

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re ) Chapter 11  
NEXPAK CORPORATION, *et al.*,<sup>1</sup> ) Case No. 09-11244 (PJW)  
Debtors. ) (Jointly Administered)  
)

**FIRST AMENDED JOINT PLAN OF LIQUIDATION FOR  
NEXPAK CORPORATION AND ITS AFFILIATED DEBTORS**

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<sup>1</sup> The Debtors (along with the last four digits of each of their Federal tax identification numbers) are the following entities: NexPak Corporation (2207); Atlanta Precision Molding Co., LLC (4923); EPM Holdings, Inc. (4658); NexPak Holdings LLC (8844); JMC Acquisition LLC (1660); and AEI Acquisition LLC (1655).

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Pursuant to chapter 11 of title 11 of the United States Code, 11.U.S.C §§ 101 *et seq*, the debtors and debtors in possession in the above-captioned cases hereby respectfully propose the following joint plan of liquidation.

**ARTICLE I  
INTRODUCTION**

The Plan is a plan of liquidation of the Debtors' assets and does not contemplate the continuation of the Debtors' business. The Plan contemplates that the net proceeds from the liquidation of the Debtors' assets will be distributed by the Reorganized Debtors according to the Plan to the Holders of Claims against the Debtors as set forth herein in accordance with the priorities established by the Bankruptcy Code.

**ARTICLE II  
DEFINITIONS**

**A. Rules of Interpretation**

1. For purposes herein: (a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter gender; (b) any reference herein to a contract, agreement or other document being in a particular form or on particular terms and conditions means that the referenced document shall be substantially in that form or substantially on those terms and conditions; (c) any reference herein to an existing document or exhibit having been filed or to be filed shall mean that document or exhibit, as it may thereafter be amended, modified or supplemented; (d) unless otherwise specified, all references herein to "Articles" or "Sections" are references to Articles or Sections hereof or hereto; (e) the words "herein," "hereof" and "hereto" refer to the Plan in its entirety rather than a particular portion of the Plan; (f) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (g) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; and (h) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be.

2. The provisions of Fed. R. Bankr. P. 9006(a) shall apply in computing any period of time prescribed or allowed hereby.

3. All references herein to monetary figures shall refer to currency of the United States of America, unless otherwise expressly provided.

## **B. Definitions**

Capitalized terms used in the Plan are defined in this Article, other Articles herein or the Bankruptcy Code.

“Administrative Claim” and “Administrative Expense Claim” shall mean a Claim Allowed under Section 503(b) of the Bankruptcy Code that is entitled to priority under Section 507(a)(2) of the Bankruptcy Code, including, without limitation, (a) any actual and necessary costs and expenses of preserving the Estates or administering the Chapter 11 Case as authorized and approved by a Final Order, (b) any actual and necessary costs and expenses incurred in the ordinary course of the Debtors’ business, (c) fees and expenses of Professionals to the extent Allowed by Final Order under Sections 330, 331, or 503 of the Bankruptcy Code, and (d) all fees and charges payable by the Estates to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930.

“AEF” shall mean AEI Acquisition LLC, one of the Debtors in the Chapter 11 Cases.

“Allowed” shall mean, with reference to any Claim: (a) a Claim that has been listed by the Debtors in their Schedules, as amended, and (i) is not listed as disputed, contingent or unliquidated, and (ii) is not a Claim as to which a proof of Claim has been filed; (b) a Claim as to which a proof of Claim has been filed in a sum certain and either (i) no objection thereto, or application to estimate, equitably subordinate, reclassify or otherwise limit recovery, has been made on or before any applicable deadline, or (ii) if an objection thereto, or application to estimate, equitably subordinate, reclassify or otherwise limit recovery, has been interposed, the extent to which such Claim (whether in whole or in part) has been allowed by a Final Order; (c) a Claim arising from the recovery of property under Section 550 or 553 of the Bankruptcy Code and allowed in accordance with Section 502(h) of the Bankruptcy Code; (d) any Claim previously allowed by order of the Bankruptcy Court; or (e) any Claim allowed under the Plan.

“Allowed Claim” shall mean a Claim that is Allowed in any Class.

“APM” shall mean Atlanta Precision Molding Co., LLC, one of the Debtors in the Chapter 11 Cases.

“Ballot” shall mean the form or forms distributed to each Holder of an impaired Claim entitled to vote on the Plan on which an acceptance or rejection of the Plan shall be indicated.

“Bankruptcy Code” shall mean Title 11 of the United States Code, as now in effect or hereafter amended to the extent that such amendment(s) are made retroactively applicable to the Chapter 11 Cases.

“Bankruptcy Court” shall mean the United States Bankruptcy Court for the District of Delaware and, to the extent of any withdrawal of the reference under 28 U.S.C. § 157, the United States District Court for the District of Delaware.

"Bankruptcy Rules" shall mean the Federal Rules of Bankruptcy Procedure as promulgated under 28 U.S.C. § 2075, as the same may be amended from time to time.

"Bar Date" shall mean the date fixed by the Bar Date Order by which Persons asserting a Claim against the Debtor, and who are required to file a proof of Claim on account of such Claim, must file a proof of Claim, or be barred from voting on the Plan and/or sharing in distributions hereunder. With respect to Claims arising before the Petition Date, including Section 503(b)(9) Claims, and Administrative Claims arising from the Petition Date through August 15, 2009, "Bar Date" means October 15, 2009. With respect to Administrative Claims arising from August 15, 2009 through and including the Effective, "Bar Date" means the date that is 30 days after the Effective Date.

"Bar Date Order" shall mean the Order Fixing Bar Dates for Filing Proofs of Claim and Approving Form, Manner and Sufficiency of Notice Thereof (Docket No. 300) entered by the Bankruptcy Court on August 13, 2009.

"Budgeted Administrative Expense Claims" shall mean any Administrative Expense Claims paid or to be paid in accordance with any budget approved by the Pre-Petition Lenders.

"Business Day" shall mean any day other than a Saturday, Sunday or legal holiday, as such term is defined in Bankruptcy Rule 9006.

"Cash" shall mean cash, cash equivalents (including personal checks drawn on a bank insured by the Federal Deposit Insurance Corporation, certified checks and money orders) and other readily marketable direct obligations of the United States of America and certificates of deposit issued by banks.

"Causes of Action" shall mean all preference, fraudulent conveyance, turnover, and other Claims and causes of action arising under Chapter 5 of the Bankruptcy Code except to the extent waived and released by the Settlement Agreement and any and all other actions, causes of action, liabilities, obligations, rights, suits, debts, sums of money, damages, judgments, Claims and demands whatsoever, that have been or could have been brought by on behalf of the Debtors arising before, on or after the Petition Date, whether known or unknown, in law, equity, or otherwise.

"Chapter 11 Cases" shall mean the Debtors' chapter 11 bankruptcy cases.

"Claim" shall mean a claim against a Person or its property as defined in Section 101(5) of the Bankruptcy Code, including, without limitation, (a) any right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured; or (b) any right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured.

**"Claims Reserve"** shall mean the fund established and maintained by the Reorganized Debtors for Distributions pursuant to Section 6.3(e) of the Plan.

