBTOR WAIVES AND RELEASES ANY BENEFIT, RIGHT OR DEFENSE WHICH IT MIGHT OTHERWISE HAVE UNDER ANY SUCH LAW WITH REGARD TO THE RELEASE OF UNKNOWN, UNANTICIPATED OR MISUNDERSTOOD DEFENSES, CLAIMS, CAUSES OF ACTION, CONTRACTS, LIABILITIES, INDEBTEDNESS AND OBLIGATIONS.

**9.2.3. Releases by Holders of Claims and Interests.** As of the Effective Date of the Plan, each Holder of a Claim or an Interest, shall be deemed to have released and forever waived and discharged all Claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action, and liabilities whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity, or otherwise that are based in whole or part on any act, omission, transaction, event, or other occurrence taking place on or prior to the Effective Date (including prior to the Petition Date) in any way relating to in any way relating to the Debtors, the Chapter 11 Cases, the Plan, or the Disclosure Statement, the purchase, sale, or rescission of the purchase or sale of any security of the Debtors or the Reorganized Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the restructuring of Claims and Interests prior to or in the Chapter 11 Cases, the negotiations, formulation, or preparation of the Plan, the related Disclosure Statement, the related Plan Supplement, or related agreements, instruments, or other documents, or upon any other act or omission, transaction, agreement, event, or other occurrence taking place before the Effective Date and that could have been asserted by or on behalf of the Debtors or their Estates at any time up to immediately prior to the Effective Date against the Released Parties, other than Claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes willful misconduct or gross negligence. Notwithstanding anything to the contrary in the foregoing, the release set forth above does not release any post-Effective Date obligations of any party under the Plan or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan.

**9.2.4. Exculpation.** The Exculpated Parties shall not be liable, other than for gross negligence or willful misconduct, to any Holder of a Claim or Interest or any other Person with respect to any action, omission, forbearance from action, decision, or exercise of discretion taken at any time prior to the Effective Date in connection with:

- the management or operation of the Debtors or the discharge of their duties under the Bankruptcy Code;
- the implementation of any of the transactions provided for, or contemplated in the Plan or the other Plan Documents;

- any action taken in connection with either the enforcement of the rights of any Debtor against any Persons or the defense of Claims asserted against any such Debtor with regard to the Chapter 11 Cases;
- any action taken in the negotiation, formulation, development, proposal, solicitation, disclosure, Confirmation, or implementation of the Plan or the other Plan Documents; or
- the administration of the Plan or the assets and property to be distributed pursuant to the Plan.

In connection with this provision, the Exculpated Parties are entitled to reasonably rely upon the opinions of their respective counsel, accountants, and other experts or professionals and such reliance, if reasonable, will conclusively establish the absence of gross negligence or willful misconduct; *provided, however*, that a determination that such reliance is unreasonable will not, by itself, constitute a determination regarding the existence of willful misconduct or gross negligence.

If the Holder of a Claim or Interest or other Person brings an action, suit, or proceeding covered by this Section and does not prevail, such Holder or other Person must pay the reasonable attorneys' fees and costs of the Exculpated Party. Moreover, as a condition to going forward with such action, suit, or proceeding, the Holder of a Claim or Interest or other Person must, at the outset, provide appropriate proof and assurances of its capacity to pay the Exculpated Party's reasonable attorneys' fees and costs in the event the Holder or other Person fails to prevail. The Exculpated Party shall have no obligation to pay, or provide appropriate proof and financial assurance of its capacity to pay, reasonable attorneys' fees and costs in the event that the Holder of a Claim or Interest or other Person prevails in any such action, suit, or proceeding against such Exculpated Party.

**9.2.5. Injunction Related to Releases.** To the fullest extent allowed by law, and except as otherwise provided in the Plan or the Confirmation Order, all Persons that have held, currently hold, or may hold claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action, and liabilities that are released or exculpated pursuant to Section 9.2.1, 9.2.2, 9.2.3, and 9.2.4 are permanently enjoined, on and after the Effective Date, from taking any of the following actions on account of any such claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action and liabilities: (i) commencing or continuing in any manner any action or other proceeding of any kind against a Released Party or Exculpated Party with respect to any such claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action, and liabilities; (ii) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order against any Released Party or any Exculpated Party or any of its or their Assets on account of any such claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action, and liabilities; (iii) creating, perfecting, or enforcing any Lien or encumbrance against any Released Party or any Exculpated Party or any of its or their assets on account of any such claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action, and liabilities; (iv) asserting any right of setoff, subrogation, or recoupment of any kind against any debt, liability, or obligation due to any Released Party or any Exculpated Party or any of its or their Assets on account of any such claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action, and liabilities; and (v) commencing or continuing any action, in any manner, in any place that does not comply with or is inconsistent with the provisions of the Plan or the Confirmation Order. Such injunction shall extend to any successor of any Released Party or any Exculpated Party or any of its or their assets. Any Person injured by any willful violation of such injunction shall recover actual damages, including costs and attorneys' and experts' fees and

**disbursements, and, in appropriate circumstances, may recover punitive damages, from the willful violator.**

9.3. **No Successor Liability.** Except as otherwise expressly provided herein, none of the Released Parties shall be determined to be successors to any of the Debtors or to any Person for which the Debtors may be held legally responsible, by reason of any theory of law or equity, and none can be responsible for any successor or transferee liability of any kind or character. The Released Parties do not agree to perform, pay, or indemnify creditors or otherwise have any responsibilities for any liabilities or obligations of the Debtors or the Reorganized Debtors, whether arising before, on, or after the Confirmation Date, except as otherwise expressly provided in the Plan.

9.4. **Release of Liens.** Except as otherwise expressly provided in the Plan or in any contract, instrument, indenture, or other agreement or document expressly incorporated by reference in the Plan, the Confirmation Order will release any and all prepetition Liens.

9.5. **Term of Injunctions.** All injunctions or stays provided in, or in connection with, the Chapter 11 Cases, whether pursuant to section 105, section 362, or any other provision of the Bankruptcy Code, other applicable law or court order, in effect immediately prior to Confirmation will remain in full force and effect until such injunctions or stays become effective and shall remain in full force and effect thereafter if so provided in the Plan, the Confirmation Order or by their own terms. In addition, on and after Confirmation Date, the Debtors may seek further orders to preserve the status quo during the time between the Confirmation Date and the Effective Date.

9.6. **Binding Effect.** The Plan shall be binding upon, and inure to the benefit of, the Debtors and all Holders of Claims and Interests, and their respective successors and assigns, whether or not the Claims and Interests of such Holders are Impaired under the Plan and whether or not such Holders have accepted the Plan.

9.7. **Dissolution of the Committee.** The Committee shall be dissolved on the Effective Date and shall not continue to exist thereafter except for the limited purposes of filing any remaining fee applications, and the Professionals retained by the Committee shall be entitled to compensation for services performed and reimbursement of expenses incurred in connection therewith. Upon dissolution of the Committee, the members of the Committee shall be released and discharged of and from all duties, responsibilities and obligations related to and arising from and in connection with the Debtors' Chapter 11 Cases.

9.8. **Post-Confirmation Date Retention of Professionals.** After the Confirmation Date, any requirement that Professionals employed by the Debtors comply with sections 327 through 331 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date will terminate, and the Reorganized Debtors will be authorized to employ and compensate Professionals in the ordinary course of business and without the need for Bankruptcy Court approval.

## **X.**

### **EFFECTIVENESS OF THE PLAN**

10.1. **Conditions Precedent.** The Plan shall not become effective unless and until the following conditions have been satisfied:

10.1.1. **Conditions to Confirmation.**

10.1.1.1. **Disclosure Statement.** The Bankruptcy Court shall have approved a Disclosure Statement with respect to the Plan as containing adequate information within the meaning of section 1125 of the Bankruptcy Code.

