

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
Miami Division
www.flsb.uscourts.gov

In re:

EXPORTHER BONDED CORP., d/b/a
EBC Duty Free,

Debtor.

CASE NO. 15-28287-RAM

Chapter 11

**DEBTOR'S SECOND AMENDED DISCLOSURE STATEMENT
REGARDING FIRST AMENDED PLAN Dated July 27, 2016**

I. INTRODUCTION

This is the first amended disclosure statement (the "Disclosure Statement") in the chapter 11 case of Exporther Bonded Corp., dba EBC Duty Free ("EBC" or the "Debtor"). This Disclosure Statement contains information about the Debtor and describes the Debtor's First Amended Plan of Liquidation filed by the Debtor on July 27, 2016 (the "Plan"). A full copy of the Plan is attached to this Disclosure Statement as Exhibit A. **Your rights may be affected. You should read the Plan and this Disclosure Statement carefully and discuss them with your attorney. If you do not have an attorney, you may wish to consult one.**

The proposed distributions under the Plan are discussed at pages 8 and 9 of this Disclosure Statement. General unsecured creditors are classified in Class 2 and will receive a distribution of 0 to 5 % of their allowed claims, to be distributed in a lump sum on the date or dates indicated.

A. Purpose of This Document

This Disclosure Statement describes:

- The Debtor and the significant events leading up to and during the bankruptcy case.
- How the Plan proposes to treat claims or equity interests of the type you hold (i.e., what you will receive on your claim or equity interest if the plan is confirmed).
- Who can vote on or object to the Plan.
- What factors the Bankruptcy Court (the "Court") will consider when deciding whether to confirm the Plan.
- Why the Debtor believes the Plan is feasible, and how the treatment of your claim or equity interest under the Plan compares to what you would receive on your claim or equity interest in liquidation, and
- The effect of confirmation of the Plan.

Be sure to read the Plan as well as the Disclosure Statement. This Disclosure Statement describes the Plan, but it is the Plan itself that, if confirmed, will, establish your rights.

B. Deadlines for Voting and Objecting; Date of Plan Confirmation Hearing

The Court has not yet confirmed the Plan described in this Disclosure Statement. This section describes the procedures pursuant to which the Plan will or will not be confirmed.

1. Time and Place of the Hearing to Finally Approve This Disclosure Statement and Confirm the Plan

The hearing at which the Court will determine whether to [finally approve this Disclosure Statement and] confirm the Plan will take place before the Honorable Robert A. Mark on [insert date], at [insert time], at the United States Bankruptcy Court, C. Clyde Atkins United States Court house, 301 N. Miami Ave, Room 417 Miami, FL 33130.

2. Deadline for Voting to Accept or Reject the Plan

If you are entitled to vote to accept or reject the plan, vote on the enclosed ballot and return the ballot in the enclosed envelope to [insert address]. See section IV.A. below for a discussion of voting eligibility requirements.

Your ballot must be received by [insert date] or it will not be counted.

3. Deadline for Objecting to the [Adequacy of Disclosure and] Confirmation of the Plan

Objections to [this Disclosure Statement or to] the confirmation of the Plan must be filed with the Court and served upon [insert entities] by [insert date].

4. Identity of Person to Contact for More Information

If you want additional information about the Plan, you should contact David R. Softness, Esq., counsel for the Debtor, at the address indicated below.

C. Disclaimer

The Court has [conditionally] approved this Disclosure Statement as containing adequate information to enable parties affected by the Plan to make an informed judgment about its terms. The Court has not yet determined whether the Plan meets the legal requirements for confirmation, and the fact that the Court has approved this Disclosure Statement does not constitute an endorsement of the Plan by the Court, or a recommendation that it be accepted. [The Court's approval of this Disclosure Statement is subject to final approval at the hearing on confirmation of the Plan. Objections to the adequacy of this Disclosure Statement may be filed until _____.]