**"Class"** shall mean a category of Persons holding Claims or Interests which are substantially similar in nature to the Claims or the Interests of other Holders in such Class, as designated in Section 3.2 of the Plan.

**"Class 3 Distribution Fund"** shall mean all Cash, including Cash received from the liquidation of the remaining assets of the Estates, other than the Distribution Fund.

**"Confirmation Date"** shall mean the date upon which the Confirmation Order shall be entered by the Clerk of the Bankruptcy Court on the docket.

**"Confirmation Hearing"** shall mean the hearing held by the Bankruptcy Court to consider confirmation of the Plan pursuant to Section 1129 of the Bankruptcy Code, as such hearing may be adjourned or continued from time to time.

**"Confirmation Order"** shall mean the order entered by the Bankruptcy Court confirming the Plan pursuant to Section 1129 of the Bankruptcy Code.

**"Contested Claim"** shall mean any Claim or portion thereof as to which the Debtors, the Reorganized Debtors or any other party in interest entitled to do so under applicable law has filed an objection or request for estimation, which objection or request for estimation has not been determined by a Final Order in accordance with the Bankruptcy Rules and the Plan or which Claim or portion thereof, prior to the date an objection is brought or request for estimation is made, (i) exceeds the amount of the Claim scheduled by the Debtors or is scheduled by the Debtors as contingent, disputed and/or unliquidated or (ii) is subject to disallowance under Section 502(d) or estimation under Section 502(c), of the Bankruptcy Code.

**"Creditors' Committee"** shall mean the Official Committee of Unsecured Creditors formed by the United States Trustee on April 22, 2009.

**"Debtors"** shall mean NexPak, AEI, APM, EPM, JMC and Holdings.

**"Disclosure Statement"** shall mean the First Amended Disclosure Statement for First Amended Joint Plan of Reorganization for NexPak Corporation and its Affiliated Debtors.

**"Distribution Fund"** shall mean a fund established by the Reorganized Debtors after the Effective Date in the amount of the Section 503(b)(9) Carve-Out and the Unsecured Claim Carve-Out.

**"Distributions"** shall mean the disbursement of Cash or other assets of the Estates to Holders of Allowed Claims.

**"Dutch Pledge Agreement"** shall mean that certain Pledge of Equipment, Inventory and Receivables dated November 21, 2003, executed by NexPak B.V. in favor of Holdings, as supplemented from time to time.

**"Dutch Promissory Note"** shall mean that certain Revolving Promissory Note dated November 19, 2003 between NexPak B.V., as maker, and Holdings, as payee, as amended from time to time.

**"Effective Date"** shall mean one (1) Business Day after the date on which all conditions to Confirmation of a Plan have been satisfied or waived, provided, however that the Debtors may, in consultation with NexBank and the Creditors' Committee, declare such other date following the Confirmation Date as to be the Effective Date with respect to any or all of the provisions of the Plan.

**"EPM"** shall mean EPM Holdings, LLC, one of the Debtors in the Chapter 11 Cases.

**"Estates"** shall mean the bankruptcy estates of the Debtors created or constituted under the provisions of the Bankruptcy Code and applicable law.

**"Final Order"** shall mean an order or judgment of the Bankruptcy Court as to which the time to appeal, petition for *certiorari*, or move for reargument or rehearing has expired and as to which no appeal, petition for *certiorari*, or other proceedings for reargument or rehearing shall then be pending or as to which any right to appeal, petition for *certiorari*, reargue, or rehearing shall have been waived in writing in form and substance satisfactory to the Debtor; provided, however, that the possibility that a motion under Rule 59 or Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be filed with respect to such order shall not cause such order not to be a Final Order.

**"General Unsecured Claim"** shall mean any Claim that is not an Administrative Expense Claim, Priority Claim, Other Secured Claim, Pre-Petition Lenders' Secured Claim or Pre-Petition Lenders' Deficiency Claim.

**"Holder"** shall mean the holder of a Claim or Interest.

**"Holdings"** shall mean NexPak Holdings, LLC, one of the Debtors in the Chapter 11 Cases.

**"Interest"** shall mean the equity and stock, whether common or preferred of any class or category, of the Debtors and all rights, contractual or otherwise, to acquire any such equity or stock outstanding immediately prior to the Effective Date, and any Claims in respect thereof.

**"JMC"** shall mean JMC Acquisition LLC, one of the Debtors in the Chapter 11 Cases.

**"Local Rules"** shall mean the Local Rules of Practice and Procedure for the United States Bankruptcy Code for the District of Delaware.

"Multi-Advance Term Loan" shall mean the multi-advance term loan facility in the maximum amount of \$12,000,000 under the Pre-Petition Credit Agreement.

"Multi-Advance Term Loan Obligations" shall mean the Debtors' obligations under the Multi-Advance Term Loan.

"NexBank" shall mean NexBank, SSB as administrative agent under the Pre-Petition Credit Facility.

"NexPak" shall mean NexPak Corporation, one of the Debtors in the Chapter 11 Cases.

"NexPak Companies" shall mean the Debtors, NexPak, AEI, APM, EPM, JMC and Holdings.

"Operating Expenses" shall mean the actual, necessary and reasonable costs and expenses of preserving and, if necessary, converting to cash any assets of the Estates held by the Reorganized Debtors pursuant to the Plan, to be paid pursuant to a budget to be approved by the Pre-Petition Lenders, including, without limitation, the following:

- (a) compensation and expenses of any counsel, accountants, or other Professionals, or agents employed by the Reorganized Debtors;
- (b) all taxes of any kind or nature incurred with respect to the assets held by the Reorganized Debtors or income therefrom or upon sale thereof;
- (c) the necessary and reasonable costs and expenses incurred by the Reorganized Debtors after the Effective Date in the Claims resolution process and in pursuing Causes of Action for the benefit of the Estates, including reasonable fees and expenses of the Reorganized Debtors' counsel, accountants or other third party Professionals to the Reorganized Debtors as to such matters; and
- (d) all fees payable by the Estates on and after the Effective Date pursuant to 28 U.S.C. § 1930(a)(6).

"Operating Reserve" shall mean Cash to be set aside by the Reorganized Debtors (in such amounts and at such times as determined by the Reorganized Debtors in consultation with the Pre-Petition Lenders) to fund, among other things, the Operating Expenses from the Effective Date to the date of entry of a final decree in the Chapter 11 Cases.

"Other Secured Claim" shall mean any Secured Claim other than the Secured Claims of the Pre-Petition Lenders.

"Person" shall mean any individual, corporation, partnership, joint venture, association or organization, governmental agency, or political subdivision thereof.

"Petition Date" shall mean April 10, 2009, the date on which the Debtors filed their voluntary Chapter 11 petitions with the Bankruptcy Court pursuant to the Bankruptcy Code.

"Plan" shall mean this First Amended Joint Plan of Liquidation for NexPak Corporation and its Affiliated Debtors, as it may be amended or modified.

