

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

In re:)	
)	
New England Building Materials, LLC)	Chapter 11
)	Case No. 12-20109
Debtor.)	

DEBTOR’S SECOND AMENDED PLAN OF REORGANIZATION
DATED SEPTEMBER 11, 2012

The above-captioned debtor, **New England Building Materials, LLC** (the “Debtor” or “NEBM”), proposes this First Amended Plan of Reorganization dated September 11, 2012 pursuant to 11 U.S.C § 1121 of the Bankruptcy Code (the “Plan”).

INTRODUCTION

On February 14, 2012 (the “Filing Date”), the Debtor filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code, thereby initiating the Chapter 11 case of the Debtor. As a result of the filing, the Debtor became a debtor-in-possession with authority to operate its business pursuant to §§ 1107 and 1108 of the Code.

The Debtor is a Maine limited liability company engaged in the business of manufacturing and selling, at wholesale, Eastern White Pine lumber and related products. More specifically, the Debtor purchases Eastern White Pine logs, converts them to lumber and related products at its mill located in Sanford, Maine and then sells the finished product at wholesale. Prior to the Petition Date, the Debtor was also engaged in the business of selling lumber products at retail, through outlets in Maine and Massachusetts.

This Plan provides for the settlement and satisfaction by the Debtor of all Classes of Claims identified in the Plan in the amounts and over the timeframes set forth herein. The Plan also describes the means by which the Debtor intends to satisfy its obligations under the same. In summary, the Debtor will obtain new investment from its existing owner, United Ventures, LLC, and from new a new investor, Olim, LLC (also known as Olim Lumber Company). The new investment, combined with other available sources of funds, will provide the Debtor with the wherewithal to fund payments required to be made on the Effective Date of this Plan. Reference is made to the provisions of Articles III, IV, V, VI, VII, and VIII of this Plan for a more detailed statement of the terms of settlement and satisfaction of all Classes of Claims, and the means for doing so.

The Debtor believes that the Plan provides for the fair and equitable treatment of all creditor Claims and that the Plan is in the best interest of all creditors, and other parties-in-interest.

ARTICLE I

DEFINITIONS

General. Unless the context otherwise requires and/or unless defined elsewhere in the Plan, the following terms shall have the following meanings when used in initially capitalized form in this Plan. Such meanings shall be equally applicable to both the singular and plural forms of such terms. Any term used in initially capitalized form in this Plan that is not defined herein but that is defined in the Bankruptcy Code shall have the meaning assigned to such term in the Bankruptcy Code.

- 1.1 Administrative Claim shall mean a Claim arising and allowable under § 503(b) of the Bankruptcy Code with respect to the Debtor, including charges against the Debtor's estate under 28 U.S.C. § 1930.
- 1.2 Allowed with respect to a Claim or Interest other than a Fee Claim, shall mean any Claim or Interest (a) that is the subject of a timely filed proof of claim, or (b) any Claim or Interest that has been listed in the schedules filed with the Bankruptcy Court by the Debtor pursuant to Bankruptcy Code § 521 and is not listed therein as disputed, unliquidated, or contingent; and, in each such case as to which either (i) no objection to the allowance thereof or other similar pleading has been filed within the applicable time period set forth in the Plan, or (ii) an objection or other similar pleading has been filed and the Claim or Interest has been allowed by a Final Order but only to the extent so allowed. To the extent that all or a portion of a Claim is not Allowed, the holder of such Claim shall not receive any distribution on account of the portion of such Claim that is not Allowed.
- 1.3 Allowed Amount shall mean the amount of any Allowed Claim or Allowed Interest.
- 1.4 Assets means all property that would be property of the Debtor and the Debtor's estate under § 541 of the Bankruptcy Code, whether such property is now existing or hereafter arising or acquired and wherever located including, without limitation, all Causes of Action and all proceeds of and recoveries on Causes of Action, all accounts, contract rights, chattel paper, general intangibles, instruments, securities, furniture, fixtures, machinery, equipment, inventory, intellectual property, domain names, and interest in real estate.
- 1.5 Bank shall mean TD Bank, N.A. and its affiliates, successors, agents, and

assigns.