II. BACKGROUND

A. Description and History of the Debtor's Business and Events Leading Up to the Filing,

The Debtor is a ship chandler generally providing specialized goods for export, usually on cruise ships.

B. Insiders of the Debtor The Debtor is owned and managed by Jorge H. Rivero, Jorge H. Rivero, Jr., and Juan Carlos Rivero (the "Riveros"). The Riveros are "insiders" as defined in §101(31) of the United States Bankruptcy Code (the "Code").

C. Management of the Debtor Before and During the Bankruptcy. The Riveros are the management of the Debtor both pre and post-petition.

D. Significant Events Prior to the Bankruptcy Case.

The Debtor has been in its present business for approximately 40 years, successfully. Generally speaking, the Debtor was solvent and cash flow positive. That changed in 2015 when the United States, through its agency, the Alcohol, Tobacco Tax and Trade Bureau ("TTB") assessed the Debtor for excise taxes in excess of \$4,500,000.00 (Four Million Dollars). The TTB then issued a "jeopardy levy" designed to seize all the Debtor's assets and put it out of business (generally, the "Assessment" and the "Levy").

The Levy forced the Debtor's primary lender Bank of America ("BofA") to move to protect its senior lien position by attempting to seize all of the Debtor's cash.

These action by TTB and then BofA portended the imminent demise of the Debtor and its business, which led to the filing of the instant chapter 11 bankruptcy.

The Riveros (or entities controlled by them) borrowed funds from the Debtor in years prior to the Bankruptcy. These insider loans remain on the Debtor's books (the "Insider Loans"). The amount due is \$890,886.00. The Insider Loan was inadvertently omitted from the Debtor's schedules, but the schedules were amended to reflect that insider receivable. The Riveros may have defenses to the payment of the Insider Loans, but presently intend to pay in in full in conjunction with the Plan (the "Rivero Payment").

E. Significant Events During the Bankruptcy Case

The Debtor litigated and settled its cash collateral issues with BofA and the TTB.

The Debtor filed its objection to the TTB claim in its entirety. That litigation resulted in the Court's entry of an order allowing the TTB Claim in the amount of \$1,746,321.36 (the

“TTB Allowed Claim”). The Debtor has filed a motion for rehearing in connection with the TTB Allowed Claim, which was denied. Thus, the TTB Allowed Claim remains.

The Debtor's intended reorganization was negatively impacted when MillerCoors, who used to provide 80% of the Debtor's product suddenly refused to ship further product approximately three weeks into the chapter 11. No explanation is known to the Debtor or was given by MillerCoors. Without MillerCoors, the likelihood of reorganization dimmed.

Given the reality of the previous paragraph, the Debtor began, with the knowledge of the relevant parties and the Court, to liquidate its inventory and receivables. To this end the Debtor did have to order additional product as circumstances occasionally required to fill occasional orders.

Given the numerous legal and practical barriers to any other party conducting the liquidation, this was done without significant objection. This process is at the heart of the Plan.

The Debtor settled its secured claim with BofA by paying it a discounted payoff upon notice, hearing, and approval by the Bankruptcy Court.

The Debtor filed its Plan (of liquidation).

F. Professionals

1. With the approval of the Court, the Debtor has retained the following professionals:

- a) The law firm of David R. Softness P.A. as his general bankruptcy counsel, responsible for the day to day affairs of the Case;
- b) the law firm of Weisberg Kainen Mark, PL., as special counsel in connection with disputes between the Debtor and US government, through its agency the Alcohol, Tobacco Tax and Trade Bureau (“TTB”).
- c) The law firm of Rasco Klock Perez & Nieto P.L, as special counsel to continue to advise and represent the Debtor generally with respect to its general business matters and its continuing issues with BofA.