"Pre-Petition Credit Agreement" shall mean that certain Amended and Restated Credit Agreement Dated as of December 31, 2004 Among NexPak Holdings LLC, JMC Acquisition LLC, ABI Acquisition LLC and Atlanta Precision Molding Co., LLC as Borrowers and NexPak Corporation and EPM Holdings, Inc., as Guarantors, and Heritage Bank, SSB as Administrative Agent, and the Lenders From Time to Time Party Thereto.

"Pre-Petition Credit Facility" shall mean the Revolver, the Term Loan, the Multi-Advance Term Loan and the Subordinated Term Loan, which are the four tranches of secured debt under the Pre-Petition Credit Agreement.

"Pre-Petition Lenders" shall mean the lenders from time to time party to the Pre-Petition Credit Agreement.

"Pre-Petition Lenders' Secured Claims" shall mean the secured portion of the Pre-Petition Lenders Claims pursuant to Section 506 of the Bankruptcy Code.

"Pre-Petition Lenders' Deficiency Claims" shall mean the unsecured portion of the Pre-Petition Lenders Claims pursuant to Section 506 of the Bankruptcy Code.

"Priority Claims" shall mean Priority Tax Claims and Priority Non-Tax Claims.

"Priority Non-Tax Claims" shall mean any and all Claims (or portions thereof), if any, entitled to priority under Section 507(a) of the Bankruptcy Code other than Priority Tax Claims and Administrative Expense Claims.

"Priority Tax Claims" shall mean any Claims of governmental units entitled to priority under Section 507(a)(8) of the Bankruptcy Code.

"Professionals" shall mean those Persons (a) employed pursuant to an order of the Bankruptcy Court in accordance with Section 327 of the Bankruptcy Code and to be compensated for services pursuant to Sections 327, 328, 329, 330 and 331 of the Bankruptcy Code, or (b) for which compensation and reimbursement has been allowed by the Bankruptcy Court pursuant to Section 503(b)(4) of the Bankruptcy Code.

"Pro Rata Share" shall mean a proportionate share, so that the ratio of the consideration distributed on account of an Allowed Claim in a Class to the amount of such Allowed Claim is the same as the ratio of the amount of the consideration distributed on account of all Allowed Claims in such Class to the amount of all Allowed Claims in such Class.

**"Reorganized Debtors"** shall mean the Debtors following the Effective Date charged with liquidating the Debtors' assets and implementing the Plan in accordance with Section 6.2 of the Plan.

**"Revolver"** shall mean the revolving credit facility in the maximum amount of \$14,500,000 under the Pre-Petition Credit Facility.

**"Revolver Obligations"** shall mean the Debtors' obligations under the Revolver.

**"Sale Motion"** shall mean the Debtors' Motion for Entry of (I) An Order (A) Approving Sale Procedures in Connection With Sale of Substantially All of the Debtors' Assets, (B) Scheduling an Auction and Hearing to Approve the Transaction and Approving the Form and Manner of Notice Thereof, and (C) Establishing Procedures Relating to the Assumption and Assignment of Executory Contracts; and (II) an Order (A) Approving the Sale of the Debtors' Assets Free and Clear of Liens Claims and Encumbrances, (B) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (C) Granting Certain Related Relief (Docket No. 108) filed by the Debtors on May 15, 2009.

**"Sale Order"** shall mean the Order (A) Authorizing the Sale of the Debtors' Assets Including Intellectual Property and Designated Equipment Free and Clear of All Liens, Claims, Encumbrances and Other Interests; and (B) Granting Related Relief (Docket No. 271) entered by the Bankruptcy Court on July 23, 2009.

**"Sale Procedures Order"** shall mean the Order (A) Approving Sale Procedures in Connection With Sale of Substantially All of the Debtors' Assets, (B) Scheduling an Auction and Hearing to Approve the Transaction and Approving the Form and Manner of Notice Thereof, and (C) Establishing Procedures Relating to the Assumption and Assignment of Executory Contracts (Docket No. 157) entered by the Bankruptcy Court on June 4, 2009.

**"Section 503(b)(9) Claims"** shall mean Administrative Claims arising under Section 503(b)(9) of the Bankruptcy Code for the value of goods received by the Debtors in the ordinary course of business within twenty days before the Petition Date.

**"Section 503(b)(9) Claim Carve-Out"** shall mean the \$110,000 carve-out from the Pre-Petition Lenders' collateral for payment of Allowed Section 503(b)(9) Claims in accordance with the Settlement Stipulation.

**"Secured Claim"** shall mean, pursuant to Bankruptcy Code Section 506, that portion of a Claim that is (a) secured by a valid, perfected and enforceable security interest, lien, mortgage or other encumbrance, which is not subject to avoidance under applicable bankruptcy or non-bankruptcy law, in or upon any right, title or interest of the Debtors in and to property of the Estates, to the extent of the value of the Holder's interest in such property as of the relevant determination date or (b) any Claim that is (i) subject to an offset right under applicable law and (ii) any secured claim against the Debtors pursuant to Bankruptcy Code Sections 506(a) and 553.

"Secured Obligations" shall mean the aggregate of the Revolver Obligations, the Term Loan Obligations, the Multi-Advance Term Loan Obligations and the Subordinated Term Loan Obligations.

"Settlement Order" shall mean the Order Approving Debtors' Motion for Entry of an Order Pursuant to Bankruptcy Code Section 105 and Bankruptcy Rule 9019 for Approval of a Settlement Among the Debtors, NexBank, SSB, as Administrative Agent for the Debtors' Prepetition Lenders and the Official Committee of Unsecured Creditors (Docket No. 255) entered by the Bankruptcy Court on July 15, 2009.

"Settlement Stipulation" shall mean the stipulation among the Debtors, the Pre-Petition Lenders and the Creditors' Committee, which was approved by the Settlement Order.

"Schedules" shall mean the schedules of assets and liabilities, the list of holders of interests and the statements of financial affairs filed by the Debtors under section 521 of the Bankruptcy Code and Bankruptcy Rule 1007, as such schedules, lists and statements have been or may be supplemented or amended from time to time.

"Subordinated Term Loan" shall mean the subordinated term loan facility in the maximum amount of \$37,000,000 under the Pre-Petition Credit Agreement.

"Subordinated Term Loan Obligations" shall mean the Debtors' obligations under the Subordinated Term Loan.

"Term Loan" shall mean the term loan facility in the maximum amount of \$15,500,000 under the Pre-Petition Credit Agreement.

"Term Obligations Loan" shall mean the Debtors' obligations under the Term Loan.

"Unresolved Claim" shall mean any Contested Claim or any Claim to the extent that it is not an Allowed Claim.

"Unsecured Claim Carve-Out" shall mean the \$100,000 carve-out from the Pre-Petition Lenders' collateral for payment of Allowed Administrative Claims, Priority Claims and General Unsecured Claims in accordance with the Settlement Stipulation.