- 1.6 Bankruptcy Code shall mean 11 U.S.C. §§ 101 *et seq.*, as in effect with respect to the Case on the Petition Date. All Code references herein are to the Bankruptcy Code in effect as of the Petition Date, unless otherwise stated.
- 1.7 Bankruptcy Court shall mean the United States Bankruptcy Court for the District of Maine, or any other court with jurisdiction over the Case.
- 1.8 Bar Date shall mean the date, if any, established by the Bankruptcy Court as the deadline for filing proofs of claims or interests in the Case.
- 1.9 Case shall mean the Chapter 11 Case of the Debtor now pending in the Bankruptcy Court pursuant to Chapter 11 of the Bankruptcy Code.
- 1.10 Cash shall mean payment, including by check, issued by or on behalf of the Debtor with respect to any payment of collected funds required to be made pursuant to the Plan.
- 1.11 Cause of Action shall mean all claims and causes of action now owned or hereafter acquired by the Debtor and/or its estate, whether arising under the Bankruptcy Code or other federal or state law, including, without limitation, Chapter 5 Causes of Action
- 1.12 Chapter 5 Causes of Action shall mean all Causes of Action (as that term is defined *infra* at §1.11 arising under Chapter 5 of the Bankruptcy Code (including, but not limited to, causes of action arising under 11 U.S.C. §§ 544, 547, 548, 549, 550, and 553).
- 1.13 Claim shall mean a claim, as defined in § 101(5) of the Bankruptcy Code, against the Debtor.
- 1.14 Committee shall mean the Official Committee of Unsecured Creditors appointed in this case.
- 1.15 Confirmation Date shall mean the date on which the Confirmation Order is entered on the docket of the Bankruptcy Court.
- 1.16 Confirmation Order shall mean the Order (which need not be a Final Order) confirming the Plan pursuant to § 1129 of the Bankruptcy Code.

- 1.17 Effective Date shall mean the date determined in accordance with Article VI of the Plan.
- 1.18 Encumbrances shall mean all liens, encumbrances, mortgages, hypothecations, pledges, and security interests of any kind whatsoever.
- 1.19 Executory Contract shall mean an executory contract within the meaning of § 365 of the Bankruptcy Code.
- 1.20 Fee Claim shall mean the Administrative Claim of a professional person for compensation and/or reimbursement of expenses.
- 1.21 Final Order shall mean an Order of any court, administrative agency or other tribunal as entered on its docket as to which (a) the time to appeal or petition for rehearing or *certiorari* has expired and as to which no appeal or motion for rehearing or petition for *certiorari* has been timely filed or taken, (b) if such an appeal or motion for rehearing or petition for *certiorari* has been timely filed or taken, such order or judgment has been affirmed by the highest tribunal in which review was sought or such appeal, motion for rehearing or petition for *certiorari* was dismissed or otherwise terminated without modification of such order or judgment, and the time has expired within which any further proceeding for review may be commenced.
- 1.22 Liquidating Trust shall mean the New England Building Materials, LLC Liquidating Trust established by this Plan pursuant to the terms of the Liquidating Trust Agreement attached hereto as Exhibit A, which Trust shall be vested with ownership of the Chapter 5 Causes of Action pursuant to the Plan.
- 1.23 Liquidating Trustee shall mean the Trustee appointed to oversee the Liquidating Trust and vested with the powers and responsibilities set forth in the Liquidating Trust Agreement attached hereto as Exhibit A.
- 1.24 Order shall mean an order of the Bankruptcy Court.
- 1.25 Petition Date shall mean February 14, 2012
- 1.26 Plan shall mean this Second Amended Plan of Reorganization, dated September 11, 2012, as it may be amended or modified by the Debtor from time to time (or such other interest rate as the Court may order or the Debtor may agree upon with the relevant parties-in-interest), together with all exhibits, schedules and other attachments hereto, as the same may be amended or modified by the Debtor from time to time (or such other

interest rate as the Court may order or the Debtor may agree upon with the relevant parties-in-interest), all of which are incorporated herein by reference.