10.1.1.2. **Plan Supplement.** The Plan Documents to be provided in the Plan Supplement are in a form that is reasonably satisfactory to the Debtors and the Exit Revolver Lenders.

10.1.1.3. **Confirmation Order.** The Confirmation Order must be in form and substance reasonably acceptable to the Debtors and the Exit Revolver Lenders.

10.1.2. **Conditions to Effective Date.**

10.1.2.1. **Confirmation Order.** At least 10 days shall have passed after the Bankruptcy Court shall have entered the Confirmation Order in form and substance reasonably acceptable to the Debtors and the Exit Revolver Lenders.

10.1.2.2. **No Stay of Confirmation.** There shall not be in force any order, decree, or ruling of any court or governmental body having jurisdiction, restraining, enjoining, or staying the consummation of, or rendering illegal the transactions contemplated by, the Plan.

10.1.2.3. **Receipt of Required Authorization.** All authorizations, consents, and regulatory approvals (if any) necessary to effectuate the Plan shall have been obtained.

10.1.2.4. **Exit Facility.** The documents evidencing the Revolving Credit Agreement shall be in form and substance acceptable to the Debtors and the Exit Revolving Lenders, shall have been executed and delivered by the respective parties thereto, and all conditions precedent to the effectiveness of such document shall have been satisfied or waived.

10.1.2.5. **Term Loan.** The documents evidencing the Term Loan Credit Agreement shall be in form and substance reasonable acceptable to the Debtors and the Exit Revolving Lenders, shall have been executed and delivered by the respective parties thereto, and all conditions precedent to the effectiveness of each such document shall have been satisfied or waived.

10.1.2.6. **Liquidating Trust Agreement.** If the Liquidating Trust Existence Condition Precedent occurs, the Liquidating Trust Agreement must be in form and substance reasonably acceptable to the Debtors and the Exit Revolving Lenders and shall have been executed and delivered by the respective parties thereto.

10.1.2.7. **Liquidating Trust Oversight Committee.** If the Liquidating Trust Existence Condition Precedent occurs, the Liquidating Trust Oversight Committee shall have been appointed.

10.1.2.8. **Liquidating Trustee.** If the Liquidating Trust Existence Condition Precedent occurs, the Liquidating Trustee shall have been appointed.

10.1.2.9. **Plan Supplement.** All documents to be contained in the Plan Supplement shall be completed and in final form and, to the extent necessary, shall have been executed and delivered by the respective parties thereto.

10.1.2.10. **Required Transactions.** All transactions required by the Plan have been completed to the reasonable satisfaction of the Debtors and the Exit Facility Lenders.

10.1.2.11. **Restructuring Transactions.** At the discretion of the Debtors and with the consent of the Exit Facility Lenders (which consent shall not be unreasonably withheld), the Restructuring Transactions described in the Restructuring Transactions Memorandum have been completed to the reasonable satisfaction of the Debtors and the Exit Revolving Lenders.

10.1.3. **Waiver.** Any of the conditions set forth in Sections 10.1.1 and 10.1.2 hereof may be waived by the Debtors to the extent that such waiver does not affect the distributions hereunder.

10.2. **Effect of Failure of Conditions.** In the event that the conditions specified in Section 10.1. have not been satisfied or waived on or before 120 days after the Confirmation Date, then the Debtors may seek an order from the Bankruptcy Court vacating the Confirmation Order. Such request shall be served upon counsel for the administrative agent under the Prepetition Credit Agreement, the administrative agent under the DIP Facility, the proposed administrative agent under the Revolving Credit Agreement, the Committee, and the U.S. Trustee. If the Confirmation Order is vacated, (i) the Plan shall be null and void in all respects; (ii) any settlement of Claims or Interests provided for hereby shall be null and void without further order of the Bankruptcy Court; and (iii) the time within which the Debtors may assume and assign or reject all Executory Contracts and Unexpired Leases shall be extended for a period of 60 days after the date the Confirmation Order is vacated.

## XI. RETENTION OF JURISDICTION

11.1. **Bankruptcy Court.** Pursuant to sections 105(c) and 1142 of the Bankruptcy Code and notwithstanding entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court will retain exclusive jurisdiction over all matters arising out of, and related to, the Chapter 11 Cases and the Plan to the fullest extent permitted by law, including, among other things, jurisdiction to:

11.1.1. allow, disallow, determine, liquidate, classify, estimate, or establish the priority or secured or unsecured status of any Claim or Interest, including, without limitation, the resolution of any request for payment of any Administrative Expense Claim or Priority Tax Claim and the resolution of any objections to the allowance or priority of Claims or Interests;

11.1.2. hear and rule upon all Causes of Action retained by the Debtors and commenced and/or pursued by the Debtors or the Reorganized Debtors;

11.1.3. resolve any matters related to the rejection, assumption, or assumption and assignment of any Executory Contract or Unexpired Lease to which any Debtor is a party or with respect to which the Debtors may be liable and to hear, determine, and, if necessary, liquidate any Claims arising therefrom;

11.1.4. ensure that Distributions on account of Allowed Claims are accomplished pursuant to the provisions of the Plan;

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

11.1.6. enter such orders as may be necessary or appropriate to implement or consummate the provisions of the Plan and all contracts, instruments, releases, and other agreements or documents created in connection with the Plan, the Plan Supplement, the Disclosure Statement, or the Confirmation Order;

11.1.7. resolve any cases, controversies, suits, or disputes that may arise in connection with the consummation, interpretation, or enforcement of the Plan or any contract, instrument, release, or other agreement or document that is executed or created pursuant to the Plan, or any Person's rights arising from or obligations incurred in connection with the Plan or such documents;

11.1.8. approve any modification of the Plan before or after the Effective Date pursuant to section 1127 of the Bankruptcy Code or approve any modification of the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, or other agreement or document created in connection with the Plan, the Disclosure Statement, or the Confirmation Order, or remedy any defect or omission or reconcile any inconsistency in any Bankruptcy Court order, the Plan, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, or other agreement or document created in connection with the Plan, the Disclosure Statement, or the Confirmation Order, in such manner as may be necessary or appropriate to consummate the Plan;

11.1.9. hear and determine all applications for compensation and reimbursement of expenses of Professionals under the Plan or under sections 330, 331, 363, 503(b), 1103, and 1129(a)(9) of the Bankruptcy Code, which shall be payable by the Debtors, or the Reorganized Debtors, as applicable, only upon allowance thereof pursuant to the order of the Bankruptcy Court; *provided, however*, that the fees and expenses of the Debtors incurred after the Confirmation Date, including attorneys' fees, may be paid by the Reorganized Debtors in the ordinary course of business and shall not be subject to the approval of the Bankruptcy Court;

11.1.10. issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Person with consummation of the Plan, implementation, or enforcement of the Plan or the Confirmation Order;

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

11.1.12. enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason or in any respect modified, stayed, reversed, revoked, or vacated, or if Distributions pursuant to the Plan are enjoined or stayed;

11.1.13. determine any other matters that may arise in connection with or relate to the Plan, the Plan Supplement, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, or other agreement, or document created in connection with the Plan, the Disclosure Statement, or the Confirmation Order;



11.1.14. enforce all orders, judgments, injunctions, releases, exculpations, indemnifications, and rulings entered in connection with the Chapter 11 Cases;

11.1.15. hear and determine all matters related to (i) the property of the Debtors and the Estates from and after the Confirmation Date and (ii) the activities of the Debtors or the Reorganized Debtors; and

11.1.16. hear and determine such other matters as may be provided in the Confirmation Order or as may be authorized under the Bankruptcy Code.

## **XII. MISCELLANEOUS PROVISIONS**

12.1. ***Plan Supplement.*** No later than 10 days prior to the Voting Deadline, the Debtors shall File with the Bankruptcy Court the Plan Supplement, which shall contain such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. Holders of Claims or Interests may obtain a copy of the Plan Supplement upon written request to the Debtors' counsel.