E. Projected Recovery of Avoidable Transfers

If necessary, the Debtor will file an adversary proceeding (lawsuit) against TTB to avoid any lien which it alleges to own as any such lien would appear to be a preference and avoidable pursuant to Section 547 of the Code. If successful, the TTB claim, if any, will be rendered unsecured.

The Debtor is not presently aware of any additional preferential or fraudulent conveyances, or other avoidance actions which he intends to pursue, however, the Debtor has not yet completed its investigation with regard to any other prepetition transactions which may be avoidable. If you received a payment or other transfer within 90 days of the bankruptcy, or other transfer avoidable under the Code, the Debtor may seek to avoid such transfer.

G. Claims Objections

Except to the extent that a claim is already allowed pursuant to a final non-appealable order, the Debtor reserves the right to object to claims. Therefore, even if your claim is allowed for voting purposes, you may not be entitled to a distribution if an objection to your claim is later upheld. The procedures for resolving disputed claims are set forth in Article V of the Plan.

The claims filed against the Debtor's estate as of the Bar Date are in an amount in excess of \$7,578,964 (excluding the BofA claim which was paid). The Debtor believes in good faith, that upon review and after objections are filed and litigated, that the amount of the "allowed" claims against the estate will be greatly reduced, and will fall somewhere in the range of \$ 1,000,000 to \$1,500,000.

H. Current and Historical Financial Conditions

The most recent post-petition operating report filed since the commencement of the Debtor's bankruptcy case is set forth in Exhibit B. This report shows the Debtor's current assets and (generally) monthly expenses.

III. SUMMARY OF THE PLAN OF LIQUIDATION AND TREATMENT OF CLAIMS AND EQUITY INTERESTS

A. What is the Purpose of the Plan of Liquidation?

As required by the Code, the Plan places claims and equity interests in various classes and describes the treatment each class will receive. The Plan also states whether each class of claims or equity interests is impaired or unimpaired. If the Plan is confirmed, your recovery will be limited to the amount provided by the Plan.

The Debtor intends to liquidate all of its assets to create a Liquidation Fund (net of operating expenses attendant to the liquidation – the "Liquidation Fund"). The Plan also contemplates the Rivero Payment. These two sources will be distributed to the creditors in full.

B. Unclassified Claims

Certain types of claims are automatically entitled to specific treatment under the Code. They are not considered impaired, and holders of such claims do not vote on the Plan. They may, however, object if, in their view, their treatment under the Plan does not comply with that required by the Code. As such, the Plan Proponent has not placed the following claims in any class:

1. Administrative Expenses

Administrative expenses are costs or expenses of administering the Debtor's chapter 11 case which are allowed under § 507(a)(2) of the Code. Administrative expenses also include the value of any goods sold to the Debtor in the ordinary course of business and received within 20 days before the date of the bankruptcy petition. The Code requires that all administrative expenses be paid on the effective date of the Plan, unless a particular claimant agrees to a different treatment.

The following chart lists the Debtor's estimated administrative expenses and their proposed treatment under the Plan:

<u>Type</u>	<u>Estimated Amount Owed</u>	<u>Proposed Treatment</u>
Professional Fees, as approved by the Court.	\$200,000.00	Paid in full on the effective date of the Plan, or according to separate written agreement, or according to court order if such fees have not been approved by the Court on the effective date of the Plan. Payments will be made first from the Liquidation Fund, and then from the Rivero Payment. Other than the reserve for unsecured creditors, the administrative claims will be paid in full before any other creditors are paid.
Clerk's Office Fees	\$0	Paid in full on the effective date of the Plan
Other administrative expenses	\$100,000 to \$300,000 for unpaid post-petition vendors.	Paid in full on the effective date of the Plan or according to separate written agreement. Payments will be made first from the Liquidation Fund, and then from the Rivero Payment. Other than the reserve for unsecured creditors, the administrative claims will be paid in full before any other creditors are paid.
Office of the U.S. Trustee Fees	unknown	Paid in full on the effective date of the Plan
TOTAL	\$300,000 top \$500,000.	