- 1.27 Olim shall mean Olim, LLC, a limited liability company.
- 1.28 Post-Petition Bar Date shall mean the date that is forty-five (45) days after the Effective Date.
- 1.29 Prime Rate shall mean the annualized rate of interest designated as the "Prime Rate" as published in the Money Rates Section of the Wall Street Journal, Eastern Edition, as of the Effective Date. If the Prime Rate shall no longer be published in the Money Rates or any other section of The Wall Street Journal, then the holder(s) of an obligation payable with interest at the Prime Rate pursuant to this Plan shall have the right, exercising reasonable judgment, to substitute a new method for determining a comparable per annum interest rate to be charged by the holder(s) and such rate of interest determined by such method shall become the Prime Rate for the purpose of this Plan and any obligation issued pursuant to this Plan.
- 1.30 Priority Claim shall mean an Unsecured Claim arising before the Petition Date and allowable under §§ 507(a)(2) through 507(a)(9) of the Bankruptcy Code.
- 1.31 Seaboard shall mean Seaboard International Forest Products, LLC, and its affiliates, successors, agents, and assigns.
- 1.32 Secured Claim shall mean a claim that is secured by a perfected (or similarly binding) Encumbrance on any of the Debtor's assets, to the extent provided in 11 U.S.C. § 506 of the Bankruptcy Code.
- 1.33 United Healthcare shall mean United Healthcare Insurance Company a/k/a Unimerica Insurance Company, and its affiliates, successors, agents, and assigns.
- 1.34 United Healthcare Action shall mean the adversary proceeding initiated by the Debtor against United Healthcare, which adversary proceeding is currently pending in the Bankruptcy Court and has been assigned docket number 12-2020.
- 1.35 United Ventures shall mean United Ventures, LLC, a Maine limited liability company and the sole member of the Debtor.

- 1.36 Unsecured Claim shall mean a Claim which arose before the Petition Date and which is not secured by any interest in any property of the Debtor's estate, and shall include a Claim which arises from the rejection of an Executory Contract or Unexpired Lease, within the meaning of § 365 of the Bankruptcy Code; provided, however, that in order to be an Unsecured Claim, such claim must be evidenced by a proof of claim which has been timely filed by the holder of the Claim (whether or not such proof of claim has been Allowed) prior to the Bar Date, or such Claim must be described on Schedule F filed by the Debtor and not noted as unliquidated, contingent or disputed on such Schedule (whether or not such claim is deemed Allowed).

ARTICLE II

TREATMENT OF NON-CLASSIFIED CLAIMS

2.1 Administrative Claims. Except as otherwise provided by the Plan or as otherwise agreed between the Debtor and the holder of an Allowed Administrative Claim against the Debtor, each holder of an Allowed Administrative Claim shall be paid in full upon the later of the Effective Date and the date which is thirty (30) days after the date upon which such Administrative Claim becomes an Allowed Administrative Claim.

2.2 Priority Claims. Except as otherwise agreed by the Debtor and the holder of an Allowed Priority Claim against the Debtor the holders of Allowed Priority Claims, shall, in the sole discretion of the Debtor, be paid either (a) in full upon the later of the Effective Date and the date which is thirty (30) days after the date upon which such Priority Claim becomes an Allowed Priority Claim; or (b) in the case of priority claims described in § 507(a)(8) of the Bankruptcy Code, pursuant to the terms of § 1129(a)(9)(C).

2.3 Bankruptcy Fees. Any Administrative Claim for outstanding fees incurred in the Case pursuant to 28 U.S.C. § 1930(a)(6) and due and payable as of the Effective Date shall be paid in full on the Effective Date. Thereafter, the Debtor shall pay any and all fees lawfully due and payable under 28 U.S.C. § 1930(a)(6) with respect to the Case in the ordinary course without necessity of allowance by the Court until entry of an Order closing the Case.