12.2. ***Exemption for Registration Requirements.*** Pursuant to section 1145 of the Bankruptcy Code, the offering, issuance and Distribution of any securities contemplated by the Plan shall be exempt from, among other things, the registration requirements of Section 5 of the Securities Act and any state or local law requiring registration prior to the offering, issuance, distribution or sale of securities. In addition, any securities contemplated by the Plan will be tradable by the recipients thereof, subject to (i) the provisions of section 1145(b)(1) of the Bankruptcy Code; and (ii) the restrictions, if any, on the transferability of such securities and instruments.

12.3. ***Statutory Fees.*** All fees payable pursuant to section 1930 of title 28 of the United States Code, as determined by the Bankruptcy Court at the Confirmation Hearing, shall be paid by the Debtors on or before the Effective Date.

12.4. ***Third Party Agreements.*** The Distributions to the various Classes of Claims and Interests hereunder shall not affect the right of any Person to levy, garnish, attach, or employ any other legal process with respect to such Distributions by reason of any claimed subordination rights or otherwise. All of such rights and any agreements relating thereto shall remain in full force and effect, except as compromised and settled pursuant to the Plan. Distributions shall be subject to and modified by any Final Order directing distributions other than as provided in the Plan.

12.5. ***Amendment or Modification of Plan.*** As provided in section 1127 of the Bankruptcy Code, modification of the Plan may be proposed in writing by the Debtors at any time before Confirmation, *provided* that the Plan, as modified, meets the requirements of sections 1122 and 1123 of the Bankruptcy Code, and the Debtors shall have complied with section 1125 of the Bankruptcy Code. The Debtors may modify the Plan at any time after Confirmation and before consummation of the Plan, *provided* that the Plan, as modified, meets the requirements of sections 1122 and 1123 of the Bankruptcy Code and the Bankruptcy Court, after notice and a hearing, confirms the Plan as modified, under section 1129 of the Bankruptcy Code, and the circumstances warrant such modifications. A Holder of a Claim that has accepted the Plan shall be deemed to have accepted such Plan as modified if the proposed alteration, amendment or modification does not materially and adversely change the treatment of the Claim or Interest of such Holder.

12.6. **Severability.** In the event that the Bankruptcy Court determines, prior to the Confirmation Date, that any provision in the Plan is invalid, void or unenforceable, the Reorganized Debtors may, at their option, (a) treat such provision as invalid, void or unenforceable with respect to the Holder or Holders of such Claims or Interests that the provision is determined to be invalid, void or unenforceable, in which case such provision shall in no way limit or affect the enforceability and operative effect of any other provision of the Plan, or (b) alter, amend, revoke, or withdraw the Plan.

12.7. **Revocation or Withdrawal of Plan.** The Debtors reserve the right to revoke and withdraw the Plan or to adjourn the Confirmation Hearing at any time prior to the occurrence of the Effective Date. If the Debtors revoke or withdraw the Plan, or if Confirmation or consummation does not occur, then (i) the Plan shall be null and void in all respects, (ii) any settlement or compromise embodied in the Plan, assumption or rejection of Executory Contracts or Unexpired Leases under the Plan, and any document or agreement executed pursuant to the Plan, shall be deemed null and void, and (iii) nothing contained in the Plan shall (A) constitute a waiver or release of any Claims by or against, or Interests in, such Debtors or any other Person, (B) prejudice in any manner the rights of such Debtors or any other Person, or (C) constitute an admission of any sort by the Debtors or any other Person.

For the avoidance of doubt, if the Confirmation Hearing is adjourned, the Debtors reserve the right to amend, modify, revoke or withdraw the Plan and/or submit any new plan of reorganization at such times and in such manner as they consider appropriate, subject to the provisions of the Bankruptcy Code.

12.8. **Rules Governing Conflicts Between Documents.** In the event of a conflict between the terms or provisions of the Plan and the Plan Documents, the terms of the Plan shall control over the Plan Documents. In the event of a conflict between the terms of the Plan or the Plan Documents, on the one hand, and the terms of the Confirmation Order, on the other hand, the terms of the Confirmation Order shall control. In the event of a conflict between the information contained in the Disclosure Statement and the Plan or any other Plan Document, the Plan or other Plan Document (as the case may be) will control.

12.9. **Governing Law.** Except to the extent that federal law (including, but not limited to, the Bankruptcy Code and the Bankruptcy Rules) is applicable or the Plan provides otherwise, the rights and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of New York without giving effect to its conflicts of law principles.

12.10. **Notices.** Any notice required or permitted to be provided under the Plan shall be in writing and served by either (a) certified mail, return receipt requested, postage prepaid, (b) hand delivery, or (c) reputable overnight delivery service, freight prepaid. If to the Debtors, any such notice shall be directed to the following at the addresses set forth below:

Building Materials Holding Corporation  
720 Park Boulevard  
Boise, Idaho 83712  
Attention: Paul Street

-- with copies to --

Gibson, Dunn & Crutcher LLP  
200 Park Avenue  
New York, New York 10166-0193  
Attention: Michael A. Rosenthal and Matthew K. Kelsey

-- and --

Young Conaway Stargatt & Taylor, LLP  
The Brandywine Building  
1000 West Street  
17th Floor  
Wilmington, Delaware 19801  
Attention: Sean M. Beach and Robert F. Poppiti

12.11. ***Interest and Attorneys' Fees.*** Interest accrued after the Petition Date will accrue and be paid on Claims only to the extent specifically provided for in the Plan, the Confirmation Order or as otherwise required by the Bankruptcy Court or by applicable law. No award or reimbursement of attorneys' fees or related expenses or disbursements shall be allowed on, or in connection with, any Claim, except as set forth in the Plan or as ordered by the Bankruptcy Court.

12.12. ***Binding Effect.*** The Plan shall be binding upon the Debtors, the Reorganized Debtors, the Holders of all Claims and Interests, parties in interest, Persons, and Governmental Units and their respective successors and assigns. To the extent any provision of the Disclosure Statement or any other solicitation document may be inconsistent with the terms of the Plan, the terms of the Plan shall be binding and conclusive.

12.13. ***No Admissions.*** As to contested matters, adversary proceedings and other Causes of Action or threatened Causes of Action, nothing in the Plan, the Plan Supplement, the Disclosure Statement, or other Plan Documents shall constitute or be construed as an admission of any fact or liability, stipulation, or waiver, but rather as a statement made in settlement negotiations. The Plan shall not be construed to be conclusive advice on the tax, securities, and other legal effects of the Plan as to Holders of Claims against, or Interests in, the Debtors or any of their subsidiaries and affiliates, as debtors and debtors in possession in the Chapter 11 Cases.

12.14. ***Exhibits.*** All Exhibits and Schedules to the Plan are incorporated into and are a part of the Plan as if set forth in full herein.

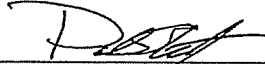
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The undersigned have executed this Joint Plan of Reorganization as of the 16th day of June, 2009.