2. Priority Tax Claims

Priority tax claims are unsecured income, employment, and other taxes described by § 507(a)(8) of the Code. Unless the holder of such a § 507(a)(8) priority tax claim agrees otherwise, it must receive the present value of such claim, in regular installments paid over a period not exceeding 5 years from the order of relief.

If the TTB Allowed Claim is deemed unsecured, it will nonetheless be treated as a priority tax claim. The Debtor is presently unaware of any other claims which would qualify as

priority.

C. **Classes of Claims and Equity Interests**

The following are the classes set forth in the Plan, and the proposed treatment that they will receive under the Plan:

1. **Classes of Secured Claims**

Allowed Secured Claims are claims secured by property of the Debtor's bankruptcy estate (or that are subject to setoff) to the extent allowed as secured claims under § 506 of the Code. If the value of the collateral or setoffs securing the creditor's claim is less than the amount of the creditor's allowed claim, the deficiency will be classified as a general unsecured claim.

The following chart lists all classes containing Debtor's secured prepetition claims and their proposed treatment under the Plan:

<u>Class</u>	<u>Description</u>	<u>Insider?</u>	<u>Impaired</u>	<u>Treatment</u>
1	Alcohol, Tobacco, Tax and Trade Bureau	No	Impaired	The Debtor believes the TTB Allowed Claim is unsecured. Nonetheless, to the extent it is determined to be secured, it will be paid from the Liquidation Fund (not the Rivero Payment) in accordance with their lien rights. Otherwise they will be paid as a priority tax claim pursuant to Section 507 of the Code.

2. **General Unsecured Claims**

General unsecured claims are not secured by property of the estate and are not entitled to priority under § 507(a) of the Code.

The following chart identifies the Plan's proposed treatment of Class 2, which consists of general unsecured claims against the Debtor:

<u>Class</u>	<u>Description</u>	<u>Insider?</u>	<u>Impaired</u>	<u>Treatment</u>
2	General Unsecured	No	N/A	Pro rata share of Available Funds after payment of administrative claims and the TTB Allowed Claim. In addition, the Rivero Payment will be earmarked to allow 10% (approx. \$90,000) to be distributed pro rata to Class 2 if no other funds are available.

3. Class of Equity Interest Holders

Class 3. Equity interest holders are parties who hold an ownership interest (i.e., equity interest) in the Debtor. The Riveros are the equity holders. They will receive full ownership and interest in the post confirmation Debtor free and clear of all claims in exchange for their payment of the Rivero Payment. For clarity, the Debtor will have no tangible material assets after the liquidation contemplated herein. The Rivero Payment will be made in exchange for the full equity interest in the post confirmation Debtor and a release from the estate. The Rivero Payment is not contingent on any future event, but its actual payment may be tied to the sale or other monetization of property owned by the Riveros.

D. Means of Implementing the Plan

1. Source of Payments

Payments and distributions under the Plan will be funded by the Debtor's liquidation of its assets, believed to be between \$50,000 and \$100,000 as of confirmation (net of operating expenses incurred in the liquidation process – the "Liquidation Fund").

The Plan will also be funded by the Rivero Payment which is in the nature of a settlement of potential claims which the Debtor and the estate may have against the Riveros. The Rivero Payment is also – in part - an equity investment in exchange for their ongoing ownership of the post confirmation Debtor. For clarity, the Debtor expects it will have no tangible material assets after the liquidation contemplated herein. Upon confirmation, the

Riveros will be fully and legally committed to the Rivero Payment in full in the amount of \$890,886.00. This amount reflects the full amount due in the Debtor's books, without consideration of any defenses which the Riveros may have. The payment will be delayed pending their ability to raise the funds (the delay goes to the timing of the payment, not the commitment to nor the ability to make it). The delay is expected to be no more than 6 months from confirmation. The Debtor believes in good faith that the Riveros have access to sufficient assets to fund the Rivero Payment. In addition, the Debtor expects that the relevant facts attendant to the Rivero Payment will be more clear as the confirmation approaches and intends to keep the Court and interested parties apprised commensurately.

