

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

In re: ) Chapter 11  
 )  
ESB 1836 Incorporated, ) Case No. 16-13848  
 )  
Debtor. ) Hon. Timothy A. Barnes

**DISCLOSURE STATEMENT FOR  
DEBTOR'S PLAN OF REORGANIZATION**

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Dated: June 1, 2016

**DISCLAIMERS**

**THE DESCRIPTION OF THE PLAN CONTAINED IN THIS DISCLOSURE STATEMENT IS INTENDED AS A SUMMARY ONLY AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE PLAN ITSELF. THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE AS OF THE DATE HEREOF, UNLESS ANOTHER TIME IS SPECIFIED HEREIN, AND DELIVERY OF THIS DISCLOSURE STATEMENT SHALL NOT CREATE AN IMPLICATION THAT THERE HAS BEEN NO CHANGE IN THE FACTS SET FORTH HEREIN SINCE THE DATE OF THIS DISCLOSURE STATEMENT AND THE DATE THE MATERIALS RELIED UPON IN PREPARATION OF THIS DISCLOSURE STATEMENT WERE COMPILED.**

**THIS DISCLOSURE STATEMENT MAY NOT BE RELIED UPON FOR ANY PURPOSE OTHER THAN TO DETERMINE HOW TO VOTE ON THE PLAN, AND NOTHING CONTAINED HEREIN SHALL CONSTITUTE AN ADMISSION OF ANY FACT OR LIABILITY, STIPULATION OR WAIVER BY ANY PARTY, OR BE ADMISSIBLE IN ANY PROCEEDING INVOLVING THE DEBTOR (INCLUDING BUT NOT LIMITED TO EXISTING LITIGATION INVOLVING THE DEBTOR, ADVERSARY PROCEEDINGS, AND OTHER ACTIONS OR THREATENED ACTIONS) OR ANY OTHER PARTY, OR BE DEEMED CONCLUSIVE ADVICE ON THE TAX OR OTHER LEGAL EFFECTS OF THE REORGANIZATION ON HOLDERS OF CLAIMS OR INTERESTS.**

**THIS DISCLOSURE STATEMENT, TOGETHER WITH THE PLAN SHOULD BE READ IN THEIR ENTIRETY. CREDITORS AND EQUITY INTEREST HOLDERS ARE URGED TO CONSULT WITH THEIR OWN INDIVIDUAL COUNSEL, AND SUCH OTHER ADVISORS AS MAY BE NECESSARY OR APPROPRIATE, AND TO REVIEW ALL OF THE PLEADINGS FILED IN THIS BANKRUPTCY CASE IN ORDER TO FULLY UNDERSTAND THE DISCLOSURES MADE HEREIN, AND ANY OTHER PERTINENT MATTERS IN THESE PROCEEDINGS.**

## I. INTRODUCTION

On April 22, 2016, ESB 1836 Incorporated (“*Debtor*”) filed its voluntary petition for relief under chapter 11 of title 11, United States Code (11 U.S.C. §§ 101, *et seq.*, the “*Bankruptcy Code*”).

This disclosure statement (the “*Disclosure Statement*”) is submitted in connection with the Debtor’s Plan of Reorganization (the “*Plan*”). A copy of the Plan is attached hereto as **Exhibit A**. The purpose of this Disclosure Statement is to provide the Debtor’s Creditors and other interested parties with sufficient information about the Plan to enable Creditors to make an informed judgment about the merits of the Debtor’s Plan and whether they should vote for or against the Plan.<sup>1</sup> A ballot for voting on the Plan also is included with this Disclosure Statement.

The information contained in this Disclosure Statement relies, in part, on financial information prepared by the Receiver that has been in control of the Real Estate since July 2012, which information has not been audited by the Debtor. In addition, the estimated amount of Allowed Claims contained in this Disclosure Statement remains subject to adjustment when, and as, the process of objection to the allowance of Claims (as may be appropriate) advances toward completion.

The description of the Plan set forth herein constitutes a summary only, and should be read in conjunction with the Plan. The Plan is a legal document that, upon confirmation, will be binding on all parties. Creditors, Interest holders and other parties-in-interest are urged to consult with independent legal counsel and to review the description of the Plan contained in this Disclosure Statement, as well as the Plan itself.

## II. SUMMARY OF THE PLAN

Local Bankruptcy Rule 3016-1 requires that the Debtor prepare a summary of the Plan (the “*Summary*”) that sets forth the nature of the Plan and includes a clear description of the exact proposed treatment of each Class of Creditors, showing total amounts and timing of payments to be made under the Plan and all sources and amounts of funding thereof, as well as plainly identifying all Classes of Creditors, the composition of each Class, the amount of Claims, and the property to be received by each Class. Accordingly, the Debtor submits the following Summary:

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<sup>1</sup> All capitalized terms not specifically defined herein shall have the meanings ascribed to them in the Plan.

<b>Debtor:</b>	ESB 1836 Incorporated
<b>General Purpose:</b>	The Plan contemplates the transfer of all of the Debtor’s assets to the Reorganized Debtor for the implementation of the Plan, the treatment of Creditors under the Plan, and the reorganization and continuation of the Debtor’s business by the Reorganized Debtor.
<b>Plan Funding:</b>	The Plan will be funded by and through (i) a revolving loan (the “New Loan”) from the existing Equity of the Debtor ( <i>i.e.</i> , up to at least \$150,000), and (ii) the Reorganized Debtor’s future cash flow generated by its ongoing business operations.
<b>Summary of Treatment of Administrative Claims:</b>	All Administrative Claims and Priority Claims, if any, shall be paid in full shortly after the confirmation of the Plan with proceeds of the New Loan.
<b>Summary of Treatment of the Forman Real Property, LLC (Class 1):</b>	Forman Real Property, LLC holds a disputed Secured Claim. The New Equity shall fund litigation against Forman Real Property and the prior holder of such Secured Claim, First Security Trust and Savings Bank.
<b>Summary of Treatment of General Unsecured Claims (Class 2):</b>	There are approximately \$38,500 in General Unsecured Claims. Each Holder of such claim shall be paid pro-rata from the proceeds of the sale of substantially all of the assets of the Reorganized Debtor and litigation against Forman Real Property, LLC and First Security Trust and Savings Bank and only after the full repayment of the New Loan (plus interest and expenses).
<b>Effective Date:</b>	The Plan shall become effective (the “ <i>Effective Date</i> ”), when each of the following conditions has been satisfied (unless waived by the Debtor): (i) the Bankruptcy Court enters the Confirmation Order; (ii) the Confirmation Order becomes a Final Order; and (iii) all other actions and documents necessary to implement the Plan as of the Effective Date have been effected or duly executed and delivered.
<b>Hearing on Disclosure Statement:</b>	There will be a hearing on approval of the Disclosure Statement on _____ before the Honorable _____ in Courtroom ___ of the Everett McKinley Dirksen Federal Building at 219 South Dearborn Street, Chicago, Illinois, 60604.
<b>Hearing on Confirmation of the Plan:</b>	There will be a hearing on confirmation of the Plan on ____ before the Honorable _____ in Courtroom ___ of the Everett McKinley Dirksen Federal Building at 219 South Dearborn Street, Chicago, Illinois, 60604.