ARTICLE III

DESIGNATION OF CLASSES OF CLAIMS

Claims that are required or permitted to be classified under Bankruptcy Code § 1123(a)(1) are hereby classified into the following classes:

3.1 Class One shall consist of all Claims of any kind or nature held by the Bank.

3.2 Class Two shall consist of all Secured Claims of any kind or nature held by Seaboard, including any right of setoff.

3.3 Class Three shall consist of the holders of all Secured Claims that are secured exclusively by virtue of rights of setoff, but Seaboard shall not be a member of this Class. Those Secured Claims are set forth below:

Creditor	Setoff Available	Net Amount Due Creditor After Setoff ¹	Net Amount Due Debtor After Setoff
Bestway	\$58,067.67	\$1,221.93	N/A
Eastern Forest	\$7,252.31	\$0.00	\$0.00
Warren Trask	\$12,352.22	\$419.42	N/A
L.R. McCoy Co.	\$12,352.22	N/A	\$603.33
HHP, Inc.	\$1,349.00	\$3,652.40	N/A
Gillies & Prittie	\$6,750.73	\$8,259.35	N/A
Jeff Simpson	\$11,437.65	\$97.94	N/A
R. Pepin & Son	\$520.00	\$0.00	\$0.00

3.4 Class Four shall consist of all Secured Claims held by the Richard A. Molyneux Revocable Trust (the "Trust").

3.5 Class Five shall consist of all Secured Claims held by Gorham Savings Bank ("GSB").

3.6 Class Six shall consist of shall consist of the holders of all Secured Claims of any kind or nature not encompassed by Classes One, Two, Three, Four, and Five.

3.7 Class Seven shall consist of the holders of all Allowed Unsecured Claims, including Allowed Unsecured Claims, arising from the rejection, prior to or after the Confirmation Date, of an executory contract or unexpired lease.

3.7 Class Eight shall consist of the holders of all equity interests in and to the Debtor, including equity interests evidenced by any class of membership units issued by the Debtor.

ARTICLE IV

TREATMENT OF CLASSIFIED CLAIMS AND INTERESTS

The following classes of Claims are unimpaired under this Plan, within the meaning of Bankruptcy Code §1124: Class Three, Class Four, Class Five, and Class Six. The following classes of Claims are impaired within the meaning of § 1124 of the

¹ This amount will become deemed an Allowed Unsecured Claim and will be placed in Class Seven for Plan purposes.

Bankruptcy Code and the treatment of each of these classes of Claims is set forth below: Class One, Class Two, Class Seven and Class Eight.

4.1 Class One. The holder of the Class One Claim shall be paid the full amount of its Allowed Class One Claim (which Allowed Class One Claim shall include regular interest but not late fees, default interest, penalties and other default amounts) on the Effective Date.. The Class One Claim is impaired under the Plan and the holder of such Claim is entitled to vote as a class to accept or reject this Plan.

4.2 Class Two. To the extent that the holder of the Class Two Secured Claim is entitled to exercise rights of setoff in satisfaction of that Claim, said holder of an Allowed Class Two Secured Claim shall be entitled to exercise its rights of setoff as of the Effective Date of the Plan.

In full and final satisfaction of the remaining balance of the Allowed Class Two Secured Claim, if any, the Debtor shall pay to the holder of the Class Two Secured Claim, on the Effective Date, the sum of \$100,000.

Upon the payment to Seaboard of \$100,000 on the Effective Date, the Class Two Claim shall be deemed fully paid and satisfied, and the holder of the Class Two Claim shall be released and discharged by the Debtor on account of or with respect to any claim or cause of action of the Debtor arising on or prior to the Petition Date, including any claim or cause of action arising under Chapter 5 of the Bankruptcy Code. Further, the holder of the Class Two claim shall have no claim or cause of action against any party for payment or satisfaction of the Class Two Claim. Without limiting the generality of the foregoing, the holder of the Class Two Claim shall have no claim or cause of action for marshaling or other remedy against Bank.

4.3 Class Three. To the extent that the holders of Allowed Class Three Secured Claims are entitled to exercise rights of setoff in satisfaction of those Claims, those holders of Allowed Class Three Secured Claims shall be entitled to exercise their rights of setoff as of the Effective Date of the Plan in the amounts set forth above in § 3.3. The exercise of setoff rights as permitted by this Plan shall not prejudice the ability of the Debtor and/or the Liquidating Trustee to challenge any setoff made by a holder of an Allowed Class Three Claim prior to the Petition Date under the provisions of Chapter 5 of the Bankruptcy Code (including, but not limited to, 11 U.S.C. § 553(b)). The holders of Allowed Claims in Class Three shall be unimpaired, and solicitation of acceptance of this Plan from the Class Three claimants is not required under Section 1126(f) of the Bankruptcy Code.