2. Post-confirmation Management

Upon confirmation of the Plan, the Debtor will be owned and managed by the Riveros, free and clear of all claims.

E. Risk Factors

The proposed Plan has the following risks:

The essential overriding risk to the Debtor's Plan is simply that the funds remaining after liquidation are insufficient to pay the administrative claims in full allowing for a distribution to the unsecured creditors.

F. Executory Contracts and Unexpired Leases

The Plan lists all executory contracts and unexpired leases that the Debtor will assume under the Plan. Assumption means that the Debtor has elected to continue to perform the obligations under such contracts and unexpired leases, and to cure defaults of the type that must be cured under the Code, if any.

If you object to the assumption of your unexpired lease or executory contract, the proposed cure of any defaults, or the adequacy of assurance of performance, you must file and serve your objection to the Plan within the deadline for objecting to the confirmation of the Plan, unless the Court has set an earlier time.

All executory contracts and unexpired leases that are not listed in the Plan will be rejected under the Plan. Consult your adviser or attorney for more specific information about particular contracts or leases.

If you object to the rejection of your contract or lease, you must file and serve your objection within the deadline for objecting to the confirmation of the Plan.

The Debtor does not presently intend to assume any contracts or leases in the Plan.

The Deadline for Filing a Proof of Claim Based on a Claim Arising from the Rejection of a Lease or Contract Is 30 days after the entry of an order (including the

confirmation order) rejecting the given Lease or Contract. Any claim based on the rejection of a contract or lease will be barred if the proof of claim is not timely filed, unless the Court orders otherwise.]

G. Tax Consequences of Plan

General

Under the Internal Revenue Code of 1986, as amended (the "*Tax Code*") and regulations promulgated thereunder (the "*Regulations*"), there may be certain significant federal income tax consequences for the Debtor, Claimants and Interest Holders associated with the Plan. Certain of these consequences are discussed below. The tax consequences described below are subject to significant uncertainties because of (i) the unique nature of the transactions contemplated by the Plan, (ii) the uncertainty as to the tax consequences of events in prior years, including changes made by the Bankruptcy Tax Act of 1980 ("*BTA80*"), the Tax Reform Act of 1985 ("*TRA85*"), the Tax Reform Act of 1986 ("*TRA86*"), the Omnibus Reconciliation Act of 1987 ("*ORA87*"), the Technical and Miscellaneous Revenue Act of 1988 ("*TAMRA*"), the Omnibus Budget Reconciliation Act of 1989 ("*OBRA89*"), the Revenue Reconciliation Act of 1990 ("*RRA90*") and the Revenue Reconciliation Act of 1993 ("*RRA93*"), (iii) the differences in the nature of the Claims of the various Claimants, their taxpayer status, residence and methods of accounting (including Claimants within the same Class), (iv) prior actions taken by Claimants with respect to their Claims and (v) the possibility that events or legislation subsequent to the date hereof could change the federal tax consequences of the transactions. There may also be state, local or foreign tax issues that may affect particular Claimants.

HOLDERS OF CLAIMS AND INTERESTS ARE URGED TO CONSULT THEIR TAX ADVISORS RESPECTING THE INDIVIDUAL TAX CONSEQUENCES OF THE TRANSACTIONS CONTEMPLATED UNDER OR IN CONNECTION WITH THE PLAN, INCLUDING STATE, LOCAL AND FOREIGN TAX CONSEQUENCES.