### ARTICLE III CLASSIFICATION OF CLAIMS AND INTERESTS

#### 3.1 Classifying Claims and Interests.

Section 3.2 sets forth the Classes of Claims and Interests. Administrative Expense Claims and Priority Tax Claims are unclassified in accordance with Section 1123(a) (1) of the Bankruptcy Code. A Claim or Interest is included in a particular Class only to the extent that the Claim or Interest fits within the description of that Class and, unless otherwise herein provided, is included in a different Class to the extent that any remainder of the Claim or Interest fits

within the description of such different Class. A Claim or Interest is included in a particular Class only to the extent that the Claim is an Allowed Claim in that Class and has not been paid prior to the Effective Date, and, in the case of an Interest, only to the extent that such Interest is outstanding immediately prior to the Effective Date.

Unless otherwise specified in the Plan or the Confirmation Order, (i) interest shall not accrue on Claims and (ii) no Holder of a Claim shall be entitled to interest accruing on or after the Petition Date on account of any Claim.

### 3.2 Classes Of Claims and Interests.

(a) Class 1: Priority Non-Tax Claims. Class 1 consists of Priority Claims, other than Administrative Claims and Priority Tax Claims, entitled to priority under Section 507(a) of the Bankruptcy Code.

(b) Class 2: Other Secured Claims. Class 2 Consists of Secured Claims, other than the Secured Claims of the Pre-Petition Lenders, as determined by Section 506(c) of the Bankruptcy Code.

(c) Class 3: Pre-Petition Lenders' Secured Claims. Class 3 consists of the secured portion of the Pre-Petition Lenders Claims pursuant to Section 506 of the Bankruptcy Code.

(d) Class 4: General Unsecured Claims. Class 4 consists of General Unsecured Claims.

(e) Class 5: Pre-Petition Lenders' Deficiency Claims. Class 5 consists of the unsecured portion of the Pre-Petition Lenders Claims pursuant to Section 506 of the Bankruptcy Code.

(f) Class 6: Interests. Class 6 consists of all of the Debtors' equity Interests.

## ARTICLE IV TREATMENT OF UNCLASSIFIED CLAIMS

### 4.1 Administrative Expense Claims.

(a) Each Holder of an Allowed Administrative Expense Claim shall be paid in full, in Cash, as soon as practicable after the later of (i) the Effective Date, (ii) the date that such Administrative Expense Claim becomes an Allowed Claim, (iii) the date that such Administrative Expense Claim becomes due in the ordinary course of business and (iv) the date that the Reorganized Debtors and the Holder of such Administrative Expense Claim otherwise agree.

Budgeted Administrative Expense Claims shall be paid in accordance with budgets approved by the Pre-Petition Lenders. Allowed Administrative Expense Claims, other than Budgeted Administrative Expense Claims and Section 503(b)(9) Claims, if any, will be paid out of the Unsecured Claim Carve-Out. Section 503(b)(9) Claims will be paid out of the Section 503(b) Carve-Out and, if necessary, from the Unsecured Claim Carve-Out.

(b) Deadline to File Administrative Expense Claims. Pursuant to the Bar Date Order, holders of Administrative Expense Claims arising on or before August 15, 2009 (other than claims of Professionals) were required to file Requests for Payment of Administrative Expense Claims on or before October 15, 2009. **HOLDERS OF ADMINISTRATIVE EXPENSE CLAIMS ARISING FROM AUGUST 16, 2009 THROUGH THE EFFECTIVE DATE (OTHER THAN CLAIMS OF THE DEBTORS' PROFESSIONALS) MUST FILE REQUESTS FOR PAYMENT OF ADMINISTRATIVE EXPENSE CLAIMS ON OR BEFORE 30 DAYS AFTER THE EFFECTIVE DATE.**

All Professionals or other entities seeking an award from the Bankruptcy Court for compensation for services rendered and/or reimbursement of expenses through and including the Effective Date under Sections 503(b)(2), 503(b)(3), 503(b)(4) or 503(b)(5) of the Bankruptcy Code must file their respective final applications for compensation for services rendered and reimbursement of expenses on or before 30 days after the Effective Date. The final applications may include requests for compensation for services rendered and/or reimbursement of expenses incurred following the Effective Date in preparing the final applications.

#### 4.2 Priority Tax Claims.

Each Holder of an Allowed Priority Tax Claim pursuant to Section 507(a)(8) of the Bankruptcy Code shall be paid in full, in Cash, as soon as practicable after the later of the Effective Date and the date that such Priority Tax Claim becomes an Allowed Claim.

### ARTICLE V TREATMENT OF CLASSIFIED CLAIMS

#### 5.1 Class 1: Priority Non-Tax Claims.

Each Holder of an Allowed Class 1 Non-Tax Priority Claim shall receive Cash in an amount equal to the amount of such Allowed Priority Non-Tax Claim as soon as practicable after the later of the Effective Date and the date such Claim becomes an Allowed Claim unless the Reorganized Debtors and the Claim Holder agree to different treatment.

Class 1 is unimpaired. Holders of Class 1 Claims are conclusively deemed to accept the Plan and are not entitled to vote on the Plan.

#### 5.2 Class 2: Other Secured Claims.

Each Holder of an Allowed Class 2 Other Secured Claim will be placed in a separate subclass and each subclass will be treated as a separate class for distribution purposes. On or as soon as practicable after the Effective Date, each Holder of an Allowed Other Secured Claim shall receive, in full and final satisfaction of such Claim, in the sole discretion of the Reorganized Debtors, except to the extent that the Reorganized Debtors and the Holder of an Allowed Other Secured Claim agrees to a different treatment, either:

- (i) the collateral securing such Allowed Other Secured Claim;

(ii) cash in a amount equal to the value of the collateral securing such Allowed Other Secured Claim; or

(iii) the treatment required under Section 1124(2) of the Bankruptcy Code for such Allowed Other Secured Claim to be reinstated or rendered Unimpaired.

Class 2 is unimpaired. Holders of Class 2 Claims are conclusively deemed to accept the Plan and are not entitled to vote on the Plan.

5.3 Class 3: Pre-Petition Lenders' Secured Claims.

Holders of Allowed Class 3 Pre-Petition Lenders' Secured Claims shall retain their liens on the Debtors' assets and receive their Pro Rata share of the Class 3 Distribution Fund.

Class 3 is impaired and Holders of Class 3 claims are entitled to vote on the Plan.

5.4 Class 4: General Unsecured Claims.

Class 4 consists of General Unsecured Claims. On and after the Effective Date, each Holder of an Allowed Class 4 General Unsecured Claim shall receive its Pro Rata Share of the Unsecured Claim Carve-Out remaining after payment of Administrative Expense Claims and Priority Claims.

Class 4 is impaired and Holders of Class 4 Claims are entitled to vote on the Plan.

5.5 Class 5: Pre-Petition Lenders' Deficiency Claims.

Holders of Class 5 Pre-Petition Lenders' Deficiency Claims are impaired and shall neither receive nor retain any property under the Plan.

Notwithstanding the treatment of Class 5 Claims, Holders of Class 5 Pre-Petition Lenders' Deficiency Claims are deemed to accept the Plan consistent with the Settlement Stipulation.

5.6 Class 6: Interests.

Class 6 Interests will be extinguished and Holders of Class 6 Interests shall neither receive nor retain any property under the Plan.

Class 6 is impaired and Holders of Class 6 Interests are conclusively deemed to reject the Plan.