4.4 Class Four. In full and final satisfaction of the Allowed Secured Claim in Class Four, the Debtor shall pay the full amount thereof, from the proceeds of the collateral securing that Claim that have been collected since the Petition Date. The holder of Allowed Claim in Class Four shall be unimpaired, and solicitation of acceptance of this Plan from the Class Four claimant is not required under Section 1126(f) of the Bankruptcy Code.

4.5 Class Five. In full and final satisfaction of the Allowed Secured Claim in Class Five, the Debtor shall restate and reaffirm its obligations to GSB under the applicable note and mortgage, and shall continue to make payments on the same pursuant to the terms of the promissory note. The Class Five Claim shall retain all security which currently secures the Class Five Claim, and as such, the aforesaid promissory note shall be secured by a first priority mortgage in a certain condominium unit located in Old Orchard Beach Maine and owned by the Debtor. The Class Five Claim is unimpaired under the Plan and the holder of such Claim is not entitled to vote as a class to accept or reject this Plan.

4.6 Class Six. The holders of Allowed Claims in Class Six shall be unimpaired, and solicitation of acceptance of this Plan from the Class Six claimants is not required under Section 1126(f) of the Bankruptcy Code.

4.7 Class Seven. In full and final satisfaction of all Allowed Claims in Class Seven, the holders of such Allowed Claims shall receive the payments described herein.

(a) The Debtor shall pay the amount of \$300,000 (the “Initial Payment”) to the Liquidating Trust on the Effective Date, subject to the following n possible reductions of the Initial Payment: :

- i. To the extent that as of the date of entry of the Confirmation Order, Administrative Claims for professionals employed by the Debtor or the Creditors Committee remain unpaid and such unpaid administrative claims exceed \$125,000, then the Initial Payment shall be reduced by the amount of such excess.
- ii. In addition, the Initial Payment shall be reduced by an amount equal to the lesser of (i) \$50,000; and (ii) the amount of the allowed priority claim of Maine Revenue Services.

(b) Subject to the provisions of Article V, § 5.1(a), The Debtor shall assign and transfer to the Liquidating Trust all of the Chapter 5 Causes of Action. The Liquidating Trust shall hold and administer the same, and shall, in the discretion of the Liquidating Trustee, cause the same to be liquidated, and shall apply and disburse any net proceeds thereof in accordance with the terms of the Liquidating Trust Agreement.

The treatment of holders of Allowed Claims in Class Seven shall further be governed by the provisions of the Liquidating Trust Agreement.

4.8 Class Eight. All equity interests in Class Eight shall be cancelled and terminated on the Effective Date. On the same date, United Ventures and Olim shall invest the aggregate sum of \$500,000 in cash into the Debtor, and in exchange therefor, United Ventures and Olim shall be issued 100% of the membership interests in and to the

Debtor, such membership interests to be deemed fully paid and non-assessable upon investment of said aggregate sum of \$500,000 in accordance with this Plan. United Ventures and Olim shall be entitled to enter into such agreements among themselves pertaining to the membership interests to be issued pursuant to this Plan as they may see fit, including without limitation, agreements pertaining to voting such membership interests, agreements pertaining to the redemption or sale of such membership interests, and any other appropriate agreements between and among members of a Maine limited liability company. In this case, the Class Eight Claims are impaired under the Plan and the holders of such Claims are entitled to vote as a class to accept or reject this Plan.