Tax Consequences to Claimants

A. In General

The tax consequences of the implementation of the Plan to a Claimant will depend in part on (i) whether the Claimant's Claim constitutes a security for federal income tax purposes, (ii) whether the Claimant reports income on the accrual basis, (iii) whether the Claimant receives consideration in more than one tax year, (iv) whether the Claimant is a resident of the United States, and (v) whether all the consideration received by the Claimant is deemed to be received by that Claimant as part of an integrated transaction. The federal tax consequences upon the receipt of Cash and notes allocable to interest are discussed in "Tax Consequences to Claimants - Receipt of Interest," below.

B. Gain or Loss on Exchange

The Debtor does not believe that any of the creditors' claims will constitute tax securities.

Whether a debt instrument constitutes a security is based on the facts and circumstances surrounding the origin and nature of the debt and its maturity date. Generally, claims arising out of the extension of trade credit have been held not to be securities. Instruments with a five-year term or less also rarely constitute securities. Accordingly, a Claimant will recognize gain or loss on the exchange of his existing Claim (other than a Claim for accrued interest) for any consideration. The amount of such gain or loss will equal the difference between (i) the "amount realized" in respect of such Claim and (ii) the adjusted tax basis of the Claimant in such Claim. Pursuant to Section 1001 of the Tax Code, the "amount realized" will be equal to the sum of the Cash plus the fair market value of any other property received in such exchange.

1. Receipt of Cash

A Claimant who receives cash in full satisfaction of his Claim will be required to recognize gain or loss on the exchange. The Claimant will recognize gain or loss equal to the difference between the "amount realized" in respect of such Claim and the adjusted tax basis of the Claimant in the Claim, and the tax treatment of the exchange will parallel the tax treatment set forth under "Tax Consequences to Claimants - Gain or Loss on Exchange," above.

2. Determination of Character of Gain or Loss

In the case of a Claimant whose existing Claim does not constitute a capital asset, the gain or loss realized on the exchange will give rise to ordinary income or loss. In the case of a Claimant whose existing Claim constitutes a capital asset in his hands, the gain or loss required to be recognized will generally be classified as a capital gain or loss, except to the extent of interest. Any capital gain or loss recognized by a Claimant will be long-term capital gain or loss with respect to those Claims for which the holding period of the Claimant is more than twelve (12) months, and short-term capital gain or loss with respect to such Claims for which the holding period of the Claimant is twelve (12) months or less.

3. Receipt of Interest

The BTA80 reversed prior law by providing that consideration attributable to accrued but unpaid interest will be treated as ordinary income, regardless of whether the Claimant's existing Claims are capital assets in his hands and the exchange is pursuant to a tax reorganization. A Claimant who, under his accounting method, was not previously required to include in income accrued but unpaid interest attributable to his existing Claims, and who exchanges his interest Claim for Cash, other property or Stock, or a combination thereof, pursuant to the Plan will be treated as receiving ordinary interest income to the extent of any consideration so received allocable to such interest, regardless of whether that Claimant realizes an overall gain or loss as a result of the exchange of his existing Claims.

C. Backup Withholding

Under the Tax Code, interest, dividends and other "reportable payments" may, under certain circumstances, be subject to "backup withholding" at a thirty-one percent (31%) rate. Withholding generally applies if the holder: (i) fails to furnish his social security number or other

taxpayer identification number (“*TIN*”), (ii) furnishes an incorrect *TIN*, (iii) fails to report interest or dividends or (iv) under certain circumstances fails to provide a certified statement, signed under penalty of perjury, that the *TIN* provided is his correct number and that he is not subject to backup withholding.

BECAUSE THE FINAL OUTCOME DEPENDS SO MUCH ON EACH INDIVIDUAL CLAIMANT’S SITUATION, IT IS IMPERATIVE THAT EACH CLAIMANT SEEK INDIVIDUAL TAX COUNSEL FOR ADVICE ON HIS PARTICULAR SITUATION.