<b>Voting:</b>	Holders of Claims in Classes 1 and 2 are Impaired and are entitled to vote to accept or reject the Plan. Those Creditors entitled to vote on the Plan should complete the Ballot accompanying this Disclosure Statement and return it to the Clerk’s Office, United States Bankruptcy Court, Eastern Division, 7 <sup>th</sup> Floor, 219 South Dearborn Street, Chicago, Illinois 60604. Ballots must be received on or before _____. Only those Ballots returned on a timely basis will be counted in determining whether a particular Class of Creditors has accepted or rejected the Debtor’s Plan. A Class of Claims will have accepted the Plan if two-thirds in amount and more than one-half in number have voted to accept the Plan.
<b>Objections:</b>	All objections to approval of the Disclosure Statement or confirmation of the Plan must be in writing, state the basis for the objection, be filed with the Bankruptcy Court, and be served upon counsel for the Debtor, Robert W. Glantz, Midwest Bankruptcy Attorneys LLC, 321 N. Clark St., Suite 800, Chicago, Illinois 60654, by not later than _____.
<b>Cramdown Option:</b>	In the event that a Class of Creditors rejects the Plan and one Impaired Class of Creditors votes to accept the Plan, the Debtor reserves the right to seek confirmation under § 1129(b) of the Bankruptcy Code., <i>i.e.</i> , the Cramdown Option.
<b>Additional Information:</b>	Requests for information regarding the Plan or this Disclosure Statement should be directed to counsel for the Debtor, Robert W. Glantz, Midwest Bankruptcy Attorneys LLC, 321 N. Clark St., Suite 800, Chicago, Illinois 60654; (312) 666-2835; <a href="mailto:rwglantz@midwestbankruptcyattorneys.com">rwglantz@midwestbankruptcyattorneys.com</a>

The Debtor submits that the above Summary meets the requirements of the Bankruptcy Code, the Bankruptcy Rules and Local Bankruptcy Rules. After reviewing the Disclosure Statement and the Plan, the Debtor requests that you vote on the Plan. In reaching your decision to accept the Plan, you should not rely on any representations other than those contained in this Disclosure Statement. As a Creditor, your vote is important. As specified in the above Summary, the Bankruptcy Court can confirm the Plan if the holders of two-thirds in amount and more than one-half in number of claims in an Impaired Class vote to accept the Plan.

*The Debtor believes that the Plan affords Creditors the best overall recovery possible under the circumstances, as well as the ability to maintain an ongoing business relationship with the Reorganized Debtor. As set forth in the Liquidation Analysis contained herein, if the Plan is not confirmed, the Debtor believes that Unsecured Creditors will receive nothing on account of their claims whereas under the Plan the General Unsecured Creditors will receive 80-100% of their Claims. The Debtor’s sole asset is the Real Estate (the real property commonly known as 7315 W. Grand Ave., Elmwood Park, Illinois (the “Real Estate”). The Real Estate is fully encumbered by the disputed mortgage lien of Forman Real Property (as such lien was acquired from the Debtor’s original lender, First Security Trust and Savings Bank and thus if the Debtor’s assets are liquidated out of bankruptcy, all of the proceeds will be paid to Forman Real Property, LLC on account of its secured interest in the Real Estate.*

*The Debtor therefore believes that acceptance of the Plan is in the best interest of Creditors and strongly urges all Creditors to vote to accept the Plan.*

### III. GENERAL INFORMATION

#### A. Background of Real Estate, Financing and Claims of the Debtor.

The claims of the Debtor against First Security Trust and Savings Banks and Forman Real Property, LLC arise from the following:

##### The Loan from First Security

On or about February 17, 2005, Debtor entered into a loan transaction in which First Security Trust and Savings Bank ("First Security") agreed to loan Debtor an original principal amount of \$645,000.00 (the "Loan") to purchase the Real Estate. In turn, on or about February 17, 2005, the Debtor executed a Note in favor of First Security in the principal amount of \$645,000.00 (the "Note"). As security for the Note, on or about February 17, 2005, the Debtor executed a Mortgage (the "Mortgage") encumbering the Real Estate. On or about February 9, 2007, the Debtor entered into a loan transaction in which First Security agreed to loan Debtor an original principal amount of \$100,000.00. In turn, on or about February 9, 2007, Debtor ESB executed a Second Note in favor of Plaintiff in the principal amount of \$100,000.00 (the "Second Note"). As security for the Second Note, on or about February 9, 2007, Debtor granted First Security a Second Mortgage (the "Second Mortgage") encumbering the Real Estate. On or about June 28, 2011, Debtor executed an Amended Note in favor of First Security in the principal amount of \$600,000.00 (the "Amended Note"). The Amended Note was a replacement and substitution for the Note and Second Note. As security for the Amended Note, on or about June 28, 2011, Debtor executed an Amended Mortgage (the "Amended Mortgage") encumbering the Real Estate. The Amended Mortgage was an amendment and replacement of the Mortgage and Second Mortgage.

##### The Fraud Committed by First Security Upon the Debtor

Jeffrey Gonsiewski ("Gonsiewski"), a Vice President of First Security at the time, solicited ESB to purchase the Real Estate and to execute the Note and Mortgage. Gonsiewski informed Defendants that one of First Security's clients, Mykla Slavnytsky, was having problems managing the Real Estate, and he wished to help her dispose of it.

To induce Debtor to purchase the Real Estate, First Security—through its agent Gonsiewski—provided Debtor with a fraudulent appraisal of the Real Estate stating that the Real Estate had a market value of \$1,200,000.00 (the "Appraisal"). First Security advised Debtor that it was willing to make the Loan in the full amount of the reduced purchase price of \$645,000.00 because the property was worth almost double: \$1,200,000.00. The Appraisal was prepared at the request of Gonsiewski, who conspired with the author of the same to prepare a knowingly false appraisal to enable Gonsiewski's client, Mykola Slavnytsky, to sell the Real Estate.

The representations made by First Security regarding the market value of the Real Estate were false, and First Security knew at that time that the actual value of the Real Estate was between \$500,000 and \$700,000 (hereinafter the "Misrepresentations").

The Debtor took the Loan from First Security and executed the Note, the Mortgage, and their progeny, based upon, and in reliance upon, First Security's Misrepresentations. Based on the Misrepresentations and the Appraisal, the Debtor agreed to purchase the Property for a price of \$645,000. The Debtor's principals, Eric Davis and Mark Seef, relied on the Misrepresentations of First Security when they decided that the Debtor should purchase the Real Estate and accept the Loan from First Security.

In addition, the Debtor was also forced to spend approximately \$150,000 in repairs to the Real Estate (the "Repair Costs"), that were necessitated by latent defects hidden from the Debtor.

Gonsiewski was aware of the numerous latent and structural defects necessitating and such Repair Costs, and concealed the same from the Debtor.

Gonsiewski has pled guilty in federal court for a scheme to defraud, pursuant to which he issued numerous loans that were under-collateralized or unsecured and falsified documentation to make it appear as though sufficient collateral existed for the loans. (*See* Plea Agreement, *United States vs. Jeffrey Gonsiewski*, Case No. 10-CR-606 (N.D., Ill. August 11, 2010))

Sometime after July 30, 2014, First Security assigned its interest in the Loan to Forman Real Property, LLC. Forman Real Property took such assignment with full knowledge of the fraud committed upon the Debtor.

#### **B. Ownership and Management.**

The Debtor's equity is owned by two individuals, Mark Seef and Eric Davis. No receiver was appointed in the Foreclosure Action. The Debtor maintains possession of the Real Estate.

#### **IV. FUNDING THE PLAN**

The Plan will be funded mainly by and through and new revolving loan from the existing equity of the Debtor to essentially fund litigation against the existing and former lien holders. In addition, the Plan will be funded from the existing and future rents generated by the Real Estate and ultimately through the sale or refinance of the Real Estate.

- A new revolving loan of up to \$150,000 (the "*New Loan*") bearing interest at eight percent per annum (8%).
- The Reorganized Debtor's future cash flow generated by its ongoing business operations;
- Proceeds of the litigation (the "*Litigation*") against First Security and Forman Real Property, LLC and the sale or refinance of the Real Estate.

**V. TREATMENT OF CLAIMS AND EQUITY INTERESTS UNDER THE PLAN**

**A. The Purpose of the Plan of Reorganization**

As required by the Bankruptcy Code, the Debtor’s Plan places Claims and Equity Interests in various Classes and describes the treatment each Class will receive (e.g., how each Claim will be paid under the Plan). 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.

**B. Unclassified Claims**

Certain types of claims are automatically entitled to specific treatment under the Bankruptcy Code. They are not considered impaired, and holders of such claims do not vote on the Debtor’s Plan. They may, however, object if, in their view, their treatment under the Plan does not comply with that required by the Bankruptcy Code. The following are the unclassified claims in the Plan.