Respectfully submitted,

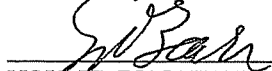
Dated: Wilmington, Delaware  
June 16, 2009

BUILDING MATERIALS HOLDING CORPORATION, on  
behalf of itself and all the other Debtors



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

COUNSEL

  
YOUNG CONAWAY STARGATT & TAYLOR, LLP  
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Donald J. Bowman Jr. (No. 4383)  
Robert F. Poppiti, Jr. (No. 5052)  
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Facsimile: 302.571.1253

---- and ----

GIBSON, DUNN & CRUTCHER LLP  
Michael A. Rosenthal (*pro hac vice* pending)  
Matthew K. Kelsey (*pro hac vice* pending)  
Aaron G. York (*pro hac vice* pending)  
200 Park Ave, 47th Floor  
New York, NY 10166-0193  
Telephone: 212.351.4000  
Facsimile: 212.351.4035

PROPOSED ATTORNEYS FOR DEBTORS  
AND DEBTORS IN POSSESSION

# **EXHIBIT A**

## **Glossary**

## PLAN APPENDIX A

### Uniform Glossary of Defined Terms for Plan Documents

Unless the context otherwise requires, the following terms, when used in initially capitalized form in the Disclosure Statement, related exhibits, and Plan Documents, shall have the following meanings. Such meanings shall be equally applicable to both the singular and plural forms of such terms. Any term used in capitalized form that is not defined herein but that is defined in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning ascribed to such term by the Bankruptcy Code or the Bankruptcy Rules (with the Bankruptcy Code controlling in the event of a conflict or ambiguity). Certain defined terms used in only one Section of the Disclosure Statement are defined in such Section. The rules of construction set forth herein and in section 102 of the Bankruptcy Code shall apply. All references to the "**Plan**" shall be construed, where applicable, to include references to the Plan and all its exhibits, appendices, schedules, and annexes (and any amendments made in accordance with their terms or applicable law).

1. **A-1 Building Components** means A-1 Building Components, LLC, a Debtor.
2. **Administrative Expense** means any cost or expense of administration of the Chapter 11 Cases incurred before the Effective Date and allowable under section 503(b) of the Bankruptcy Code and entitled to priority under section 507(a)(2) of the Bankruptcy Code including: (i) any actual and necessary postpetition cost or expense of preserving the Estates or operating the businesses of the Debtors; (ii) any payment required to cure a default on an assumed executory contract or unexpired lease; (iii) any postpetition cost, indebtedness, or contractual obligation duly and validly incurred or assumed by a Debtor in the ordinary course of its business; and (iv) compensation or reimbursement of expenses of Professionals to the extent allowed by the Bankruptcy Court under sections 330(a) or 331 of the Bankruptcy Code.
3. **Administrative Expense Claim** means any Claim for the payment of an Administrative Expense.
4. **Affiliate** has the meaning set forth in section 101(2) of the Bankruptcy Code.
5. **Allowed** means with respect to any Claim, except as otherwise provided herein: (i) a Claim that is scheduled by the Debtors on their Schedules as neither disputed, contingent, nor unliquidated, and as to which the Debtors or other party in interest have not Filed an objection by the Claims Objection Bar Date; (ii) a Claim that either is not a Disputed Claim or has been Allowed by a Final Order; (iii) a Claim that is Allowed (a) pursuant to the Plan, (b) in any stipulation that is approved by the Bankruptcy Court, or (c) pursuant to any contract, instrument, indenture, or other agreement entered into or assumed in connection with the Plan; (iv) a Claim relating to a rejected Executory Contract or Unexpired Lease that either (a) is not a Disputed Claim or (b) has been Allowed by Final Order; (v) a Claim that is Allowed pursuant to the terms of the Plan; or (vi) a Claim as to which a Proof of Claim has been timely Filed and as to which no objection has been filed by the Claims Objection Bar Date.
6. **Allowed Amount** of any Claim or Interest means the amount at which that Claim or Interest is Allowed.
7. **Allowed Claim; Allowed Interest** means any Claim or Interest in any of the Debtors or their respective Estates, (i) proof of which was filed on or before the Bar Date, (ii) if no such proof of Claim or Interest has been timely filed, which has been or hereafter is listed by such

Debtor in its Schedules as liquidated in amount and not disputed or contingent, or (iii) any Interest registered in the stock or membership register, as the case may be, maintained by or on behalf of the Debtor as of the Record Date, in each such case in clauses (i), (ii) and (iii) above, a Claim or Interest as to which no objection to the allowance thereof, or action to equitably subordinate or otherwise seek recovery from the Holder of the Claim or Interest, has been interposed within the applicable period of limitation fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or a Final Order, or as to which an objection has been interposed and such Claim has been allowed in whole or in part by a Final Order.

8. **Assets** means all property in which the Debtors hold a legal or equitable interest, including all property described in section 541 of the Bankruptcy Code and all property disclosed in Debtors' respective Schedules and the Disclosure Statement.

9. **Available Cash** shall have the meaning assigned to such term in the Liquidating Trust Agreement.

10. **Avoidance Actions** means any and all actual or potential Claims to avoid a transfer of property or an obligation incurred by the Debtors pursuant to any applicable section of the Bankruptcy Code, including, without limitation, sections 544, 545, 547, 548, 549, 550, 551, 553(b), and 724(a) of the Bankruptcy Code.

11. **Ballot** means each of the ballot forms for voting to accept or reject the Plan distributed to all Holders of Impaired Claims entitled to vote on the Plan.

12. **Balloting and Claims Agent** means The Garden City Group, Inc., retained by the Debtors in the Chapter 11 Cases.

13. **Bankruptcy Code** means title 11 of the United States Code, 11 U.S.C. sections 101-1532, as in effect on the Petition Date, together with all amendments and modifications thereto subsequently made, to the extent applicable to the Chapter 11 Cases.

14. **Bankruptcy Court** means the United States Bankruptcy Court for the District of Delaware or any other court having jurisdiction over the Chapter 11 Cases.

15. **Bankruptcy Rules** means the Federal Rules of Bankruptcy Procedure and the local rules and general orders of the Bankruptcy Court, as in effect on the Petition Date, together with all amendments and modifications thereto subsequently made applicable to the Chapter 11 Cases.

16. **Bar Date** means the date(s) by which any Entity asserting certain Claims against the Debtors must have filed a Proof of Claim or be forever barred from asserting such Claims against the Debtors or their Estates, as established by any order(s) of the Bankruptcy Court or the Plan.

17. **Bar Date Order** means the Final Order entered by the Bankruptcy Court on [\_\_\_\_], 2009 establishing [\_\_\_\_], 2009 as the general Bar Date and [\_\_\_\_], 2009 as the Bar Date applicable to Governmental Units, and any subsequent order by the Bankruptcy Court amending, revising, rescinding, or superseding the same.

18. **Beneficial Interests** means the beneficial interests in the Liquidating Trust.

19. **Beneficiaries** means the Holders of Allowed General Unsecured Claims in Class 6 Classes that have voted to accept the Plan.

20. **BMC West** means BMC West Corporation, a Debtor.
21. **BMC West Beneficial Interests** means a Distribution of the Beneficial Interests equal to the ratio (expressed as a percentage) that the amount of Allowed BMC West General Unsecured Claims bears to the aggregate amount of all Allowed General Unsecured Claims.
22. **BMC West Debtors** means BMC West and Illinois Framing.
23. **BMC West General Unsecured Claim** means a General Unsecured Claim asserted against any of the BMC West Debtors.
24. **BMC West Rejection Distribution** means, as to an Allowed BMC West General Unsecured Claim, an amount of Cash equal to four percent of the amount of such Allowed BMC West General Unsecured Claim.
25. **BMHC** means Building Materials Holding Corporation, a Debtor.
26. **BMHC Beneficial Interests** means a Distribution of the Beneficial Interests equal to the ratio (expressed as a percentage) that the amount of Allowed BMHC General Unsecured Claims bears to the aggregate amount of all Allowed General Unsecured Claims.
27. **BMHC General Unsecured Claim** means a General Unsecured Claim asserted against BMHC.
28. **BMHC Rejection Distribution** means, as to an Allowed BMHC General Unsecured Claim, an amount of Cash equal to four percent of the amount of such Allowed BMHC General Unsecured Claim.
29. **Business Day** means any day other than a Saturday, Sunday, or legal holiday (as such term is defined in Bankruptcy Rule 9006(a)).
30. **C Construction** means C Construction, Inc., a Debtor.
31. **Cash** means the legal tender of the United States of America.
32. **Cash Claims** means Administrative Claims, Cure Claims, Priority Tax Claims, Professional Compensation Claims, Other Priority Claims, and Other Secured Claims.
33. **Cash Claims Reserve** means an amount of Cash equal to the sum of (i) the Maximum Amount of each Disputed Cash Claim, *plus* (ii) an amount determined by the Debtors sufficient to pay the unpaid estimated Administrative Claims that accrue on or after the Petition Date through the Confirmation Date.
34. **Cash Collateral Account** shall have the meaning assigned to such term in the DIP Facility.
35. **Causes of Action** means all actions, causes of action, liabilities, obligations, rights, suits, damages, judgments, remedies, demands, setoffs, defenses, recoupments, crossclaims, counterclaims, third-party claims, indemnity claims, contribution claims, or any other claims whatsoever, in each case held by the Debtors, whether known or unknown, matured or unmatured, fixed or contingent, liquidated or unliquidated, disputed or undisputed, suspected or unsuspected,



foreseen or unforeseen, direct or indirect, choate or inchoate, existing or hereafter arising, in law, equity, or otherwise, based in whole or in part upon any act or omission or other event occurring prior to the Petition Date or during the course of the Chapter 11 Cases, including through the Effective Date.