ARTICLE V

MEANS FOR EXECUTION OF THE PLAN

5.1 The Debtor shall implement the Plan, and shall make Plan Distributions and other payments as set forth herein, to holders of Allowed Claims, using the following sources of funds:

(a) a new equity investment from United Ventures and Olim in the aggregate amount of \$500,000. Upon the making of such investment, United Ventures, all of its members, managers, employees, and all affiliates thereof (including, but not limited to, the various affiliated entities that may have made loans to the Debtor on behalf of United Ventures or its members) shall be released from any claims or causes of action, of any kind or nature, that the Debtor, the bankruptcy estate, and any person or party claiming by, through or under the Debtor (including, but not limited to, the Liquidating Trust and/or the Liquidating Trustee) may have against United Ventures and/or its members (including, but not limited to Chapter 5 Causes of Action));

(b) income generated by the Debtor's business operations; including income generated by the collection of retail accounts receivable;

(c) borrowed funds from new working capital and/or fixed asset loans to be obtained by the reorganized Debtor;-

(d) assumption or rejection of certain contract and lease obligations; and

(e) proceeds, if any, from the Debtor's prosecution and/or settlement of the United Healthcare Action.

ARTICLE VI

THE EFFECTIVE DATE

6.1 Effective Date. Unless the Confirmation Order has been stayed prior thereto, the Effective Date shall be the ninetieth (90th) day following the Confirmation Date, provided that such date is not a weekend day or a holiday. If such date falls on a weekend date or a holiday, the Effective Date shall be the next day which is not a weekend day or a holiday.

ARTICLE VII

TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

7.1 Assumption/Rejection of Certain Executory Contracts and Unexpired Leases.

(a) Unless the subject of a motion to assume an executory contract that is pending as of the Effective Date, or unless an executory contract is dealt with by an Order of this Court entered on or prior to the Effective Date, any and all executory contracts and unexpired leases of the Debtor that were entered into prior to the Filing Date shall be deemed rejected as of the Effective Date, if not earlier rejected by other orders of the Bankruptcy Court. If an executory contract is the subject of a motion to assume as of the Effective Date, then such executory contract shall be assumed or rejected in accordance with an order entered into by the Court with respect to such motion, or in accordance with an agreement of the Debtor and the non-debtor party(ies) to such executory contract.

(b) The non-Debtor party to any such rejected contract or lease shall be required to assert a claim for damages from such rejection in accordance with Section 8.2 hereof.

7.2 Damages. Any claim for damages arising from the rejection or deemed rejection of an executory contract or unexpired lease must be filed on or before thirty (30) days after written notice of the Confirmation Date to the non-Debtor party to such contract or lease, or by such other date as may be specified by Order of the Bankruptcy Court and, if not so filed, will be deemed disallowed, discharged, and forever barred from receiving any distribution under this Plan. All Allowed Claims arising from the rejection of executory contracts and unexpired leases shall be classified as Allowed Unsecured Claims in Class Five of the Plan.

ARTICLE VIII

MISCELLANEOUS PROVISIONS

8.1 Dissolution of the Committee. The Committee shall be dissolved as of the Effective Date of the Plan.

8.2 Legally Binding Effect. The provisions of the Plan shall bind all holders of Claims and Interests, whether or not they accept the Plan.

8.3 Claims Subject to Allowance. Notwithstanding any other provision of the Plan, no distribution shall be made on account of any Claim until such Claim is Allowed.

8.4 Prepetition Claim and Amendments. Each Claim as to which a proof of claim was required to be filed on or before the Bar Date and as to which a proof of claim

was not filed on or before the Bar Date shall not under any circumstances become an Allowed Claim. In no event shall the Allowed Amount of any Claim against the Debtor exceed the amount set forth in a proof of claim therefor filed on or before the Bar Date unless the claimant in its proof of claim expressly reserved the right to amend such proof of Claim, in which case any such amended proof of claim must be filed by the Confirmation Date. No Order allowing or disallowing a Claim may be reconsidered, pursuant to the Bankruptcy Code Section 502(j) or otherwise, so as to increase the Allowed Amount thereof after entry of the Confirmation Order.

8.5 Objections to Prepetition Claims and Interests. Claims and Interests that arose prior to the Petition Date, and which have not been scheduled by the Debtor as contingent, unliquidated or disputed, or as to which a valid proof of claim or interest has been filed on or before the Bar Date, shall be allowed in full, unless an objection to such Claim or Interest is filed on or before the date which is thirty (30) days after the Confirmation Date. Claims that have been objected to and not allowed shall have no right to vote with respect to the acceptance or rejection of this Plan except as otherwise ordered by the Court.