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 Bankruptcy 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 Bankruptcy Code requires that all administrative expenses be paid on the Effective Date of the Plan, unless a particular claimant agrees to a different treatment.

Because rents will generate sufficient income to pay operating expenses, no outstanding operating expenses are likely to be incurred during the course of this Case.

The Debtor believes that the principal administrative expense in this Case will relate to the Litigation and the New Loan. The Debtor plans to use the proceeds of the New Loan to pay expenses otherwise entitled to administrative priority, such as an appropriate retainer for counsel hired to prosecute the Litigation Claims and U.S. Trustee fees. Because the Debtor is using the proceeds of the New Loan to pay claims with administrative priority, the Debtor believes that the only administrative claim will be held by the lenders, who are the current equity of the Debtor.

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

<b><u>Estimated Administrative Expenses</u></b>		
<b>Expense Type</b>	<b>Proposed Treatment</b>	<b>Est. Am’t</b>
Expenses arising in the ordinary course of business after the Petition Date	Paid in full on the Effective Date or according to terms of obligation, if later	\$0



Value of goods received in the ordinary course of business within 20 days before the Petition Date	Paid in full on the effective date of the plan or according to terms of obligation, if later	\$0
Professional Fees, as approved by the Court	Fees in excess of the retainer will be paid on the Effective Date	Between \$50,000 and \$125,000
Office of the U.S. Trustee Fees	Paid in accordance with applicable law	\$2,000

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.

The Debtor does not have any employees. Thus, there should not be any priority tax claims in this Case.

C. Classification of Claims; Number and Amount of Claims; Distributions and Other Treatment

The Plan divides the Claims against and Interests in the Debtors into separate Classes, including one Class of Secured Claims, three Classes of Unsecured Claims and one Class of Interests in the Debtor, each of which will receive different treatment under the Plan or has different rights under the Plan. A Claim will receive a distribution under the Plan only to the extent it is an Allowed Claim.<sup>2</sup> Any distribution under the Plan to Holders of Allowed Claims will be in full satisfaction of those Claims.

1. Classes of Secured Claims

Under the Bankruptcy Code, a secured claim arises when a creditor has a lien upon the debtor’s property to secure the debtor’s repayment obligations. In this case, the Debtor believes that Forman Real Property, LLC asserts secured interests in the Real Estate. The Plan classifies Forman Real Property, LLC’s secured claim in Class 1.

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<sup>2</sup> An Allowed Claim or Allowed Administrative Claim are: (a) any Claim or Administrative Claim, proof of which was filed with the bankruptcy Court on or before the applicable Bar Date, or which has been or hereafter is scheduled by the Debtor as liquidated in amount and not disputed or contingent and which, in either case, is a Claim as to which no objection to the allowance thereof has been Filed within the applicable period of limitation (if any) for objection to Claims set forth in the Plan or as otherwise fixed by the Bankruptcy Court, or as to which any objection has been determined by an order or judgment of the Court (allowing such Claim in whole or in part) that is no longer subject to appeal or certiorari proceedings, and as to which no appeal or certiorari proceeding is pending, or (b) any Claim or Administrative Claim that is allowed (i) in a Final Order or (ii) pursuant to the terms of the Plan.

The following chart summarizes the Treatment of the Class 1 Claim:

<b><u>Forman Real Property Secured Claim</u></b>			
<b>Class, Impairment</b>	<b>Description</b>	<b>Proposed Treatment</b>	<b>Est. Am't of Distribution</b>
Class 1, Impaired	Forman Real Property, LLC to the extent of the value of the Real Estate less the offset for Debtor's Counterclaims.	The Debtor Disputes this claim and states that Debtor's counterclaims and/or offsets exceed any amounts due this creditor.	\$0,00

2. Classes of Priority Unsecured Claims

The Bankruptcy Code also requires that a reorganization plan place certain priority claims – which mainly relate to unpaid wages or benefits earned within 180 days of bankruptcy and are delineated in §§ 507(a)(3) through (a)(7) of the Bankruptcy Code – into a separate class. The Bankruptcy Code further provides that if a class of priority claims votes in favor of a debtor's plan, the holders of claims in that class can receive deferred cash payments equal to the allowed amount of such claims and that if the class does not accept the plan, the holders of such claims have to receive payment in full on the effective date of the plan.

There are no Priority Unsecured Claims in this Bankruptcy Case.

3. Class of Unsecured Claims

The Plan contains one class of Unsecured Claims – Class 2. Unsecured claims are not secured by property of the estate and are not entitled to priority treatment under the Bankruptcy Code (*i.e.*, under § 507(a) of the Bankruptcy Code). The following chart identifies the Reorganization Plan's proposed treatment of Allowed Unsecured Claims that are classified in Class 2:

<b><u>Classes of Unsecured Claims</u></b>			
<b>Class, Impairment</b>	<b>Description</b>	<b>Proposed Treatment</b>	<b>Est. Am't of Distribution</b>
Class 2, Impaired	General Unsecured Claims	Each Holder of a General Unsecured Claim shall receive a pro-rata distribution upon the conclusion or settlement of the litigation and the eventual sale or refinance of the Real Estate.	Paid in full over time after conclusion or settlement of the litigation

4. Class of Equity Interests

The Plan contains one Class consisting of the Debtor Interests, the treatment of which is as follows:

<b><u>Classes of Equity Interests – Chart 5</u></b>			
<b>Class, Impairment</b>	<b>Description</b>	<b>Proposed Treatment</b>	<b>Est. Am't of Distribution</b>
Class 3, Impaired	Debtor Interests (i.e., any share of the interests in the Debtor outstanding on the Effective Date	The Holder of the Debtor's Interests shall retain such Interests under the Plan and in exchange for funding the New Loan shall participate in the equity of the Reorganized Debtor.	N/A

**VI. THE PLAN OFFERS RECOVERIES TO CREDITORS THAT ARE HIGHER THAN IF THIS CASE WERE CONVERTED TO A CASE UNDER CHAPTER 7 OF THE BANKRUPTCY CODE**

The Bankruptcy Code provides that creditors are entitled to receive as much under a Chapter 11 plan as they would receive if the debtor were liquidated under chapter 7 of the Bankruptcy Code. Additionally, the Local Rules for the Bankruptcy Court require that a Disclosure Statement contain an analysis of how creditors would fare if the debtor were liquidated.

In this case, the Debtor believes that Creditors, particularly unsecured creditors, will fare much better under the Plan than they would if the Debtor is liquidated under chapter 7 of the Bankruptcy Code. As noted above, the Plan contemplates that the unsecured creditors will ultimately receive over 100% of their allowed claims upon conclusion of the Litigation.

The Debtor believes that Creditors, other than Forman Real Property, LLC to the extent of its secured claim, will not receive anything on account of their Claims if the Debtor's assets are liquidated under chapter 7 of the Bankruptcy Code because the Real Estate is worth substantially less than the amount claimed by Forman Real Property, LLC and the Debtor does not own any other assets that could be liquidated for the benefit of other Creditors.

## **VII. MEANS OF IMPLEMENTING THE PLAN AND OTHER PLAN PROVISIONS**

### **A. Injunctions; Stays.**

Any injunctions or stays, whether by operation of law or by order of the Bankruptcy Court, provided for in the Case pursuant to section 105 or 362 of the Bankruptcy Code or otherwise that are in effect on the Confirmation Date shall remain in full force and effect until the Effective Date.

### **B. Vesting of Debtor's Estate.**

On and as of the Effective Date, pursuant to section 1141(b) of the Bankruptcy Code all remaining Property of the Estate, including, without limitation, all rights of the Debtor under the Plan, the Confirmation Order, and all other orders entered by the Bankruptcy Court in the Chapter 11 Case on or prior to the Effective Date, and all books and records related to the Estate, shall be transferred to and vest in the Reorganized Debtor and be deemed contributed thereto, subject to the terms of the Plan.

### **C. Issuance of New Equity and New Equity Contribution.**

On the Effective Date, or as soon as reasonably practicable thereafter, the New Equity shall be issued to ESB 1836 New Equity, LLC pursuant to the Plan, in exchange for the New Loan, to fund payment of the (i) Administrative Claims and (ii) the Litigation. The issuance of the New Equity by the Reorganized Debtor is authorized without the need for any further corporate action or without any further action by a holder of Claims or Equity Interests.