36. **Certificate** means any instrument evidencing a Claim or an Interest.

37. **Chapter 11 Cases** means (i) 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 (ii) when used with reference to all Debtors, the procedurally consolidated chapter 11 cases pending for the Debtors in Bankruptcy Court.

38. **Claim** has the meaning set forth in section 101(5) of the Bankruptcy Code, against any Debtor or any Estate whether or not asserted.

39. **Claimant** means the Holder of a Claim.

40. **Claims Objection Bar Date** means, with respect to any Claim, the 90th day following the latest of the Effective Date, the date such Claim is Filed, and such later date as may be established from time to time by the Bankruptcy Court as the last date for filing objections to such Claims.

41. **Class** means a category of Holders of Claims or Interests, as set forth in Article III of the Plan, pursuant to section 1122 of the Bankruptcy Code.

42. **Class Action Claims** means any General Unsecured Claim or Cash Claim arising from those certain lawsuits styled as follows: (i) *Eduardo Acevedo, et al. v. Building Materials Holding Corporation, et al.*, Case No. CV 08-06227 SJO (Cwx) pending in the District Court for the Central District of California and (ii) *Pedro Alvarado, an individual, on behalf of himself and all others similarly situated v. Building Materials Holding Corporation, a Delaware Corporation, SelectBuild Construction, Inc., a Delaware Corporation, SelectBuild Southern California, Inc., a Delaware Corporation, H.N.R. Framing Systems, Inc., a California Corporation, and Does 1 through 50, inclusive*, Case No. BC391029 pending in the Superior Court of the State of California for the County of Los Angeles.

43. **Collateral** means any property or interest in property of an Estate that is subject to a Lien to secure the payment or performance of a Claim, which Lien is not subject to avoidance or otherwise invalid under the Bankruptcy Code or applicable state law.

44. **Collective Bargaining Agreements** means those certain collective bargaining agreements entered into by certain of the Debtors from time to time with the following Persons: (i) Chicago Regional Council of Carpenters and Residential Construction Employers Council; (ii) U.B.C. Industrial Local Union No. 2218; (iii) Lumber, Production & Industrial Workers Union Local No. 2633; (iv) General Teamsters Local Union No. 174; (v) General Teamsters Local Union No. 313; (vi) General Teamsters Local Union No. 431; and (vii) Western Council of Industrial Workers Union Local No. 2633.

45. **Committee** means the official committee of unsecured creditors for the Debtors appointed by the U.S. Trustee on [\_\_\_\_], 2009, as presently constituted.

46. **Confirmation, Confirmation of the Plan, or Plan Confirmation** means the approval of the Plan by the Bankruptcy Court at the Confirmation Hearing.

47. **Confirmation Date** means the date on which the Confirmation Order is entered on the docket of the Bankruptcy Court.

48. **Confirmation Hearing** means the hearing held by the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code to consider Confirmation of the Plan, as such hearing may be adjourned or continued from time to time.

49. **Confirmation Order** means the order of the Bankruptcy Court confirming the Plan pursuant to section 1129 and other applicable sections of the Bankruptcy Code.

50. **Creditor** means any Person holding a Claim against a Debtor's Estate or pursuant to section 102(5) of the Bankruptcy Code against property of the Debtor that arose or is deemed to have arisen on or prior to the Petition Date.

51. **Cure Claim** means a Claim based upon the Debtors' defaults on an Executory Contract or Unexpired Lease at the time such contract or lease is assumed by the Debtors pursuant to section 365 of the Bankruptcy Code.

52. **Debtor** means any of the Debtors.

53. **Debtors** has the meaning ascribed to such term in the "Introduction" of the Plan.

54. **DIP Facility** means the Senior Secured Super-Priority Debtor-in-Possession Credit Agreement, dated as of [\_\_\_\_], 2009, which was approved by the DIP Order.

55. **DIP Lenders** means those Persons committed to fund the DIP Facility.

56. **DIP Order** means the Final Order dated [\_\_\_\_], 2009 entered by the Bankruptcy Court authorizing the Debtors to enter into the DIP Facility.

57. **Disbursing Agent** means, as to distributions to be made (i) (a) on the Effective Date or (b) on account of Cash Claims that become Allowed after the Effective Date, the Reorganized Debtors, and (ii) after the Effective Date in respect of General Unsecured Claims, the Liquidating Trust or its designee.

58. **Disclosure Statement** means the Disclosure Statement in Support of the Joint Plan of Reorganization for the Debtors Under Chapter 11 of the Bankruptcy Code, dated [\_\_\_\_], 2009, including all exhibits attached thereto or referenced therein, as submitted by the Debtors pursuant to section 1125 of the Bankruptcy Code and approved by the Bankruptcy Court in the Disclosure Statement Approval Order, as such Disclosure Statement may be further amended, supplemented, or modified from time to time with the further approval of the Bankruptcy Court.

59. **Disclosure Statement Approval Order** means the order of the Bankruptcy Court, dated [\_\_\_\_], 2009, approving the Disclosure Statement.

60. **Disputed Cash Claim** means any Cash Claim that is not yet Allowed.

61. **Disputed Claim** means any Claim that is not yet Allowed.

62. ***Disputed General Unsecured Claims*** means any General Unsecured Claim that is a Disputed Claim.

63. ***Distribution*** means any distribution by the Disbursing Agent to the Holders of Allowed Claims pursuant to Article VIII of the Plan.

64. ***Distribution Date***, when used with respect to each Claim and Interest, means the date that shall take place as soon as practicable after the later of: (i) the Effective Date, (ii) the date a Claim becomes payable pursuant to any agreement with the Disbursing Agent, or (iii) solely with respect to Disputed Claims as of the Effective Date, no later than 30 days after the date upon which the Claim or Interest becomes an Allowed Claim.

65. ***Distribution Record Date*** means the record date for purposes of making distributions under the Plan on account of Allowed Claims, which date shall be five Business Days after the Confirmation Date.

66. ***Effective Date*** means the date specified by the Debtors in a notice filed with the Bankruptcy Court as the date on which this Plan shall take effect, which date shall be not more than 10 Business Days after the later of (i) the date on which the Confirmation Order shall have been entered and is no longer subject to any stay; and (ii) the date on which the conditions to the Effective Date provided for in Section 10.1.2 of the Plan have been satisfied or waived.

67. ***Equity Security*** means any equity security as defined in section 101(16) of the Bankruptcy Code in a Debtor.

68. ***Estate*** means, as to each Debtor, the estate created for such Debtor in its Chapter 11 Case pursuant to section 541 of the Bankruptcy Code.

69. ***Excess Cash Flow*** shall have the meaning assigned to such term in, and be calculated in accordance with, the Term Loan Credit Agreement.