IV. CONFIRMATION REQUIREMENTS AND PROCEDURES

To be confirmable, the Plan must meet the requirements listed in §§ 1129(a) or (b) of the Code. These include the requirements that: the Plan must be proposed in good faith; at least one impaired class of claims must accept the plan, without counting votes of insiders; the Plan must distribute to each creditor and equity interest holder at least as much as the creditor or equity interest holder would receive in a chapter 7 liquidation case, unless the creditor or equity interest holder votes to accept the Plan; and the Plan must be feasible. These requirements are not the only requirements listed in § 1129, and they are not the only requirements for confirmation.

A. Who May Vote or Object

Any party in interest may object to the confirmation of the Plan if the party believes that the requirements for confirmation are not met.

Many parties in interest, however, are not entitled to vote to accept or reject the Plan. A creditor or equity interest holder has a right to vote for or against the Plan only if that creditor or equity interest holder has a claim or equity interest that is both (1) allowed or allowed for voting purposes and (2) impaired.

In this case, the Debtor believes that classes 1 and 3 are impaired and that holders of claims in each of these classes are therefore entitled to vote to accept or reject the Plan.

1. What Is an Allowed Claim or an Allowed Equity Interest

Only a creditor or equity interest holder with an allowed claim or an allowed equity interest has the right to vote on the Plan. Generally, a claim or equity interest is allowed if either (1) the Debtor has scheduled the claim on the Debtor’s schedules, unless the claim has been scheduled as disputed, contingent, or unliquidated, or (2) the creditor has filed a proof of claim or equity interest, unless an objection has been filed to such proof of claim or equity interest. When a claim or equity interest is not allowed, the creditor or equity interest holder holding the claim or equity interest cannot vote unless the Court, after notice and hearing, either overrules the objection or allows the claim or equity interest for voting purposes pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure.

The deadline for filing a proof of claim in this case was February 22, 2016.

The deadline for filing objections to claims is 60 days after the entry of a confirmation Order.

2. What Is an Impaired Claim or Impaired Equity Interest

As noted above, the holder of an allowed claim or equity interest has the right to vote only if it is in a class that is impaired under the Plan. As provided in § 1124 of the Code, a class is considered impaired if the Plan alters the legal, equitable, or contractual rights of the members of that class.

3. Who is **Not** Entitled to Vote

The holders of the following five types of claims and equity interests are not entitled to vote:

- holders of claims and equity interests that have been disallowed by an order of the Court;
- holders of other claims or equity interests that are not “allowed claims” or “allowed equity interests” (as discussed above), unless they have been “allowed” for voting purposes.
- holders of claims or equity interests in unimpaired classes;
- holders of claims entitled to priority pursuant to §§ 507(a)(2), (a)(3), and (a)(8) of the Code; and
- holders of claims or equity interests in classes that do not receive or retain any value under the Plan;
- administrative expenses.

Even If You Are Not Entitled to Vote on the Plan, You Have a Right to Object to the Confirmation of the Plan [and to the Adequacy of the Disclosure Statement].

4. Who Can Vote in More Than One Class

A creditor whose claim has been allowed in part as a secured claim and in part as an unsecured claim, or who otherwise hold claims in multiple classes, is entitled to accept or reject a Plan in each capacity, and should cast one ballot for each claim.

B. Votes Necessary to Confirm the Plan

If impaired classes exist, the Court cannot confirm the Plan unless (1) at least one impaired class of creditors has accepted the Plan without counting the votes of any insiders within that class, and (2) all impaired classes have voted to accept the Plan, unless the Plan is eligible to be confirmed by a cram down on non-accepting classes, as discussed later in Section [B.2.].

1. Votes Necessary for a Class to Accept the Plan

A class of claims accepts the Plan if both of the following occur: (1) the holders of more than one-half (1/2) of the allowed claims in the class, who vote, cast their votes to accept the Plan, and (2) the holders of at least two-thirds (2/3) in dollar amount of the allowed claims in the class, who vote, cast their votes to accept the Plan.