8.6 Bar Date for and Objection to Post-Petition Claims. Any Claim entitled to priority under Bankruptcy Code § 503(a) arising before the Confirmation Date and still outstanding 60 days thereafter, except for a Fee Claim, shall be forever barred unless it is the subject of a proof of claim filed with the Bankruptcy Court on or before the Post-Petition Bar Date. Any Claim that is the subject of such a proof of claim shall be Allowed in full unless an objection thereto is filed within 30 days after the Post-Petition Bar Date or such other date as is provided by Order upon motion of the Debtor.

8.7 Means of Cash Payment. Cash payments made pursuant to the Plan will be in United States funds, by the means agreed to by the Debtor and the respective holders of Allowed Claims, including by check or wire transfer or, in the absence of an agreement, such commercially reasonable manner as the Debtor shall reasonably determine.

8.8 Debtor's Assets and Causes of Action. On the Effective Date of the Plan, all property of the Debtor's bankruptcy estate (with the exception of the Chapter 5 Causes of Action, which shall be transferred to and vest in the Liquidating Trust) shall vest in the Debtor, subject only to liens and encumbrances that are not discharged and that are continued in full force and effect pursuant to this Plan. On and after the Confirmation Date, and subject to compliance with the terms of this Plan, the Debtor may, without further approval of the Bankruptcy Court, use, sell, assign, transfer, abandon, settle, or otherwise dispose of at a public or private sale any of the Debtor's Assets for the purpose of liquidating and converting such assets to cash, making distributions, and fully consummating the Plan.

8.9 Discharge. To the fullest extent allowable under the Bankruptcy Code, and except as expressly provided otherwise in the Amended Plan, the Debtor shall, as of the Confirmation Date, have the full benefit of the discharge provided by Bankruptcy

Code Section 1141(d). Without limiting the generality of the foregoing, and except as provided in the Amended Plan, the Debtor shall be permanently released and discharged from all Claims liens, Encumbrances, and debts that arose before the Confirmation Date whether or not any such lien, Claim, Encumbrance or debt has been scheduled by the Debtor, a proof of claim has been filed or deemed filed, any such Claim is Allowed, or the holder of any such Claim has accepted the Amended Plan; provided, however, that nothing herein shall release or discharge the Debtor with respect to its obligation to make the payments and to provide the other consideration which is described in this Plan.

8.10 Release of Encumbrances. The entry of an order confirming this Plan shall constitute the immediate release and discharge of any contractual or statutory or judicial lien, security interest, mortgage or other encumbrance affecting property of the estate or property of the Debtor (the "Encumbrances"), unless this Plan or the Confirmation Order requires the continuation in effect of any of such Encumbrances. Any holder of an Encumbrance that is discharged pursuant to this Plan shall, upon request of the Debtor, execute and deliver to the Debtor such documents and agreements, in recordable form, as are reasonably necessary to cause the discharge of record of any such Encumbrance. In the event that any such holder fails and refuses to do so, then the Debtor may cause to be recorded a discharge of such Encumbrance.

8.11 Injunction and Stay. Unless otherwise provided, all injunctions or stays provided for in the Case pursuant to §§ 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the close of the Case. The entry of the Confirmation Order shall constitute a stay and injunction applicable to all persons, staying and enjoining the enforcement or attempted enforcement by any means of all liens, claims, Encumbrances, and debts discharged pursuant to Section 9.11 above.

8.12 Modification of Confirmed Plan. After the Confirmation Date, the Debtor may modify the Plan under Bankruptcy Code § 1127 and may remedy any defect or omission or reconcile any inconsistency in the Plan or in the Confirmation Order in such manner as may be necessary or appropriate to carry out the purposes and intent of the Plan, so long as the interests of holders of Claims and Interests are not materially and adversely affected thereby.

8.13 Substantial Consummation. The Plan shall be deemed to have been substantially consummated when all of the requirements of Bankruptcy Code § 1101(2) shall have been satisfied.