**ARTICLE VI  
IMPLEMENTING THE PLAN**

**6.1 Substantive Consolidation**

The Plan is premised upon the substantive consolidation of the Debtors for the limited purposes of confirming and consummating the Plan, including but not limited to voting, confirmation and Distribution. Each and every Claim filed or to be filed against the Debtors shall be deemed to be filed against the consolidated Debtors and shall be considered one Claim against and obligation of the consolidated Debtors.

All guaranties by any of the Debtors of the obligations of any Debtors arising prior to the Effective Date shall be deemed eliminated so that any Claim against any Debtor and any guaranty thereof executed by any other Debtor and any joint and several liability of any of the Debtors shall be considered to be one obligation of the deemed consolidated Debtors.

Substantive consolidation will not affect any liens or other security interests held by the Pre-Petition Lenders.

In the event the Bankruptcy Court authorizes the Debtors to substantively consolidate less than all of the Debtors' Estates: (a) the Plan shall be treated as a separate plan of reorganization for each Debtor not substantively consolidated; and (b) the Debtors shall not be required to re-solicit votes with respect to the Plan.

In the event that the Bankruptcy Court does not approve the Debtors' proposed substantive consolidation, the Debtors reserve the right to request confirmation and consummation of the Plan on a deconsolidated basis.

**6.2 The Reorganized Debtors.**

(a) Vesting of Assets of Estates. On and after the Effective Date, and subject only to the terms of the Plan, all assets of the Debtors and the Estates, including, without limitation, Causes of Action, wherever situated, shall vest in the Reorganized Debtors free and clear of all liens, claims encumbrances and other interests other than the liens of NexBank and the Pre-Petition Lenders.

(b) The Plan Administrator. The Plan Administrator shall be the sole officer, director and equity holder of each of the Debtors following the Effective Date. The Plan Administrator will be selected by the Pre-Petition Lenders. The Debtors will disclose the identity of the Plan Administrator and file a plan administrator agreement (the "Plan Administrator Agreement") at least twenty days before the hearing on approval of the Plan.

(c) Duties and Responsibilities of Reorganized Debtors. The Reorganized Debtors shall assume all of the fiduciary responsibilities, duties and obligations previously undertaken by the Debtors on and after the Effective Date consistent with the Plan and applicable law. The Reorganized Debtors shall stand in the same position as the Debtors with respect to any claim the Debtors may have to the attorney-client privilege, the work product doctrine, or any other

privilege, and the Reorganized Debtors shall succeed to all of the Debtors' rights to preserve, assert or waive any such privilege.

The Reorganized Debtors' duties, responsibilities and obligations include, but are not limited to, the following:

- liquidation of the Debtors' remaining assets;
- preparation and filing of tax returns on behalf of the Debtors and Reorganized Debtors, including the right to request a determination of tax liability as set forth in section 505 of the Bankruptcy Code;
- requesting and receiving of W-9 federal tax forms (as necessary) from any party who is entitled to receive a Distribution on account of a Claim or Interest;
- prosecution and resolution of Causes of Action;
- reconciling, objecting to and resolving Claims and making Distributions under the Plan;
- payment of post-confirmation fees due to the Office of the United States Trustee;
- responding to inquiries of Claim and Interest Holders;
- dissolving each of the Debtors and Reorganized Debtors under applicable law; and
- obtaining Final Decrees closing the Chapter 11 Cases.

(d) Retention of Professionals. The Reorganized Debtors may retain counsel, accountants, advisors, expert witnesses, and other Professionals as the Reorganized Debtors shall consider advisable without necessity of approval of the Bankruptcy Court. Persons who served as Professionals to the Debtors prior to the Effective Date may serve as Professionals to the Reorganized Debtors. The fees and expenses of the Professionals retained by the Reorganized Debtors shall be paid in the ordinary course from amounts held in the Operating Reserve in accordance with a budget or budgets approved by the Pre-Petition Lenders without the necessity of approval of the Bankruptcy Court.

(e) Exculpation and Indemnification. The Plan Administrator and the Reorganized Debtors, and their officers and the firms or corporations representing them, or any of their employees, Professionals or agents, shall have no liability for any of their acts or the acts of their employees, Professionals or agents, except for acts undertaken in bad faith, gross negligence or willful misconduct, in the performance of their respective duties. The Plan Administrator, the Reorganized Debtors, and their officers and the firms or corporations representing them, or any of their employees, Professionals or agents, shall be indemnified from and against any and all

liabilities, expenses, claims, damages or losses incurred by them as a direct result of acts or omissions taken by them in good faith consistent with the Plan and applicable law.

(f) Creditors' Committee. As of the Effective Date, the Creditors' Committee shall dissolve, and its members shall be released and discharged from all further authority, duties, responsibilities and obligations relating to and arising from the Chapter 11 Cases. The retention and employment of the Professionals retained by the Creditors' Committee shall terminate as of the Effective Date, provided, however, that the Creditors' Committee shall exist, and its Professionals shall be retained and their fees and expenses paid by the Reorganized Debtors after such date with respect to filing applications for compensation and reimbursement of expenses pursuant to Section 330 and 331 of the Bankruptcy Code.

### 6.3 Distributions.

(a) Distribution Fund. As soon as practicable after the Effective Date, the Reorganized Debtors shall establish the Distribution Fund in the amount of the Section 503(b)(9) Carve-Out and the Unsecured Claim Carve-Out.

(b) Administrative Expense Claims and Priority Claims. At such time or times as required by the Plan, or if no time is specified, as soon as practicable after the Effective Date, the Reorganized Debtors shall pay or shall reserve an amount sufficient to pay Allowed Administrative Expense Claims and Allowed Priority Claims provided, however, that (i) distributions to Holders of Allowed Administrative Expense Claims and Allowed Priority Claims other than Holders of Allowed Budgeted Administrative Expense Claims shall only be made from the Distribution Fund and (ii) the Section 503(b)(9) Carve-Out shall be used only to pay Allowed Section 503(b)(9) Claims. If the amount of the Section 503(b)(9) Carve-Out exceeds the amount of Allowed Section 503(b)(9) Claims, the excess of the Section 503(b)(9) Carve-Out over the amount of Allowed Section 503(b)(9) Claims shall be released from the Distribution Fund.

(c) Class 3 Pre-Petition Lenders' Secured Claims. The Reorganized Debtors shall from time to time make Distributions from the Class 3 Distribution Fund to NexBank to be distributed to Holders of Allowed Pre-Petition Lenders' Secured Claims in accordance with the Plan Administrator Agreement.

(d) Class 4 General Unsecured Claims. After the payment of, or the establishment of a reserve sufficient to pay, Allowed Administrative Claims and Allowed Priority Claims in full, the Reorganized Debtors shall, as soon as practicable after the Effective Date and from time to time thereafter as the Reorganized Debtors deem appropriate, distribute from the Distribution Fund to Holders of Allowed Class 4 General Unsecured Claims their Pro Rata share of the Distribution Fund, reserving funds with respect to Unresolved Claims as hereafter provided.