70. ***Exculpated Parties*** means (i) each of the Debtors' respective officers, directors, employees, Professionals, and agents, (ii) the Committee, its members, and Professionals, (iii) WFB and its officers, directors, employees, professionals, and agents, (iii) the Prepetition Lenders and each of their respective officers, directors, employees, professionals, and agents, and (iv) the DIP Lenders and each of their respective officers, directors, employees, professionals, and agents.

71. ***Executory Contracts*** means a contract to which one or more of the Debtors is a party and that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

72. ***Exit Revolver*** means that certain term revolving loan effectuated pursuant to the Revolving Credit Agreement, substantially in the form contained in the Plan Supplement.

73. ***Exit Revolver Lenders*** means the Person(s) who have committed to providing the Exit Revolver.

74. ***Federal Judgment Rate*** means the federal judgment rate of [ ]%, which was in effect as of the Petition Date.

75. ***File*** or ***Filed*** means file, filed, or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Cases.

76. ***Final Order*** means, as applicable, an order or judgment of the Bankruptcy Court or other court of competent jurisdiction with respect to the relevant subject matter, which has not been reversed, stayed, modified, or amended, and as to which the time to appeal, seek certiorari, or move for a new trial, reargument, or rehearing has expired and no appeal, petition for certiorari, or motion for a new trial, reargument, or rehearing has been timely filed, or as to which any appeal that has been taken, any petition for certiorari, or motion for a new trial, reargument, or rehearing that has been or may be Filed has been resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought.

77. ***Funded Lender Claim*** means a Claim arising under the Prepetition Revolving Credit Facility and the Prepetition Term Loan that are held by the Prepetition Revolving Lenders and the Prepetition Term Loan Lenders, respectively, including, without limitation, any claims of the Prepetition L/C Lenders under the Prepetition Letters of Credit that have been liquidated prior to the Petition Date, all accrued and unpaid interest, fees, and expenses, claims arising from swap agreements contemplated by the Prepetition Credit Agreement, accrued and unpaid interest payable in kind under the Prepetition Term Loan as of the Petition Date, and other liquidated Obligations (as such term is defined in the Prepetition Credit Agreement) arising as of the Petition Date under the Prepetition Revolving Credit Facility and the Prepetition Term Loan.

78. ***Funded Lender's Share of Sale Cash Collateral Excess Proceeds Account Effective Date Amount*** means, as to each Funded Lender Claim, that amount equal to the Excess Cash Collateral Account Effective Date Proceeds multiplied by that ratio (expressed as a percentage) that such Funded Lender Claim on the Effective Date bears to the aggregate of all Liquidated L/C Amounts of L/C Lender Claims and Funded Lender Claims on the Effective Date.

79. ***General Unsecured Claim*** means any Unsecured Claim that is not an L/C General Unsecured Claim, an Intercompany Claim, or a Section 510(b) Claim.

80. ***Governmental Unit*** has the meaning ascribed to such term in section 101(27) of the Bankruptcy Code.

81. ***H.N.R. Framing Systems*** means H.N.R. Framing Systems, Inc., a Debtor.

82. ***Holder*** means any Person holding an Interest or Claim.

83. ***Illinois Framing*** means Illinois Framing, Inc., a Debtor.

84. ***Impaired*** means a Claim or a Class of Claims that is impaired within the meaning of section 1124 of the Bankruptcy Code.

85. ***Initial Distribution Date*** means the date that is on or before 30 days after the Effective Date, which date shall be the initial date for distribution of Available Cash by the Liquidating Trust.

86. ***Intercompany Claim*** means any Claim held by a Debtor against another Debtor or any Claim held by an Affiliate against a Debtor.

87. ***Intercompany Contracts*** means any Executory Contract by or between or among any of the Debtors.

88. **Intercompany Interest** means an Interest in a Debtor held by another Debtor or an Interest in a Debtor held by an Affiliate of a Debtor.

89. **Interim Compensation Order** means the order entered by the Bankruptcy Court on [\_\_\_\_], 2009 establishing procedures for interim compensation and reimbursement of expenses of Professionals of the Debtors and the Committee.

90. **Interest** means any: (i) Equity Security, including all issued, unissued, authorized, or outstanding shares of capital stock of the Debtors, 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; and (b) partnership, limited liability company, or similar interest in a Debtor.

91. **L/C General Unsecured Claim** means a General Unsecured Claim for which the Holder thereof has issued in its favor, or in favor of an insurance provider of the Debtors with respect to a self-insured retention applicable to the Holder, including, without limitation, a Holder of a General Unsecured Claim for worker's compensation, construction defects, general casualty liabilities, and performance bonds that are subject to insurance policies secured by the Prepetition Letters of Credit.

92. **L/C Lender Claim** means the Claim held by a Prepetition L/C Lender pursuant to the Prepetition Letters of Credit, which Claim has not been liquidated prior to the Petition Date and which shall be estimated and Allowed solely for purposes of voting and Distribution under the Plan, and subject to the provisions of section 4.3.2 of the Plan, at the face amount of a Prepetition L/C Lender's Pro Rata share of the outstanding Prepetition Letters of Credit as of the Petition Date.

93. **L/C Lender's Share of Sale Cash Collateral Excess Proceeds Account Effective Date Amount** means, as to any Liquidated L/C Amount of a L/C Lender Claim on the Effective Date, that amount equal to the Excess Cash Collateral Account Effective Date Proceeds multiplied by that ratio (expressed as a percentage) that such Liquidated L/C Amount on the Effective Date bears to all Liquidated L/C Amounts of L/C Lender Claims and Funded Lender Claims on the Effective Date.

94. **L/C Lender Fee** means that certain standby letter of credit fee equal to 5% per annum, which fee shall accrue quarterly [in arrears] and shall, at Reorganized BMHC's option, be paid in kind for the first eight quarters after the Effective Date and, thereafter, be paid quarterly [in arrears] in Cash.

95. **Lien** has the meaning set forth in section 101(37) of the Bankruptcy Code.

96. **Liquidated L/C Amount** means that amount, if any, paid with respect to a draw on a Prepetition Letter of Credit whether by WFB, as the letter of credit issuer under the Prepetition Credit Agreement, or by the Prepetition Revolving Lenders in respect of their several reimbursement obligations to WFB arising under the Prepetition Credit Agreement; if and to the extent that WFB is reimbursed by a Prepetition Revolving Lender in respect of its several reimbursement obligation to WFB arising under the Prepetition Credit Agreement, the Liquidated L/C Amount paid shall be deemed to have been paid by such Prepetition Revolving Lender and not by WFB.

97. **Liquidating Trust** means the trust contemplated by the Liquidating Trust Agreement.

98. **Liquidating Trustee** means the Person designated 20 days prior to the Confirmation Hearing by the Committee and, after the Effective Date, by the Liquidating Trust Oversight Committee, to administer the Liquidating Trust.

99. **Liquidating Trust Agreement** means an agreement substantially in the form contained in the Plan Supplement, as amended from time to time prior to the Effective Date, with such amendments to be Filed, and after the Effective Date, as amended from time to time in accordance with the terms thereof.

100. **Liquidating Trust Assets** means the Unsecured Cash Fund and the Liquidating Trust Share of Excess Cash Flow.

101. **Liquidating Trust Oversight Committee** means the board established pursuant to the Liquidating Trust Agreement and Section 7.4.4 of the Plan to advise, assist, and supervise the Liquidating Trustee in the administration of the Liquidating Trust.

102. **Liquidating Trust Existence Condition Precedent** means if one or more of Classes 6(a), 6(b), or 6(c) votes to accept the Plan.