### **D. Corporate Existence.**

Except as otherwise provided in the Plan, the Debtor shall continue to exist after the Effective Date as a limited liability company with all the powers of a limited liability company pursuant to the applicable law in the jurisdiction in which the Debtor is incorporated or formed and pursuant to the applicable formation documents in effect prior to the Effective Date, except to the extent such formation documents are amended by the Plan or otherwise, and to the extent such documents are amended, such documents are deemed to be amended pursuant to the Plan and require no further action or approval.

### **E. Corporate Action.**

Each of the matters provided for by the Plan involving the corporate structure of the Debtors or corporate or related actions to be taken by or required of the Reorganized Debtor shall, as of the Effective Date, be deemed to have occurred and be effective as provided in the Plan (except to the extent otherwise indicated), and shall be authorized, approved, and, to the extent taken prior to the Effective Date, ratified in all respects without any requirement of further action by holders of Claims or Equity Interests, members of the Debtor, or any other Entity.

### **F. Effectuating Documents; Further Transactions.**

On and after the Effective Date, the Reorganized Debtor and the members thereof, are

authorized to and may issue, execute, deliver, file, or record such contracts, securities, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of the Plan and the New Equity issued pursuant to the Plan in the name of and on behalf of the Reorganized Debtor, without the need for any approvals, authorization, or consents except for those expressly required pursuant to the Plan. Nothing in the Plan shall impair or prevent the Reorganized Debtor from merging with another business, selling substantially all of its assets or effectuating a Real Estate Transaction (without any further authorization from the Bankruptcy Court or any other Entity).

**G. Exemption from Certain Taxes and Fees.**

Pursuant to section 1146(a) of the Bankruptcy Code, and to the extent permitted under the law, any transfer to any Entity pursuant to, in contemplation of, or in connection with the Plan or pursuant to: (a) the issuance, distribution, transfer, or exchange of any debt, equity security, or other interest in the Debtor or the Reorganized Debtor; (b) the creation, modification, consolidation, or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means; (c) the making, assignment, or recording of any lease or sublease; or (d) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any stamp tax, FERC filing or recording fee, or other similar tax or governmental assessment, and the appropriate state or local governmental officials or agents shall forego the collection of any such tax or governmental assessment and to accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

**H. Representative of the Estate.**

The Reorganized Debtor shall be the representative of the Estate of the Debtor in all respects pursuant to section 1123(b)(3)(B) of the Bankruptcy Code, and the Reorganized Debtor shall be vested as of the Effective Date with all rights and powers of the Debtor under the Bankruptcy Code and other applicable law, the Plan, the prior orders of the Court in this Chapter 11 Case, and in all other respects.

**I. Risk Factors.**

In summary, the Plan will be funded by (i) the New Loan (ii) the Reorganized Debtor's revenue stream from the leasing of the Real Estate; and (iii) a sale of the Real Estate or the refinancing of the Debtor's outstanding secured obligations to the extent it is determined by a court or through settlement.

As set forth in this Disclosure Statement, the Debtor believes that the New Loan, future rental income, and proceeds of the Litigation will be sufficient to meet all of the Reorganized Debtor's obligations under the Plan. There is, however, a risk that the Reorganize Debtor will not generate enough revenue from the leasing or sale of the Real Estate or the Litigation to

enable it to continue operating, in which case no Distributions will be made to Creditors under the Plan.

**J. Executory Contracts and Unexpired Leases.**

Within sixty (60) days of the Effective Date, the Reorganized Debtor shall be authorized, without further order of the Bankruptcy Court, to assume or reject executory contracts or unexpired leases by giving thirty (30) days' prior written notice to the parties thereto, not later than the expiration of the foregoing 60-day period, by which such contract or lease shall be deemed assumed or rejected, as the case may be. The notice to the contract counterparty of any executory contract or unexpired lease to be assumed shall contain the Debtor's proposed cure amount for such contract or lease, which such cure amount shall be determined pursuant to agreement of the parties or by further order of the Court if no such agreement can be reached. Any rejection damages arising pursuant to a notice of rejection shall constitute Class 2 Claims.

**K. Objections to Claims.**

Objections to Claims other than Administrative Claims and governmental Proofs of Claim shall be filed by the date that is seventy-five (75) days after the Effective Date and Objections to Administrative Claims and governmental Proofs of Claims shall be filed with the Bankruptcy Court no later than sixty (60) days after the applicable Bar Date (the "Claim Objection Deadlines"); provided, however, that these deadlines may be extended by the Bankruptcy Court upon motion of the Reorganized Debtor. Scheduled claims that are subject to an objection shall not be deemed Allowed Claims pending resolution of the objection with respect thereto. Notwithstanding the foregoing, (i) the Bankruptcy Court shall overrule any objections to Claims that are deemed Allowed Claims under the Plan and (ii) any proof of Claim filed after the Bar Date shall be automatically disallowed as a late filed Claim, without any action by Debtor, unless and until the party filing such Claim obtains the written consent of the Debtor, or after the Effective Date, the Reorganized Debtor, to file such Claim late or obtains an order of the Bankruptcy Court upon notice to the Debtor that permits the late filing of the Claim, in which event, the Debtor, or after the Effective Date, the Reorganized Debtor, shall have thirty (30) days from the date of such written consent or order to object to such Claim, which deadline may be extended with the written consent of the Holder of such Claim or by the Bankruptcy Court upon motion of the Debtor, or after the Effective Date, the Reorganized Debtor, without notice or a hearing. Nothing herein shall be construed to extend the Bar Dates or the Bar Date for rejection damages set forth in Section VIII.C. of the Plan. Subject to Bankruptcy Court approval, objections to Claims may be litigated to judgment, settled or withdrawn. Distributions with respect to and on account of Claims to which objections have been filed will be made as soon as practicable after an order, judgment, decree or settlement agreement with respect to such Claim becomes a Final Order.

**L. Releases and Injunction.**

Except as otherwise expressly provided in the Plan or for obligations issued pursuant to the Plan, all Entities who have held, hold, or may hold, Claims or Interests that have been released, compromised or are subject to exculpation pursuant to Article X of the Plan, are permanently enjoined, from and after the Effective Date, from: (a) commencing or continuing in

any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests; (b) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Entities on account of or in connection with or with respect to any such Claims or Interests; (c) creating, perfecting, or enforcing any encumbrance of any kind against such Entities or the property or estates of such Entities on account of, in connection with or with respect to any such Claims or Interests; (d) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from such Entities or against the property or estates of such Entities on account of, in connection with or with respect to any such Claims or Interests unless such Holder has filed a motion requesting the right to perform such setoff on or before the Effective Date, and notwithstanding an indication in a proof of Claim or interest or otherwise that such Holder asserts, has, or intends to preserve any right of setoff pursuant to § 553 of the Bankruptcy Code or otherwise; and (e) commencing or continuing in any manner any action or other proceeding of any kind on account of, in connection with or with respect to any such Claims or Interests released or settled pursuant to the Plan, provided that notwithstanding anything to the contrary herein, no such release is granted by this paragraph.

**M. Exculpation.**

Except as otherwise specifically provided in the Plan, no Entity shall have or incur, and each such Entity is released and exculpated from any Claim, obligation, Cause of Action, or liability to one another or to any exculpating party for any Claim (except for gross negligence, willful misconduct, or fraud, but in all respects such Entities shall be entitled to reasonably rely upon the advice of counsel) with respect to their duties and responsibilities pursuant to the Plan and their conduct in connection with the bankruptcy case. The Debtor and each of its affiliates, officers, directors, principals, employees, agents, advisors, attorneys, accountants, consultants, representatives, and other Professionals have, and upon the Effective Date shall be deemed to have, participated in good faith and in compliance with the applicable provisions of the Bankruptcy Code with regard to Distributions set forth pursuant to the Plan, and therefore are not, and on account of any such Distribution shall not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or any such Distribution made pursuant to the Plan.