Notwithstanding the foregoing, the Reorganized Debtors shall not make any distributions to Holders of Allowed Class 4 General Unsecured Claims unless and until all asserted Administrative Expense Claims and Priority Claims have been paid or reserved for in full.

(e) Unresolved Claims. If on a date on which payments are made on account of the Allowed Claims of a given Class, there exist any Unresolved Claims in such Class, the amount of Cash distributed to Holders of Allowed Claims in that Class shall be determined as if all Unresolved Claims were Allowed Claims in the full amount claimed by the Holders thereof (or in such lesser amount as the Bankruptcy Court determines by Final Order) and the Reorganized Debtors shall, in such circumstances, reserve in the Claims Reserve for Holders of Unresolved Claims in such Class the Cash that would have been distributed to them in the full amount of their Claims, or such lesser amount as the Bankruptcy Court determines, were such Claims Allowed Claims on such distribution date. Interest earned on cash in the Claims Reserve, if any, shall likewise be added to the Cash held in the Claims Reserve.

To the extent that an Unresolved Claim becomes an Allowed Claim after a distribution date on which payments are made on account of Allowed Claims in such Class, the Reorganized Debtors shall, as soon as practicable thereafter, distribute to the Holder of the newly Allowed Claim, from the Claims Reserve, the amount of cash that such Holder would have received to date had its Claim been an Allowed Claim on the initial distribution date or subsequent distribution dates on which payments were made on account of then Allowed Claims. On each subsequent date on which payments are made on Allowed Claims in such Class, to the extent that all or a portion of any Unresolved Claims were disallowed since the preceding distribution date, the Reorganized Debtors shall distribute to each Holder of an Allowed Claim and reserve for each remaining Holder of an Unresolved Claim its Pro Rata Share of the amount of Cash that had been held in the Claims Reserve on account of the disallowed portion of the Unresolved Claims.

(f) Objections to Claims. Following the Effective Date, only the Reorganized Debtors shall be authorized to object to Claims. The deadline for objections to claims shall be 180 days after the Effective Date provided, however, that the Reorganized Debtors may seek an extension of this deadline from the Bankruptcy Court.

(g) Checks Not Presented Within 120 Days. The Reorganized Debtors are authorized to stop payment on any check delivered to a Holder that is not presented for collection within 120 days after such check is delivered. The failure to present a check for payment within 120 days shall be deemed a waiver of any remaining Claims against the Estates (including the right to receive payment from the Reorganized Debtors) by such Holder, and the funds represented by that payment shall revert to the Reorganized Debtors and shall be distributed to other Holders or to pay the Operating Expenses, as appropriate, all subject to the terms of the Plan.

(h) Distributions Under \$10.00. Notwithstanding anything to the contrary contained in the Plan, no distributions of cash shall be made hereunder in an amount less than \$10.00. At the time of final distribution, all cash not distributed due to the foregoing limitation shall be distributed to other Holders or used to pay the Operating Expenses, as appropriate, all subject to the other terms of the Plan.

(i) Tax Matters. The Reorganized Debtors, to the extent they deem it necessary to fulfill any obligation to any taxing authority, may require Holders who are to receive Distributions under the Plan to provide the Reorganized Debtors with appropriate tax-payer

identification numbers and related withholding information before making a payment to any such Person. If a Person shall fail to provide the Reorganized Debtors with any requested tax-payer identification information within 120 days of the request, this failure shall be deemed a waiver of all Claims against the Estates (including the right to any payment by the Reorganized Debtors), and the funds that would otherwise have been distributed to said Person shall revert and be distributed in accordance with the Plan to other Persons that have provided the requested tax-payer identification information, or to pay Operating Expenses, as appropriate.

#### 6.4 Preservation of Causes of Action by the Reorganized Debtors.

(a) Except as expressly provided herein, and unless expressly waived, relinquished, exculpated, released, compromised or settled in the Settlement Stipulation, Plan, the Confirmation Order, any Final Order, or in any contract, instrument, release or other agreement entered into or delivered in connection with the Plan, the Reorganized Debtors will exclusively retain, may prosecute and/or enforce, and expressly reserve and preserve for these purposes, in accordance with sections 1123(a)(5)(B) and 1123(b)(3) of the Bankruptcy Code, any and all Claims, demands, rights and Causes of Action whether arising under Section 5 of the Bankruptcy Code or otherwise, that the Debtors or the Estates may hold against any Person or entity. The failure of the Debtors to describe or identify a Claim, a right of action, suit, Cause of Action or proceeding in the Plan shall not constitute a waiver, release or abandonment by the Debtors or the Estates of such Claim, right of action, suit, Cause of Action or proceeding.

(b) Without limiting the foregoing, the Debtors expressly reserve and preserve all Causes of Action for collection of accounts receivable including, without limitation, Causes of Action against the Persons listed on Exhibit 1, which Causes of Action were not waived and released pursuant to the Settlement Stipulation.

(c) The Reorganized Debtors shall be empowered and authorized, without approval of the Bankruptcy Court, but subject to the approval of the Pre-Petition Lenders, to settle, adjust, dispose of or abandon any Claims, rights or other Causes of Action, including any counterclaims to the extent such counterclaims are potential setoffs against the proceeds of such Causes of Action.

#### 6.5 Exemption from Certain Transfer Taxes.

In accordance with Section 1146(a) of the Bankruptcy Code, neither the issuance, transfer or exchange or the delivery of any instrument of transfer under or pursuant to the Plan shall be taxed under any law imposing a stamp or similar tax. The Confirmation Order shall direct all governmental officials and agents to forego the assessment and collection of any such tax.

#### 6.6 Fees Payable to the Office of the United States Trustee and Related Reports.

On and after the Effective Date, the Reorganized Debtors shall pay quarterly fees payable to the Office of the United States Trustee pursuant to 28 U.S.C. §1930(a)(6) and be responsible for the preparation and filing of all necessary reports required until such time as the Bankruptcy Court enters a final decree closing the Chapter 11 Cases.

6.7 Books and Records.

The Reorganized Debtors shall retain any and all books and records of the Debtors, the Estates and/or the Reorganized Debtors, except as authorized by Order of the Bankruptcy Court, until such time as the Bankruptcy Court enters a final decree closing the Chapter 11 Cases.

6.8 Termination of the Duties of the Reorganized Debtors.

Upon final Distribution of the assets and properties of the Reorganized Debtors in accordance with the Plan and the satisfaction as far as possible of all liabilities and obligations of the Reorganized Debtors under and in accordance with the Plan, and upon the dissolution of the Debtors and Reorganized Debtors under applicable law, the responsibilities of the Reorganized Debtors shall terminate.

**ARTICLE VII  
TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

7.1 General.

Any unexpired lease or executory contract that has not been expressly assumed by the Debtors pursuant to a Final Order shall, as of the Confirmation Date (subject to the occurrence of the Effective Date), be deemed to have been rejected by the Debtors unless there is pending before the Bankruptcy Court on the Confirmation Date a motion to assume such unexpired lease or executory contract, or such executory contract or unexpired lease is otherwise designated for assumption, provided that such lease or executory contract is ultimately assumed.