A class of equity interests accepts the Plan if the holders of at least two-thirds (2/3) in amount of the allowed equity interests in the class, who vote, cast their votes to accept the Plan.

2. Treatment of Non-Accepting Classes

Even if one or more impaired classes reject the Plan, the Court may nonetheless confirm the Plan if the non-accepting classes are treated in the manner prescribed by § 1129(b) of the Code. A plan that binds non-accepting classes is commonly referred to as a cram down plan. The Code allows the Plan to bind non-accepting classes of claims or equity interests if it meets all the requirements for consensual confirmation except the voting requirements of § 1129(a)(8) of the Code, does not discriminate unfairly, and is fair and equitable toward each impaired class that has not voted to accept the Plan.

You should consult your own attorney if a cram down confirmation will affect your claim or equity interest, as the variations on this general rule are numerous and complex.

C. Liquidation Analysis

To confirm the Plan, the Court must find that all creditors and equity interest holders who do not accept the Plan will receive at least as much under the Plan as such claim and equity interest holders would receive in a chapter 7 liquidation. Given that this is a liquidating plan, the Debtor posits that creditors will receive more in its liquidation than in a chapter 7 liquidation due to the complexity and legal issues attendant to a liquidation of this nature. Thus, no liquidation analysis is necessary or appropriate.

D. Feasibility

Feasibility is not relevant since this is a Plan of liquidation.

1. Ability to Initially Fund Plan

The Plan will be funded as indicated from the Liquidation Fund and the Rivero Payment.

2. Ability to Make Future Plan Payments and Operate Without Further Reorganization

You Should Consult with Your Accountant or other Financial Advisor If You Have Any Questions Pertaining to These Projections.

V. EFFECT OF CONFIRMATION OF PLAN

A. DISCHARGE OF DEBTOR

Discharge. Confirmation of the Plan shall forever discharge the Debtor from any and all claims which arose before or during the commencement of the Case. In the event the Rivero Payment is not made the Liquidation Fund will be distributed as indicated and the Debtor will cease to exist. In the event the Rivero Payment is made, the post confirmation Debtor will be owned by the Riveros in exchange for the Rivero Payment, free and clear of all claims against the Debtor. For clarity, the Debtor will have no tangible material assets after the liquidation contemplated herein.

The Debtor will not be discharged from any debt excepted from discharge under § 523 of the Code, except as provided in Rule 4007(c) of the Federal Rules of Bankruptcy Procedure.

B. Modification of Plan

The Plan Proponent may modify the Plan at any time before confirmation of the Plan. However, the Court may require a new disclosure statement and/or re-voting on the Plan.

Upon request of the Debtor, the United States Trustee, or the holder of an allowed unsecured claim, the Plan may be modified at any time after confirmation of the Plan but before the completion of payments under the Plan, to (1) increase or reduce the amount of payments under the Plan on claims of a particular class, (2) extend or reduce the time period for such payments, or (3) alter the amount of distribution to a creditor whose claim is provided for by the Plan to the extent necessary to take account of any payment of the claim made other than under the Plan.

C. Final Decree

Once the estate has been fully administered, as provided in Rule 3022 of the Federal Rules of Bankruptcy Procedure, the Debtor, or such other party as the Court shall designate in the Plan Confirmation Order, shall file a motion with the Court to obtain a final decree to close the case. Alternatively, the Court may enter such a final decree on its own motion

DATED September 23, 2016

Respectfully submitted,

EXPORTHER BONDED CORP., d/b/a EBC Duty
Free; Debtor, Debtor in Possession and Plan
Proponent

By: _____

JUAN CARLOS RIVERO
It's President

/s/ David R. Softness

David R. Softness, Esq.

FBN: 0513229

DAVID R. SOFTNESS, P.A.

Counsel for the Debtor

201 S. Biscayne Blvd.

Suite 2740

Miami, Florida 33131

Email david@softnesslaw.com

Tel: 305-341-3111

Counsel for the Debtor