**N. Discharge of Claims; Termination of Interests and Rights.**

Except as otherwise provided in the Plan or the Confirmation Order, pursuant to section 1141(d)(1) of the Bankruptcy Code, all Claims against the Debtor or the Reorganized Debtor arising before the entry of the Confirmation Order shall be discharged as of the Effective Date, regardless of whether the Holder of the Claim or any other Person filed a proof of Claim based on the debt, and whether or not a Claim is allowed under section 502 of the Bankruptcy Code or whether the Holder of the Claim has accepted the Plan.

**O. Conditions to Confirmation of the Plan and Effective Date.**

Other than as stated in the Plan, there are no conditions to confirmation of the Plan. The Effective Date shall not occur until the Cash Infusion has been made.

**P. Tax Consequences of Plan.**

**CREDITORS AND EQUITY INTEREST HOLDERS CONCERNED WITH HOW THE PLAN MAY AFFECT THEIR TAX LIABILITY SHOULD CONSULT WITH THEIR OWN ACCOUNTANTS, ATTORNEYS, AND/OR ADVISORS.**

**VIII. CONFIRMATION STANDARDS**

The Bankruptcy Court shall confirm the Plan at the Combined Hearing only if the requirements of §1129 of the Bankruptcy Code are met. Among the requirements for confirmation of a plan of reorganization are that the Plan must be (i) accepted by all impaired classes of Claims and equity interest, or if rejected by an impaired class, that the Plan does not discriminate unfairly and is fair and equitable as to such class, (ii) feasible, and (iii) in the best interest of holders of Claims and interest that are impaired under the Plan. These are complex statutory provisions and this summary is not intended to be a complete statement of the law.

**A. Acceptance.**

Each Impaired Class must accept the Plan by the percentages set forth in § 1126 of the Bankruptcy Code. Under the Plan, Classes 1, 2 and 3 are Impaired by the Plan and are entitled to vote to accept or reject the Plan. In addition, the Debtor expressly reserves the right to seek confirmation under § 1129(b) of the Bankruptcy Code with respect to any Class of Claims that is entitled to vote to accept or reject the Plan, and such Class rejects the Plan.

**B. Unfair Discrimination/Fair and Equitable.**

If less than all the Impaired Classes accept the Plan, the Plan may nevertheless be confirmed by the Bankruptcy Court under § 1129(b) of the Bankruptcy Code, as long as one (1) Impaired Class has affirmatively voted to accept the Plan, not counting the votes of any “insiders.” In order to be confirmed pursuant to § 1129(b) of the Bankruptcy Code, the Bankruptcy Court must find, with respect to each nonaccepting Class, that the Plan “does not discriminate unfairly” and is “fair and equitable with respect to that class.” A plan does not discriminate unfairly if no class receives more than it is entitled to for its claim. The Bankruptcy Code establishes different “fair and equitable” tests for secured creditors and unsecured creditors as follows:

1. Secured Creditors. A Secured Creditor whose Claim is Impaired must retain the liens securing its Claim and receive under the Plan cash payments that have a present value at least equal to such Holder’s Allowed Secured Claim, or otherwise receive the “indubitable equivalent” of the value of the interest in the Debtor’s asset upon which the Creditor holds a lien.

2. Unsecured Creditors. An Unsecured Creditor whose Claim is impaired must receive or retain under the Plan, property of a value at least equal to the amount of its Allowed Unsecured Claim, or the Holders of Claims and Interests that are junior to the Claims of the dissenting Class shall not receive any property under the Plan, this principle is also referred to as the ‘absolute priority rule’ which is discussed briefly below.



3. Equity Interests. An equity interest Holder, or shareholder, must receive and retain under the Plan, property of a value equal to the greatest of the allowed amount of any fixed liquidation preference to which such Holder is entitled, any fixed redemption price to which such Holder is entitled, or the value of the interest, or the Holder of any interest junior to the nonaccepting class shall not receive or retain any property under the Plan, this principle is also referred to as the ‘absolute priority rule’ which is discussed briefly below.

4. Absolute Priority Rule. In order for the Plan to be “fair and equitable” it must comply with the ‘absolute priority rule’, which requires with respect to each Impaired dissenting Class of Creditors and Interests Holders, such Creditors or Interest Holders receive or retain on account of their Claims or Interests, property of a value, as of the Effective Date of the Plan, at least equal to the value of their Claim or Interest or, if they receive less than full value, that no inferior or junior class receive or retain anything on account of such junior Claim or Interest. In other words, beginning with the most senior impaired dissenting Class of Creditors, such Class must receive full and complete payment before any Class in descending rank or priority may participate in a distribution under the Plan.

**C. Feasibility**

The Bankruptcy Court must also determine that confirmation of the Plan is not likely to be followed by the liquidation or further financial reorganization of the Debtor, unless provided in the Plan.

**D. Best Interests**

Section 1129(a)(7) of the Bankruptcy Code requires that, with respect to each impaired class, each member of such class either has accepted the Plan, or will receive or retain under the Plan on account of its Claim, property of a value, as of the Effective Date, that is at least equal to the amount which such member of the class would receive or retain if the Debtor were liquidated under Chapter 7 of the Bankruptcy Code. The Bankruptcy Court, in considering whether the Plan is in the “best interests” of creditors, is not required to consider any alternative to the Plan other than the dividend projected in a liquidation of all the Debtor’s assets under Chapter 7 of the Bankruptcy Code. The Debtor has determined that confirmation of the Plan will provide each holder of an Allowed Claim or Interest with a recovery that is not less than such holder would receive pursuant to liquidation of the debtor under Chapter 7 of the Bankruptcy Code.

**E. Good Faith Requirement**

In order to confirm a Plan, the Bankruptcy Court must find that the Plan was proposed in good faith and that the Plan and its proponent have complied with all applicable provisions of the Bankruptcy Code.

**IX. ALTERNATIVES TO THE PLAN**

If a Plan cannot be confirmed in this Case, the Case will either be dismissed or converted to a chapter 7 liquidation proceeding. In either event, the Real Estate will be sold for the sole benefit of Forman Real Property, LLC and other Creditors will receive nothing on account of their Claims.

**X. CONCLUSION AND RECOMMENDATION**

This Disclosure Statement is intended to assist each Holder of a Claim against the Debtor to make an informed decision regarding the acceptance of Debtor's Plan. If the Plan is accepted, all Creditors will be bound by its terms, whether or not they vote in favor of the Plan. The Debtor believes that confirmation and implementation of the Plan is preferable to any of the alternatives described above because it will provide a greater recovery to Creditors than any other alternative. Therefore, the Debtor respectfully urges Creditors to carefully review the Disclosure Statement and the enclosed copy of the Plan, to accept the Plan and to evidence such acceptance by returning their ballot on or before \_\_\_\_\_.

Respectfully submitted,

ESB 1836 INCORPORATED

Dated: June 1, 2016

By: /s/ Robert W. Glantz  
One of its attorneys

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Midwest Bankruptcy Attorneys, LLC  
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**LIST OF EXHIBITS**

Exhibit A: Plan of Reorganization

<b><u>Liquidation Analysis</u></b>	
<b>Assets of Known or Estimable Value</b>	<b>Estimated Amt.</b>
Real Estate	\$300,000
Total Assets at Liquidation Value:	\$300,000
Less:	
Chapter 7 Trustee fees and expenses (estimated)	\$15,000
Real estate taxes proration	\$20,000
Net Sale Proceeds from Liquidation:	\$265,000
Distribution to Forman Real Property, LLC Secured Claim	\$265,000
Balance for all other claims:	\$0
<b>Percentage of Claims Which Unsecured Creditors Would Receive or Retain in a Chapter 7 Liquidation (estimated):</b>	<b>0%</b>
<b>Percentage of Claims Which Chapter 11 Administrative Claims Would Receive in a Chapter 7 Liquidation</b>	<b>0%</b>
<b>Percentage of Claims Which Chapter 11 Administrative Claims Will Receive Under the Plan</b>	<b>100%</b>
<b>Percentage of Claims Which Unsecured Creditors Will Receive or Retain Under the Plan:</b>	<b>100%</b>

## **EXHIBIT A**

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

In re: ) Chapter 11  
          ) )  
ESB 1836 Incorporated ) Case No. 16-13848  
                                  ) )  
Debtor. ) Hon. Timothy A. Barnes

**DEBTOR'S PLAN OF REORGANIZATION**

Robert W. Glantz  
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Tel: (312) 666-2835  
Fax: (847) 980-3888  
*Counsel to ESB 1836 Incorporated*

Dated: June 1, 2016

ESB 1836 Incorporated (the “*Debtor*”) proposes the following Plan of Reorganization (the “*Plan*”) pursuant to Section 1121 of the Bankruptcy Code 11 U.S.C. § 1121. Subject to certain restrictions set forth in 11 U.S.C. § 1127, Fed. R. Bankr. P. 3019 and this Plan, the Debtor reserves the right to alter, amend, modify, revoke or withdraw this Plan prior to its substantial consummation.