7.2 Claims Deadline for Filing Proof of Claim Relating to Executory Contracts and Unexpired Leases Rejected Pursuant to the Plan.

Claims arising out of the rejection of an executory contract or unexpired lease designated for rejection pursuant to the Plan and/or Confirmation Order must be filed with the Bankruptcy Court by no later than 30 days after the Effective Date. The Holders of Claims not timely filed pursuant to this paragraph shall not be entitled to any distribution under the Plan or otherwise from the Reorganized Debtors.<sup>2</sup>

**ARTICLE VIII  
EFFECTS OF CONFIRMATION**

8.1 Effect on Third Parties.

The Plan shall be binding on all Persons who have or may have Claims against or Interests in the Debtors and the Plan shall be the sole means for such Persons to receive any distributions from the Debtors with respect to such Claims or Interests.

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<sup>2</sup> The right to file a proof of Claim on account of such deemed rejection is not intended, nor shall it be deemed, to extend the time period for filing proofs of Claim for damages with respect to any other lease or other executory contracts previously assumed or rejected by the Debtors prior to the Effective Date.

## 8.2 Injunction.

Pursuant to Section 105 of the Bankruptcy Code, and except as otherwise specifically provided in the Plan, all Persons who have held, hold, or may hold Claims against or Interests in the Debtors and any successors, assigns or representatives of such Person shall be precluded and permanently enjoined on and after the Effective Date from (a) commencing or continuing in any manner any Claim, action or other proceeding of any kind with respect to any Claim, Interest or any other right against the Debtors or the Estates which they possessed or may have possessed prior to the Confirmation Date, (b) the enforcement, attachment, collection or recovery by any manner or means of any judgment, award, decree, or order with respect to any Claim, Interest or other right against the Debtors or the Estates which they possessed or may have possessed prior to the Confirmation Date, (c) creating, perfecting or enforcing any encumbrance of any kind with respect to any Claim, Interest, or any other right against the Debtors or the Estates which they possessed or may have possessed prior to the Confirmation Date, and (d) asserting any Claims other than as provided in the Plan.

## 8.3 Exculpation.

The Debtors, the Creditors' Committee, NexBank and the Pre-Petition Lenders, and their respective officers, directors, employees, members, attorneys, accountants, consultants and agents, shall (a) not have or incur any liability to any person or entity for any act or omission in connection with the Chapter 11 Cases and/or arising out of their formulation, implementation, confirmation, consummation or administration of the Plan (including solicitation or rejection thereof) or the treatment or administration of the property to be distributed under the Plan, except if such act or omission is determined in a Final Order to reflect bad faith or constitute gross negligence, willful misconduct or willful fraud, and (b) in all respects, shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Plan, and (c) shall be fully protected in acting or in refraining from acting in accordance with such advice; provided, however, that nothing contained herein shall relieve any of the foregoing of any liability of any kind or nature related to any act or omission prior to the Petition Date.

## 8.4 Releases by the Debtors.

In addition to the Releases provided for in the Settlement Stipulation and Settlement Order, the Debtors also shall unconditionally and forever release the Debtors' agents, advisors, accountants, attorneys, and other representatives (including the Debtors' current directors, officers, employees, members and Professionals) and the Creditors' Committee, NexBank and the Pre-Petition Lenders, and their respective officers, directors, employees, members, attorneys, accountants, consultants and agents, from all claims, obligations, suits, judgments, damages, rights, Causes of Action, and liabilities whatsoever, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, existing on the Effective Date or thereafter arising in law, equity or otherwise that are based in whole or in part upon any act or omission, transaction, event, or other occurrence taking place on or after the Petition Date and before the Effective Date and in any way relating to the Debtors or the Chapter 11 Cases or the Plan. In furtherance of the foregoing, the Confirmation Order will constitute an injunction permanently enjoining the commencement or prosecution by any entity, derivatively

or otherwise, of any Claim, demand, debt, liability, Cause of Action, right, or Interest released and waived pursuant to the Plan against such entities and individuals.

## ARTICLE IX CONDITIONS PRECEDENT

### 9.1 Conditions Precedent to Effective Date.

The Plan shall not become effective unless and until each of the following conditions shall have been satisfied in full in accordance with the provisions specified below:

- (a) The Bankruptcy Court shall have approved the Disclosure Statement as satisfying the requirements of Section 1125 of the Bankruptcy Code;
- (b) The Confirmation Order shall have become a Final Order; and
- (c) The Confirmation Order shall be in full force and effect.

### 9.2 Revocation, Withdrawal or Non-Consummation of Plan.

If, after the Confirmation Order is entered, each of the conditions precedent to the Effective Date have not been satisfied or duly waived on or by ninety (90) days after the Confirmation Date, then upon motion by the Debtors or any other party in interest, the Confirmation Order may be vacated by the Bankruptcy Court; provided, however, that notwithstanding the filing of such a motion, the Confirmation Order shall not be vacated if each of the conditions precedent to the Effective Date is either satisfied or duly waived before the Bankruptcy Court enters an order granting the relief requested in such motion. If the Confirmation Order is vacated, the Plan shall be null and void in all respects, and nothing contained in the Plan shall (i) constitute a waiver or release of any Claims against or Interests in the Debtor, (ii) prejudice in any manner the rights of the Holder of any Claim against or Interest in the Debtors or (iii) prejudice in any manner the rights of the Debtors in the Chapter 11 Cases.

## ARTICLE X RETENTION OF JURISDICTION

### 10.1 Retention of Jurisdiction

Following the Effective Date, the Bankruptcy Court shall, except as otherwise provided by applicable law or the Confirmation Order, retain jurisdiction of the Chapter 11 Cases pursuant to the provisions of Chapter 11 of the Bankruptcy Code to the fullest extent permitted by law, until the entry of a final decree closing the Chapter 11 Cases, including with respect to the following matters:

- (i) To enable the Reorganized Debtors to commence any and all proceedings and/or Causes of Action that they may bring whether before or after the Effective Date.

(ii) To hear and determine any and all applications for allowance of compensation for periods on or before the Effective Date.

(iii) To hear and determine all controversies concerning the Allowance of Claims and distributions to be made to Holders of Allowed Claims.

(iv) To enforce the payment of any amounts payable under the Plan.

(v) To hear and determine all Claims or controversies arising from the assumption or the rejection of any executory contracts or unexpired leases.

(vi) To liquidate or estimate damages in connection with any disputed, contingent or unliquidated Claim.

(vii) To hear and determine all disputes regarding the recovery of any assets of the Estates, wherever and however located.

(viii) To hear and determine any dispute arising under or in connection with the Plan, including any matter which, pursuant to the terms of the Plan, is to be determined by the Bankruptcy Court.

(ix) To hear all matters relating to the closing of the Chapter 11 Cases and the entry of Final Decrees; and

(x) To hear such other matters and enter such other orders as are necessary or appropriate to enforce and carry out the provisions of the Plan.

## ARTICLE XI MISCELLANEOUS PROVISIONS

### 11.1 Headings.

The headings of the articles, paragraphs and sections of the Plan are inserted for convenience only and shall not affect the interpretation hereof.