103. **Liquidating Trust Share of Excess Cash Flow** means (i) if each of Classes 6(a), 6(b), and 6(c) vote to accept the Plan, 20% of the Excess Cash Flow, determined on an annual basis based on the delivery of audited financial statements, in any fiscal year in which the EBITDA of Reorganized BMHC equals or exceeds \$50 million; and (ii) if one or more of Classes 6(a), 6(b), or 6(c) votes to reject the Plan, the Liquidating Trust Share of Excess Cash Flow described in clause (i) of this definition shall be reduced by the percentage that the aggregate amount of Allowed General Unsecured Claims in such rejecting Class or Classes bears to the aggregate amount of Allowed General Unsecured Claims in Classes 6(a), 6(b), and 6(c); *provided, however*, that the aggregate Liquidating Trust Share of Excess Cash Flow shall not exceed the difference between (a) the aggregate amount of all Allowed General Unsecured Claims in any Class 6 Class that votes to accept the Plan and (b) the Unsecured Cash Fund.

104. **Liquidating Trust Share of Excess Cash Flow Maturity Date** shall mean the earlier to occur of (i) December 31, 2015 or (ii) the date that the Liquidating Trust Share of Excess Cash Flow is paid in full.

105. **Liquidation Analysis** means the liquidation analysis attached as **Exhibit E** to the Disclosure Statement.

106. **Long Term Incentive Plan** means that certain post-Effective Date management equity incentive plan, the form of which shall be included in the Plan Supplement, and shall be implemented by the New Board of Reorganized BMHC as soon after the Effective Date as reasonably practicable, and shall consist of restricted stock units, stock options, and/or stock appreciation rights in an amount up to 10% of the Reorganized BMHC Equity Interests, some portion of which shall be allocated to management by the New Board of Reorganized BMHC within [ ] days of the Effective Date.

107. **Maximum Amount** means, with respect to any Disputed General Unsecured Claim: (i) the amount agreed to by the Liquidating Trust and the Holder of such Claim; (ii) the amount, if any, estimated or determined by the Bankruptcy Court in accordance with section 502(c) of the Bankruptcy Code; or (iii) absent any such agreement, estimation, or determination, the liquidated

amount set forth in the proof of claim Filed by the Holder of such Claim or, if no amount is so set forth, the amount estimated by the Liquidating Trustee.

108. **Maximum L/C Lenders Term Note Cap** means, as to the Liquidated L/C Amount of each Allowed L/C Lender Claim, that amount equal to the Peak Prepetition Letters of Credit Exposure Prior to the Confirmation Date multiplied by that ratio (expressed as a percentage) that \$135,000,000 bears to the aggregate Allowed Funded Lender Claims.

109. **New Boards** means the initial boards of directors of the Reorganized Debtors.

110. **New Bylaws** means the form of the bylaws of each of Reorganized BMHC and the other Reorganized Debtors, which form shall be included in the Plan Supplement.

111. **New Certificate of Incorporation** means the form of the certificates of incorporation of each of Reorganized BMHC and the other Reorganized Debtors, which form shall be included in the Plan Supplement.

112. **Other Priority Claim** means any Claim, other than an Administrative Claim or a Priority Tax Claim, entitled to priority in right of payment under section 507(a) of the Bankruptcy Code.

113. **Other Secured Claim** means any Secured Claim that is not a Funded Lender Claim or an L/C Lender Claim.

114. **Peak Prepetition Letters of Credit Exposure Prior to the Confirmation Date** means the highest exposure under the Prepetition Letters of Credit occurring prior to the Confirmation Date.

115. **Person** means any person, including without limitation, any individual, entity, corporation, partnership, limited liability company, limited liability partnership, joint venture, association, joint stock company, estate, trust, unincorporated association or organization, official committee, *ad hoc* committee or group, governmental agency or political subdivision thereof, the U.S. Trustee, and any successors or assigns of any of the foregoing.

116. **Petition Date** means June 16, 2009, the date on which the Chapter 11 Cases were commenced with the filing of voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

117. **Plan** means the Joint Plan of Reorganization for the Debtors under Chapter 11 of the Bankruptcy Code proposed by the Debtors, dated June 16, 2009, and all exhibits attached thereto or referenced therein including, without limitation, the Plan Supplement, as the same may be amended, modified, or supplemented from time to time.

118. **Plan Documents** means the Plan, the Plan Supplement, the Disclosure Statement, and all documents, attachments, and exhibits attached to the Plan or the Disclosure Statement that aid in effectuating the Plan, as the same may be amended, modified, or supplemented, in accordance with their terms.

119. **Plan Supplement** means the supplement to the Plan in form and substance satisfactory to the Debtors to be filed with the Bankruptcy Court not later than 10 days prior to the Voting Deadline, which shall contain forms of final documents described in the Plan.

120. **Postpetition Period** means the period of time following the Petition Date through the Confirmation Date.

121. **Prepetition Credit Agreement** means that certain Second Amended and Restated Credit Agreement, dated as of November 10, 2006 (as amended from time to time) by and among BMHC, as borrower, the Subsidiary Debtors, as guarantors, WFB, as administrative agent, and the lenders party thereto.

122. **Prepetition L/C Lenders** means those Persons responsible to make payments in respect of draws on the Prepetition Letters of Credit.

123. **Prepetition Lenders** means the Prepetition Revolving Lenders, the Prepetition Term Loan Lenders, and the Prepetition L/C Lenders.

124. **Prepetition Letters of Credit** means those certain letters of credit in favor of certain of the Debtors' creditors issued by WFB under the terms of the Prepetition Credit Agreement.

125. **Prepetition Revolving Credit Facility** means that \$200,000,000 revolving credit facility under the Prepetition Credit Agreement maturing November 2011.

126. **Prepetition Revolving Lenders** means those Persons who have committed to fund the Prepetition Revolving Credit Facility.

127. **Prepetition Term Loan** means that \$350,000,000 term loan facility under the Prepetition Credit Agreement maturing November 2011.

128. **Prepetition Term Loan Lenders** means those Persons who hold the Prepetition Term Loan.

129. **Priority Tax Claim** means a Claim of a kind specified in section 507(a)(8) of the Bankruptcy Code.

130. **Pro Rata** means, with reference to any Distribution on account of any Allowed Claim or Allowed Interest in a Class, a Distribution equal in amount to the ratio (expressed as a percentage) that the amount of such claims bears to the aggregate amount of all Allowed Claims in the same Class.

131. **Professional Compensation Claim** means all Administrative Claims for compensation, indemnification, or reimbursement of expenses incurred by Professionals through the Confirmation Date pursuant to section 327, 328, 330, 331, 363, or 503(b) of the Bankruptcy Code in connection with the Chapter 11 Cases.

132. **Professionals** means those Persons (a) employed pursuant to an order of the Bankruptcy Court in accordance with sections 327, 328, 363, or 1103 of the Bankruptcy Code and to be compensated for services pursuant to sections 327, 328, 329, 330, 331, and 363 of the Bankruptcy Code, for which compensation and reimbursement has been allowed by the Bankruptcy Court pursuant to section 503(b)(1) of the Bankruptcy Code and/or (b) for which compensation and reimbursement has been allowed by the Bankruptcy Court or is sought pursuant to section 503(b)(4) of the Bankruptcy Code.



133. ***Proof of Claim*** means any proof of claim filed with the Bankruptcy Court or the Balloting and Claims Agent with respect to a Debtor pursuant to section 501 of the Bankruptcy Code and Bankruptcy Rules 3001 or 3002.

134. ***Record Date*** means the date of entry of the Disclosure Statement Approval Order.

135. ***Rejected Executory Contract and Unexpired Lease List*** means the list (as may be amended from time to time), as determined by the Debtors or the Reorganized Debtors, of Executory Contracts and Unexpired Leases (including any amendments or modifications thereto) that will be rejected by the Debtors pursuant to Article VI of this Plan.

136. ***Rejection Distribution*** means any of the BMHC Rejection Distribution, the BMC West Rejection Distribution, and the SelectBuild Rejection Distribution.

137. ***Rejection Distributions*** means the aggregate of the BMHC Rejection Distribution, the BMC West Rejection Distribution, and the SelectBuild Rejection Distribution.