## I. DEFINITIONS AND RULES OF CONSTRUCTION

A. As used in this Plan, the following terms shall have the respective meanings specified below:

1. “*Administrative Claim*” means a Claim under section 507(b) of the Bankruptcy Code, or a Claim under section 503(b) of the Bankruptcy Code, that is entitled to priority under section 507(a)(1) of the Bankruptcy Code, for costs or expenses of administration of the Chapter 11 Case including, without limitation, claims arising from loans issued to the Debtor pursuant to 11 U.S.C. § 364, as well as any other actual and necessary expenses of operating the businesses of the Debtor or preserving the Estate, and any and all fees and expenses of Professionals to the extent allowed by the Bankruptcy Court under sections 330, 331, or 503 of the Bankruptcy Code.

2. “*Administrative Claims Bar Date*” shall have the meaning set forth in Section II.E of this Plan.

3. “*Allowed Claim*” or “*Allowed Administrative Claim*” means: (a) any Claim or Administrative Claim, proof of which was filed with the Bankruptcy Court on or before the applicable Bar Date, or which has been or hereafter is scheduled by the Debtor as liquidated in amount and not disputed or contingent and which, in either case, is a Claim as to which no objection to the allowance thereof has been filed within the applicable period of limitation (if any) for objection to Claims set forth in this Plan or as otherwise fixed by the Bankruptcy Court, or as to which any objection has been determined by an order or judgment of the Court (allowing such Claim in whole or in part) that is no longer subject to appeal or certiorari proceedings, and as to which no appeal or certiorari proceeding is pending, or (b) a Claim or Administrative Claim that is allowed (i) in a Final Order or (ii) pursuant to the terms of this Plan.

4. “*Avoidance Actions*” means Causes of Action arising under sections 542, 544, 545, 547, 548, 549, 550, 551 or 553 of the Bankruptcy Code.

5. “*Bankruptcy Code*” means title 11 of the United States Code, as now in effect or hereafter amended to the extent such amendment is applicable to the Chapter 11 Case.

6. “*Bankruptcy Court*” or “*Court*” means the United States Bankruptcy Court for the Northern District of Illinois or such other court with jurisdiction over the Chapter 11 Case.

7. “*Bankruptcy Rules*” means the Federal Rules of Bankruptcy Procedure and the local rules of the Bankruptcy Court, as now in effect or hereafter amended to the extent such amendment is applicable to the Chapter 11 Case.

8. “*Bar Date*” means the dates set forth in this Plan or otherwise designated by the Bankruptcy Court as the last dates for filing proofs of Claim, of Interest, or of Administrative Claims, as the case may be, against the Debtor.

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

10. “**Cash**” means cash and cash equivalents, including, but not limited to, wire transfers, checks and other readily marketable direct obligations of the United States of America and certificates of deposit issued by banks.

11. “**Causes of Action**” means all claims and causes of action now owned or hereafter acquired by the Debtor, either individually or collectively, whether arising under any contract, the Bankruptcy Code, or other federal or state law, including, but not limited to, all litigation pending as of the Effective Date in any jurisdiction in which the Debtor is a plaintiff, and all other adversary proceedings and lawsuits.

12. “**Chapter 11 Case**” means the above-captioned case under chapter 11 of the Bankruptcy Code.

13. “**Claim**” means a claim as defined in section 101(5) of the Bankruptcy Code.

14. “**Claim Objection Deadlines**” shall have the meaning set forth in Section VII.D. of this Plan.

15. “**Class**” means a category of Holders of Claims or Debtor Interests.

16. “**Confirmation Date**” means the date of entry of the Confirmation Order on the docket of the Bankruptcy Court.

17. “**Confirmation Hearing**” means the hearing on confirmation of this Plan by the Bankruptcy Court pursuant to 11 U.S.C. § 1128.

18. “**Confirmation Order**” means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code, as the same may thereafter be modified by the Bankruptcy Court.

19. “**Cramdown Option**” shall have the meaning set forth in Section V.C.1. of this Plan.

20. “**Creditor**” means a Holder of Claim(s) against the Debtor, either individually or collectively, including without limitation a Claim that arose on or before the Petition Date or a Claim against the Estate, either individually or collectively, of any kind specified in sections 502(g), 502(h) or 502(i) of the Bankruptcy Code.

21. “**Debtor**” or “**Debtor in Possession**” means ESB 1836 Incorporated, as debtor and as debtor in possession.

22. “**Debtor Interests**” means any equity share of the Debtor outstanding on the Effective Date, together with the rights of any Person or Entity to purchase or demand the issuance of any interest or economic interest related thereto.

23. “**Disclosure Statement**” means that certain Disclosure Statement respecting this Plan, to be presented for approval by the Bankruptcy Court as containing adequate information in accordance with sections 1125 and 1126 of the Bankruptcy Code, all exhibits thereto and any amendments or modifications thereof.



24. “*Disputed Claim*” or “*Disputed Administrative Claim*” means any Claim or Administrative Claim (i) as to which a timely objection or request for estimation in accordance with the Bankruptcy Code and Bankruptcy Rules, or otherwise disputed in accordance with applicable law, has been interposed and (ii) that has not been withdrawn or determined by a Final Order.

25. “*Distribution(s)*” means the distribution of Cash or other Property to be made in accordance with this Plan.

26. “*Distribution Agent*” means the Reorganized Debtor, as the authorized distribution agent under the terms of this Plan.

27. “*Effective Date*” means the Business Day this Plan becomes effective, as provided in Article IX hereof.

28. “*Entity*” shall have the meaning set forth in section 101(15) of the Bankruptcy Code.

29. “*ESB 1836 New Equity LLC*” means the entity to which new equity interests in the Reorganized Debtor will be issued pursuant to Section VI.D. of this Plan.

30. “*Estate*” means the estate of the Debtor created in the Chapter 11 Case pursuant to section 541 of the Bankruptcy Code.

31. “*Final Order*” means an order entered by 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 rehear shall have been waived in writing in form and substance satisfactory to the Debtor, or, in the event that an appeal, writ of certiorari, reargument or rehearing has been sought, such order of the Bankruptcy Court shall have been determined by the highest court to which such order was appealed, or certiorari, reargument or rehearing shall have been denied, and the time to take any further appeal, petition for certiorari, or move for reargument or rehearing shall have expired; provided, however, that the possibility that a motion under Rules 59 or 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 preclude such order from being a Final Order.

32. “*First Security*” means First Security Trust and Savings Bank, an Illinois banking corporation.

33. “*Forman*” means Forman Real Property, LLC.

34. “*Forman Secured Claim*” means the Secured Claim of Forman.

35. “*General Unsecured Claims*” means all Unsecured Claims, other than Administrative Claims, Priority Real Estate Tax Claims, and Priority Claims.

36. “*Higher Offer*” shall have the meaning set forth in Section V.C.2. of this Plan.

37. “*Holder*” means an Entity holding a Claim or Interest.

38. “*Impaired*” shall have the meaning set forth in section 1124 of the Bankruptcy Code.

39. “**Initial Distribution Date**” shall have the meaning set forth in Section IV.B. of this Plan.