### 11.2 Binding Effect of Plan.

Except as otherwise provided in Bankruptcy Code § 1141(d)(3), on and after the Effective Date, the provisions of the Plan shall bind any Holder of a Claim against, or Interest in, the Debtors, the Estates, the Reorganized Debtors and their respective successors or 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.

### 11.3 Successors and Assigns

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, without limitation, the Reorganized Debtors and any trustee appointed for the Debtors under chapters 7 or 11 of the Bankruptcy Code).

### 11.4 Final Order.

Except as otherwise expressly provided in the Plan, any requirement in the Plan for a Final Order may be waived by the Debtors upon written notice to the Bankruptcy Court. No such waiver shall prejudice the right of any party in interest to seek a stay pending appeal of any order that is not a Final Order.

### 11.5 Governing Law.

Except to the extent a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules), the rights, duties and obligations arising under the Plan and/or any agreements, documents and instruments executed in connection with the Plan shall be governed by, and construed and enforced in accordance with the laws of the State of Delaware, without giving effect to conflicts of law principles.

### 11.6 Severability.

After the Effective Date, should the Bankruptcy Court, or any other court of competent jurisdiction, determine that any provision in the Plan is either illegal on its face or illegal as applied to any Claim, such provisions shall be unenforceable either as to all Holders of Claims or as to the Holder of such Claim as to which the provision is illegal, respectively. Such a determination of unenforceability shall in no way limit or affect the enforceability and operative effect of any other provision of the Plan.

### 11.7 Revocation.

The Debtors reserve the right to revoke and withdraw the Plan prior to the Confirmation Date. If the Debtors revoke or withdraw the Plan, then the Plan shall be null and void and, in such event, nothing contained herein shall be deemed to constitute a waiver or release of any Claims by or against the Debtors or any other Person or to prejudice in any manner the rights of the Debtors or any Person in any further proceedings involving the Debtors.

### 11.8 Payment of Statutory Fees.

All fees payable pursuant to section 1930 of title 28 of the United States Code after the Effective Date, as determined by the Bankruptcy Court pursuant to Section 1128 of the Bankruptcy Code, shall be paid prior to the closing of the Chapter 11 Cases.

#### 11.9 Plan Controls Disclosure Statement.

In the event and to the extent any provision of the Plan is inconsistent with any provision of the Disclosure Statement, the provisions of the Plan shall control and take precedence.

#### 11.10 Amendments and Modifications.

The Debtors may alter, amend or modify the Plan under Bankruptcy Code § 1127(a) at any time prior to the Confirmation Hearing. After the Confirmation Date and prior to "substantial consummation" of the Plan (as such term is defined in Section 1101(2) of the Bankruptcy Code), the Debtors or Reorganized Debtors may institute proceedings in the Bankruptcy Court pursuant to Bankruptcy Code Section 1127(b) to remedy any defect or omission or reconcile any inconsistencies in the Plan, the Disclosure Statement or the Confirmation Order, and such matters as may be necessary to carry out the purposes and effects of the Plan, by the filing of a motion on notice to the Bankruptcy Rule 2002 service list only, and the solicitation of all Creditors and other parties-in-interest shall not be required.

#### 11.11 Filing of Additional Documents

On or before the Effective Date, the Debtors may file with the Bankruptcy Court such agreements or other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

#### 11.12 Direction to a Party.

From and after the Effective Date, the Debtors may apply to the Bankruptcy Court for the entry of an order directing any Person to execute or deliver or to join in the execution or delivery of any instrument or document reasonably necessary or reasonably appropriate to effect a transfer of properties dealt with by the Plan, and to perform any other act (including the satisfaction of any lien or security interest) that is necessary or reasonably appropriate for the consummation of the Plan.

#### 11.13 Prior Orders.

All orders entered by the Bankruptcy Court in the Chapter 11 Cases shall remain in full force and effect to the extent such orders are not inconsistent with the terms of the Plan or the Confirmation Order.

#### 11.14 Reservation of Rights.

Except as expressly set forth herein, the Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order. Neither the filing of the Plan, any statement contained in the Plan or Disclosure Statement nor the taking of any action by a Debtor or any Person with respect to the Plan shall be or shall be deemed to be an admission or waiver of any rights of the Debtors prior to the Effective Date.

**11.15 Good Faith Compliance.**

The Debtors, NexBank, the Pre-Petition Lenders and the Creditors Committee, and each of their respective officers, directors, employees, members, attorneys, accountants, consultants Professionals and agents, shall be deemed to have acted in "good faith" under Section 1125(e) of the Bankruptcy Code.

**11.16 Further Assurances.**

The Debtors, the Reorganized Debtors, the Plan Administrator, any Holder of a Claim receiving a Distribution under the Plan, and all other parties-in-interest shall, from time to time, prepare, execute and delivery any agreements or other documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan and/or the Confirmation Order.

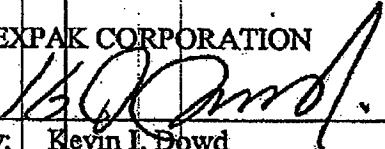
**11.17 No Stay of Confirmation Order.**

The Confirmation Order shall contain a waiver of any stay of enforcement of the Confirmation Order otherwise applicable, whether pursuant to Bankruptcy Rules 3020(e) and/or 7062 or otherwise.

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Dated: September 8, 2009  
Wilmington, Delaware

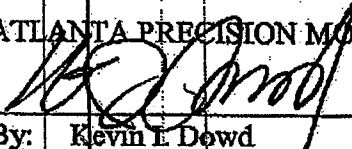
NEXPAK CORPORATION

  
By: Kevin I. Dowd  
Title: President and CRO

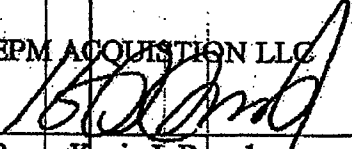
AEI Acquisition LLC

  
By: Kevin I. Dowd  
Title: President and CRO

ATLANTA PRECISION MOLDING CO., LLC

  
By: Kevin I. Dowd  
Title: President and CRO

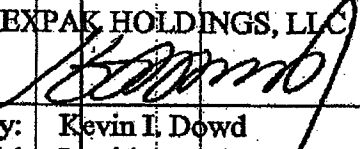
EPM ACQUISITION LLC

  
By: Kevin I. Dowd  
Title: President and CRO

JMC ACQUISITION LLC

  
By: Kevin I. Dowd  
Title: President and CRO

NEXPAK HOLDINGS, LLC

  
By: Kevin I. Dowd  
Title: President and CRO

# **EXHIBIT 1**

## Causes of Action Parties

A.D. Vision Inc.

Advanced Duplication Service

Advanced Media Products, Inc.

Americ Disc USA

Dering Corporation

Disque Americ Inc.

Duplium Corporation

Egames Inc.

Findaway World, LLC

Inoveris, LLC

Logic General Inc.

Next Generation Media, Inc.

Optical Experts Manufacturing

Sleeve City

Vaughan Associates

Wax Works/Video Works

Zanin CD/DVD Inc.

Zomax, Inc.