138. ***Released Parties*** means (i) each of the Debtors' respective officers, directors, Professionals, agents, and employees, (ii) WFB and its officers, directors, employees, professionals, and agents, and (iii) the Prepetition Lenders and each of their respective officers, directors, employees, professionals, and agents, and (iv) the DIP Lenders and each of their respective officers, directors, employees, professionals, and agents.

139. ***Reorganized*** means, when used with reference to the Debtor, such Debtor on and after the Effective Date.

140. ***Reorganized BMHC*** means a newly formed corporation or the Reorganized Debtors used to implement the Restructuring Transaction.

141. ***Reorganized BMHC Equity Interests*** means up to 200 million of common voting stock of Reorganized BMHC authorized pursuant to the Plan, the par value of which shall be \$.01 per share, which Equity Interests shall initially be issued to Holders of Allowed Claims in Classes 2 and 3 in accordance with the provisions of the Plan, subject to dilution by the Long Term Incentive Plan.

142. ***Reorganized BMHC Equity Interest L/C Lender Cap*** means an amount of the Reorganized BMHC Equity Interests on an undiluted basis not to exceed that amount equal to the ratio (expressed as a percentage) of the Peak Prepetition Letters of Credit Exposure Prior to the Confirmation Date divided by the sum of the Allowed Funded Claims and the Peak Prepetition Letters of Credit Exposure Prior to the Confirmation Date.

143. ***Reorganized Debtors Operating Cash Minimum*** shall mean the sum of \$[6],000,000.

144. ***Restructuring Transactions*** means those mergers, amalgamations, consolidations, arrangements, continuances, restructurings, transfers, conversions, dispositions, liquidations, dissolutions, or other corporate transactions that the Debtors or the Reorganized Debtors determine to be necessary or appropriate to effect a restructuring of a Debtor's business or a restructuring of the overall corporate structure of the Reorganized Debtors, including those described in the Restructuring Transactions Memorandum.

145. ***Restructuring Transactions Memorandum*** means the memorandum describing the Restructuring Transactions, which will be included in the Plan Supplement.

146. ***Revolving Credit Agreement*** means the revolving credit agreement to be entered into by the Reorganized BMHC and certain lenders, the provisions of which shall give effect to the Exit Revolver.

147. ***Sale Cash Collateral Excess Proceeds Account*** shall have the meaning assigned to such term in the DIP Facility.

148. ***Sale Cash Collateral Excess Proceeds Account Effective Date Amount*** means the amount of Cash in the Sale Cash Collateral Excess Proceeds Account, less (i) amounts required to repay the DIP Facility in full and (ii) amounts required to fund the Reorganized Debtors Operating Cash Minimum.

149. ***Schedules*** means the schedules, statements, and lists filed by the Debtors with the Bankruptcy Court pursuant to Bankruptcy Rule 1007, as may be amended or supplemented from time to time.

150. ***Section 510(b) Claims*** means any Claim against the Debtors arising from rescission of a purchase or sale of a security of the Debtors or an Affiliate of the Debtors, for damages arising from the purchase or sale of such a security, or for reimbursement or contribution allowed under section 502 of the Bankruptcy Code on account of such a Claim.

151. ***Secured*** mean when referring to a Claim: (i) secured by a Lien on property in which an Estate has an interest, which Lien is valid, perfect, 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 (ii) Allowed as such pursuant to the Plan.

152. ***Securities Act*** means the Securities Act of 1933, 15 U.S.C. §§ 77a-77m, as in effect on the Petition Date, together with all amendments and modifications thereto subsequently made applicable to the Chapter 11 Cases.

153. ***SelectBuild Arizona*** means SelectBuild Arizona, LLC, a Debtor.

154. ***SelectBuild Beneficial Interest*** means a Distribution of the Beneficial Interests equal to the ratio (expressed as a percentage) that the amount of Allowed SelectBuild General Unsecured Claims bears to the aggregate amount of all Allowed General Unsecured Claims.

155. ***SelectBuild Construction*** means SelectBuild Construction, Inc., a Debtor.

156. ***SelectBuild Debtors*** means C Construction, H.N.R. Framing Systems, SelectBuild Arizona, SelectBuild Construction, SelectBuild Illinois, SelectBuild Nevada, SelectBuild Northern California, SelectBuild Southern California, and TWF Construction.

157. ***SelectBuild General Unsecured Claim*** means a General Unsecured Claim asserted against any of the SelectBuild Debtors.

158. ***SelectBuild Illinois*** means SelectBuild Illinois, LLC, a Debtor.

159. **SelectBuild Nevada** means SelectBuild Nevada, Inc., a Debtor.
160. **SelectBuild Northern California** means SelectBuild Northern California, Inc., a Debtor.
161. **SelectBuild Rejection Distribution** means, as to an Allowed SelectBuild General Unsecured Claim, an amount of Cash equal to two percent of the amount of such Allowed SelectBuild General Unsecured Claim.
162. **SelectBuild Southern California** means SelectBuild Southern California, Inc., a Debtor.
163. **Shareholder Agreement** means that certain agreement, if any, by and among Reorganized BMHC and certain holders of Reorganized BMHC Equity Interests, to be entered into on the Effective Date, substantially in the form to be included in the Plan Supplement.
164. **Small Unsecured Claims** means (i) a General Unsecured Claim if the Allowed Amount of such Claim is less than or equal to \$5,000 and (ii) a General Unsecured Claim if the Allowed Amount of such Claim is greater than \$5,000 and the Holder of such Claim elects to reduce the Allowed Amount of its General Unsecured Claim to \$5,000 or less and made the Small Unsecured Claims Class Election on the Ballot within the time fixed by the Bankruptcy Court.
165. **Small Unsecured Claims Class Election** means an election by a Holder of a General Unsecured Claim on its Ballot to reduce its Claim to \$5,000 or less and have such Claim treated as a Small Unsecured Claim.
166. **Subsidiary Debtors** means the BMC West Debtors and the SelectBuild Debtors.
167. **Term Loan Credit Agreement** means the term loan credit agreement, substantially in the form contained in the Plan Supplement, to be entered into by the Reorganized BMHC and certain lenders, the provisions of which shall give effect to the Term Loan.
168. **Term Notes** means those certain term notes issued pursuant to the Term Loan Credit Agreement.
169. **TWF Construction** means TWF Construction, Inc., a Debtor.
170. **Unexpired Lease** means a lease to which one or more of the Debtors is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.
171. **Unimpaired** means, with respect to a Class of Claims or Interests, a Class of Claims or Interests that is unimpaired within the meaning of section 1124 of the Bankruptcy Code.
172. **Unsecured Cash Fund** means (i) if each of Classes 6(a), 6(b), and 6(c) vote to accept the Plan, \$10,000,000; and (ii) if one or more of Classes 6(a), 6(b), or 6(c) vote to reject the Plan, \$10,000,000 less the percentage of such \$10,000,000 that the aggregate amount of Allowed General Unsecured Claims in such rejecting Class or Classes bears to the aggregate amount of Allowed General Unsecured Claims in Classes 6(a), 6(b), and 6(c).
173. **Unsecured Claim** means any Claim that is neither Secured nor entitled to priority under the Bankruptcy Code or any order of the Bankruptcy Court, including any Claim arising from

the rejection of an Executory Contract or Unexpired Lease under section 365 of the Bankruptcy Code.

174. ***U.S. Trustee*** means the United States Trustee for the District of Delaware.

175. ***U.S. Trustee Fees*** means all fees and charges assessed against the Estates under section 1930 of title 28 of the United States Code, and interest, if any, for delinquent quarterly fees pursuant to section 3717 of title 31 of the United States Code.

176. ***Voting Deadline*** means the deadline set by the Bankruptcy Court for submitting Ballots.

177. ***WFB*** means Wells Fargo Bank, N.A.