40. “**Legal Rate**” means the rate of interest set forth in 28 U.S.C. § 1961(a) as of the Effective Date.

41. “**Lien**” means a lien as defined in section 101(37) of the Bankruptcy Code, or a judicial lien as defined in section 101(36) of the Bankruptcy Code and includes, without limitation, mortgages, deeds of trust, security interests, conditional sale or other retention agreements, mechanic’s liens, pledges, judgments, demands, easements, defects, options, liabilities, obligations, interests, levies, assessments, defenses, setoffs, recoupments, title retention contracts, leases, subleases, agreements, commitments, options to purchase, rights of first refusal and restrictions of all kinds.

42. “**Litigation**” means the action against First Security and Forman as defined in the Disclosure Statement.

43. “**New Equity**” means those certain membership units of the Reorganized Debtor to be issued pursuant to the Plan.

44. “**New Equity Contribution**” shall have the meaning set forth in Section VI.D. of this Plan.

45. “**New Loan Documents**” shall have the meaning set forth in Section IV.B.1. of this Plan.

46. “**New Obligation**” shall have the meaning set forth in Section IV.B.1. of this Plan.

47. “**Other Deficiency Claim**” means that portion of any Secured Creditor’s Claim, that exceeds the value of the property owned by the Debtor that secures said Claim, after accounting for senior encumbrances on such property.

48. “**Periodic Sale**” and “**Periodic Sale Proceeds**” shall have the meanings set forth in Section IV.B. of this Plan.

49. “**Person**” means a natural person, or any legal Entity or organization including, without limitation, any corporation, partnership (general or limited), limited liability company, business trust, unincorporated organization or association, joint stock company, trust, association, governmental body (or any agency, instrumentality or political subdivision thereof), or any other form of legal Entity.

50. “**Petition Date**” means December 19, 2012, the date that the Debtor filed its petition for relief under chapter 11 of the Bankruptcy Code.

51. “**Plan**” means this Plan of Reorganization, all attachments, exhibits and schedules hereto, and any amendments or modifications hereof.

52. “**Priority Claim**” means any Claim against the Debtor, other than an Administrative Claim or Priority Tax Claim that is entitled to priority in payment under section 507(a) of the Bankruptcy Code.

53. “**Priority Tax Claim**” means any Claim for taxes against the Debtor or its assets, including, without limitation any interest and penalties thereon, to the extent entitled to priority in payment pursuant to section 507(a)(8) of the Bankruptcy Code.

54. “**Professionals**” means those Persons (i) employed pursuant to an order of the Bankruptcy Court in accordance with section 327 of the Bankruptcy Code and to be compensated for services rendered prior to the Effective Date, pursuant to sections 327, 328, 329, 330 and 331 of the Bankruptcy Code, (ii) for which compensation and reimbursement has been allowed by the Bankruptcy Court in a Final Order issued pursuant to section 503(b)(4) of the Bankruptcy Code, or (iii) for which compensation and reimbursement is provided pursuant to this Plan.

55. “**Property**” means all property and interests in property of the Debtor’s Estate of any nature whatsoever, real or personal, tangible or intangible, existing on the Effective Date.

56. “**Real Estate**” means the real property commonly referred to as 9139 S. Commercial Avenue, Chicago, 60617.

57. “**Real Estate Transaction**” shall mean a sale or refinancing of the Real Estate, other than a Periodic Sale.

58. “**Reorganized Debtor**” shall mean the post-confirmation Debtor after the transactions and events to occur (or deemed to occur) on or after the Effective Date are effected pursuant to this Plan, including the vesting of the Property of the Estate and other rights and powers in the Reorganized Debtor pursuant to Article VI of the Plan.

59. “**Retained Actions**” shall mean all suits, Claims, Causes of Action or other litigation rights available to the Debtor that are being retained by Reorganized Debtor, including Claims for unpaid rents and any Avoidance Actions.

60. “**Schedules**” means the Debtor’s Schedules of Assets and Liabilities filed with the Bankruptcy Court pursuant to Bankruptcy Rule 1007, as they may be amended from time to time.

61. “**Secured Claim**” means all or that portion of a debt existing on the Effective Date, as finally allowed and approved by the Bankruptcy Court, to the extent that such debt is treated under this Plan as not greater than the value of the assets of the Debtor that the Bankruptcy Court finds (pursuant to the Confirmation Order or a stipulation of the Debtor and the Creditor, or otherwise) are valid, perfected and unavoidable security for such debt, in accordance with section 506(a) of the Bankruptcy Code and this Plan.

62. “**Unimpaired**” means any Claim that is not Impaired.

63. “**Unsecured Claim**” means any Claim that is not secured by a valid, perfected and unavoidable Lien other than Administrative Claims, Priority Claims, Deficiency Claims, and Priority Tax Claims.

B. Unless otherwise specified, all section, article, schedule, attachment or exhibit references in this Plan are to the respective Section in, Article of, Schedule, Attachment, or Exhibit to, this Plan. The words “herein,” “hereof,” “hereto,” “hereunder” and other words of similar import refer to this Plan as a whole and not to any particular section, subsection or clause contained in this Plan. Whenever the context requires, such terms shall include the plural as well

as the singular number, the masculine gender shall include the feminine and the feminine gender shall include the masculine.

C. For purposes of this Plan, unless otherwise provided herein: (a) any reference to a contract, instrument, release, or other agreement or document being in a particular form or on particular terms and conditions means that such document will be substantially in such form or substantially on such terms and conditions; (b) any reference to an existing document or schedule filed or to be filed means such document or schedule, as it may have been or may be amended, modified, or supplemented pursuant to this Plan; (c) any reference to an Entity or Person as a Holder of a Claim or Interest includes that Entity's or Person's successors and assigns; (d) 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 of this Plan; (e) subject to the provisions of any contract, certificates of incorporation, by-laws, instrument, release or other agreement or document entered into in connection with this Plan, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, federal law, including the Bankruptcy Code and Bankruptcy Rules; (f) the rules of construction of section 102 of the Bankruptcy Code will apply; and (g) in computing any period of time prescribed or allowed by this Plan, the provisions of Bankruptcy Rule 9006(a) will apply.

D. All terms not expressly defined herein shall have the respective meanings given such terms in section 101 of the Bankruptcy Code or as otherwise defined in applicable provisions of the Bankruptcy Code, as the case may be.

## II. PROVISIONS FOR PAYMENTS OF ALLOWED ADMINISTRATIVE AND PRIORITY TAX CLAIMS

A. **In General.** In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, Priority Claims, and Priority Tax Claims are not classified in this Plan. The treatment of and consideration to be received by Holders of Allowed Administrative Claims, Allowed Priority Claims, and Allowed Priority Tax Claims pursuant to this Article 2 shall be in full and complete satisfaction, settlement, release and discharge of such Claims.

B. **Treatment of Administrative Claims.** Except to the extent the Holder of an Allowed Administrative Claim agrees otherwise, each Holder of an Allowed Administrative Claim shall be paid in respect of such Allowed Claim the full amount thereof, without interest, in Cash, on the tenth (10<sup>th</sup>) Business Day following the later of (i) the Effective Date, or (ii) the date on which such Administrative Claim becomes Allowed by a Final Order.

C. **Treatment of Priority Claims.** On the tenth (10<sup>th</sup>) Business Day following the later of (i) the Effective Date if such Priority Claim is an Allowed Priority Claim as of the Effective Date or (ii) the date on which such Priority Claim becomes an Allowed Priority Claim, each Holder of an Allowed Priority Claim shall receive in full satisfaction, settlement and release of and in exchange for such Allowed Priority Claim at the election of the Debtor made on or prior to the Effective Date (a) Cash equal to the amount of such Allowed Priority Claim; and (b) such other treatment as to which the Debtor and the Holder of such Allowed Priority Claim agree upon in writing.

D. **Treatment of Priority Tax Claims.** Priority Tax Claims, if any, shall pass through the Chapter 11 Case Unimpaired and shall be paid in the ordinary course when due.