8.14 Closing of Case. The Case shall be deemed closed at such time as the Order closing the Case pursuant to Bankruptcy Code § 350 has been entered by the Bankruptcy Court on the motion of the Debtor, and the Order becomes a Final Order.

8.15 Retained Jurisdiction. The Bankruptcy Court shall retain jurisdiction over the Case after the Confirmation Date for the following purposes:

- (a) to hear and determine objections to claims;
- (b) to hear and determine any disputes arising under the Plan, its implementation and execution of any necessary documents thereunder, and any requests to amend, modify, or correct the Plan, provided that such matters are brought before the Court prior to the point of Substantial Consummation as that term is defined in Bankruptcy Code § 1101(2) of the Bankruptcy Code and by the Plan itself, and subject, further, to the restrictions set forth in Bankruptcy Code § 1127(b);
- (c) to grant extensions of any deadlines set forth in the order confirming this Plan as may be appropriate;
- (d) to enforce all discharge provisions under the Plan, including the provisions of § 8.9 of this Article;
- (e) to review and rule upon applications for compensation of professional persons; and
- (f) If at the time of the hearing confirming the Plan, the Debtor expects that a broader retention of jurisdiction will be sought, but is not in a position to request a specific enlargement, the Court may conditionally reserve the question of additional retained jurisdiction in the order confirming the Plan and shall set a time within which the Debtor shall file a motion on notice requesting retention of such additional jurisdiction as necessary, to be embodied in a supplemental order.

8.16 Dates. Whenever the Plan requires the Debtor to make a distribution or take some other action on a particular date, such action shall be taken on the required date or as soon as practicable thereafter.

8.17 Exculpation. Neither the Debtor, nor any of its respective attorneys, consultants, advisors, and agents (acting in such capacity), shall have or incur any liability to any entity for any act taken or omitted to be taken in the formulation, preparation, dissemination, implementation, confirmation or approval of the Plan, or any contract, instrument, release or other agreement or document provided for or contemplated in connection with the consummation of the transactions set forth in the Plan; provided, however, that the provisions of this Section not affect the liability of any entity that otherwise would result from any such act or omission to the extent that such act or omission is determined in a Final Order to have constituted gross negligence, willful misconduct or breach of fiduciary duty. Any of the foregoing parties in all respects shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Plan.

8.18 Exemption from Transfer Taxes. Pursuant to § 1146(c) of the Bankruptcy Code, the assignment or surrender of any lease or sublease, or the delivery of any deed or

other instrument of transfer under, in furtherance of, or in connection with the Plan, including the execution, delivery and recording of any deeds, bills of sale or assignments executed in connection with any disposition of assets under, in furtherance of, or in connection with the Plan shall not be subject to any stamp, real estate transfer, mortgage recording, sales, use or other similar tax.

8.19 Binding Effect. Except as otherwise provided in § 1141(d)(3) of the Bankruptcy Code, on and after the Confirmation Date, the provisions of the Plan shall bind any holder of a Claim against, or Interest in, the Debtor and its respective successors and assigns, whether or not the Claim or Interest of such holder is impaired under the Plan and whether or not such holder has accepted the Plan. The rights, benefits and obligations of any entity named or referred to in the Plan, whose actions may be required to effectuate the terms of the Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor or assign of such entity (including, but not limited to, any trustee appointed for the Debtor under chapters 7 or 11 of the Bankruptcy Code).

8.20 Severability. In the event that the Bankruptcy Court determines, prior to the Confirmation Date, that any provision of the Plan is invalid, void or unenforceable, the Bankruptcy Court shall, with the consent of the Debtor, have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of the Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such holding, alteration or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

8.21 Headings. Headings are utilized in the Plan for convenience and reference only and shall not constitute a part of the Plan for any other purpose.

8.22 Plan Controls. To the extent that the Plan is inconsistent with the Disclosure Statement, the provisions of the Plan shall be controlling.

Dated: September 11, 2012

**NEW ENGLAND BUILDING
MATERIALS, LLC**
Debtor and Debtor-in-Possession

By: /s/George J. Marcus

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