E. **Bar Date for Administrative Claims.** Unless otherwise ordered by the Bankruptcy Court, requests for payment of Administrative Claims, including all applications for final allowance of compensation and reimbursement of expenses of Professionals incurred through the Effective Date, must be filed and served on the counsel for the Debtor no later than thirty (30) days after the Effective Date (“*Administrative Claims Bar Date*”). Any Person that is required to file and serve a request for payment of an Administrative Claim and fails to timely file and serve such request, shall be forever barred, estopped and enjoined from asserting such Claim or participating in Distributions under this Plan on account thereof. Objections to an Administrative Claim must be filed and served on the Debtor’s counsel and the requesting party and its counsel (if any) no later than sixty (60) days after the Effective Date.

### III. CLASSIFICATION OF CLAIMS AND INTERESTS

- A. For purposes of this Plan, all other Claims and Interests are classified as follows:
1. Class 1 shall consist of the Forman Secured Claim.
  2. Class 2 shall consist of all General Unsecured Claims not otherwise classified.
  3. Class 3 shall consist of all Debtor Interests.

### IV. TREATMENT OF CLAIMS AND INTERESTS

A. **In General.** Except as limited by section 1141(d) of the Bankruptcy Code, the treatment of and consideration to be received by Holders of Allowed Claims or Debtor Interests classified in Classes 1, 2 or 3 pursuant to this Article 4 shall be in full and complete satisfaction, settlement, release and discharge of such Claims and Interests. The Debtor’s obligations in respect of such Claims and Interests shall be satisfied in accordance with the terms of this Plan.

B. **Treatment of Class 1 – Secured Claim.** Class 1 is Impaired. The Holder of the Allowed Class 1 Claim shall receive either the Real Estate or the proceeds of the sale of the Real Estate (after payment of the cost of any sale and payment of any senior liens), but only to the extent it has a valid allowed claim and lien against the Real Estate and after the set-off of any court ordered or agreed upon amount in connection with the Litigation.

C. **Treatment of Class 2 – General Unsecured Claims.** Class 2 is Impaired. Each Holder of an Allowed Class 2 Claim shall receive a pro-rata distribution from the proceeds of an award arising from the Litigation or the net proceeds available from the sale or refinance of the Real Estate, upon the conclusion of the Litigation or such earlier date as the Reorganized Debtor determines in its sole discretion.

D. **Treatment of Class 3 Interests – Debtor Interests.** Class 3 is Impaired. The Holders of the Debtor’s Interests shall receive an interest in the Reorganized Debtor in exchange for the New Loan (as defined in the Disclosure Statement).

### V. ACCEPTANCE OR REJECTION OF THE PLAN

A. **Impaired Classes Entitled to Vote.** Holders of Claims in Classes 1 and 2 are Impaired and are entitled to vote to accept or reject the Plan. Pursuant to Section 1126(g) of the Bankruptcy Code, the Holders of the Class 3 Interests are deemed to have accepted the Plan.

B. **Acceptance by an Impaired Class.** In accordance with section 1126(c) of the Bankruptcy Code and except as provided in section 1126(e) of the Bankruptcy Code, an Impaired Class of Claims shall have accepted this Plan if it is accepted by the Holders of at least two-thirds (2/3) in dollar amount and one-half (1/2) in number of the Allowed Claims of such Class that have timely and properly voted to accept or reject this Plan.

C. **Cramdown.**

1. **Right to pursue cramdown.** The Debtor reserves the absolute right to seek confirmation of this Plan under section 1129(b) of the Bankruptcy Code if this Plan cannot be confirmed consensually (the “*Cramdown Option*”).

2. **Modifications to the Plan.** The Debtor reserves the right, in its sole discretion, to modify this Plan prior to the Effective Date to address and/or resolve any objections or obstacles to Confirmation. In particular, to the extent the Court determines that any of the terms or provisions of this Plan violate applicable law or render the Plan non-confirmable, the Debtor reserves the right to modify such terms or provisions so as to make such terms and provisions conform to the Bankruptcy Code.

## VI. MEANS FOR IMPLEMENTATION OF THE PLAN

A. **Injunctions; Stays.** Any injunctions or stays, whether by operation of law or by order of the Bankruptcy Court, provided for in the Chapter 11 Case pursuant to sections 105 or 362 of the Bankruptcy Code or otherwise that are in effect on the Confirmation Date shall remain in full force and effect until the Effective Date.

B. **Vesting of Debtor’s Estate.** On and as of the Effective Date, pursuant to section 1141(b) of the Bankruptcy Code all remaining Property of the Estate, including, without limitation, all rights of the Debtor under this Plan, the Confirmation Order, and all other orders entered by the Bankruptcy Court in the Chapter 11 Case on or prior to the Effective Date, and all books and records related to the Estate, shall be transferred to and vest in the Reorganized Debtor and be deemed contributed thereto, subject to the terms of this Plan. Nothing in this **Section VI.B.**, however, shall preclude payment of statutory fees under section 1930 of Title 28 of the United States Code to the extent unpaid on the Effective Date. The Debtor is hereby authorized and directed to take such steps as may be necessary or appropriate to confirm such transfer and contribution of its Property to the Reorganized Debtor

C. **Post-Confirmation Professionals.** The Reorganized Debtor may retain such personnel or professionals (including, without limitation, legal counsel, financial advisors or other agents) as it deems appropriate, and compensate such professionals without approval of the Bankruptcy Court. Professionals so retained need not be “disinterested” as that term is defined in the Bankruptcy Code and, specifically, may include, without limitation, the Law Firm. Professionals so retained also need not make any disclosures pursuant to Bankruptcy Rules 2014 and 2016. Notwithstanding the foregoing, professionals retained by the Debtor in the Reorganization Case shall be entitled to compensation for services rendered prior to the Effective Date only in accordance with sections 330 and 331 of the Bankruptcy Code and any applicable Bankruptcy Rules.

D. **Issuance of New Equity and New Equity Contribution.** On the Effective Date, or as soon as reasonably practicable thereafter, the New Equity shall be issued to ESB 1836 New Equity LLC pursuant to the Plan, in exchange for the New Loan commitment. The issuance of

the New Equity by the Reorganized Debtor is authorized without the need for any further corporate action or without any further action by a holder of Claims or Equity Interests.

E. **Vesting and Transfer of Assets to the Reorganized Debtor**. Pursuant to section 1141(c) of the Bankruptcy Code, and except as otherwise provided herein, on the Effective Date all Assets shall vest in the Reorganized Debtor free and clear of all liens, Claims, encumbrances and interests. The Debtor's Assets are listed in the Bankruptcy Schedules.

F. **Preservation of Retained Actions**. Except as otherwise provided in the Plan, or in any contract, instrument, release, or other agreement entered into in connection with the Plan, in accordance with section 1123(b) of the Bankruptcy Code, the Debtor shall transfer the Retained Actions to the Reorganized Debtor, including, without limitation, all Avoidance Actions. The Reorganized Debtor may, in its sole discretion, pursue or refrain from pursuing the Retained Actions, as appropriate, in accordance with what is in the best interests of the Reorganized Debtor.

G. **Corporate Existence**. Except as otherwise provided in the Plan, the Debtor shall continue to exist after the Effective Date as a limited liability company with all the powers of a limited liability company pursuant to the applicable law in the jurisdiction in which the Debtor is incorporated or formed and pursuant to the applicable formation documents in effect prior to the Effective Date, except to the extent such formation documents are amended by the Plan or otherwise, and to the extent such documents are amended, such documents are deemed to be amended pursuant to the Plan and require no further action or approval.

H. **Post Effective Date Operations and Management**.

1. **Operations**. The Reorganized Debtor shall conduct business after the Effective Date and may be operated without any limitation or restriction by, and without any requirement to comply with, the Bankruptcy Code, Bankruptcy Rules or Guidelines of the Office of the United States Trustee.

2. **Corporate Action**. Each of the matters provided for by the Plan involving the corporate structure of the Debtors or corporate or related actions to be taken by or required of the Reorganized Debtor shall, as of the Effective Date, be deemed to have occurred and be effective as provided in the Plan (except to the extent otherwise indicated), and shall be authorized, approved, and, to the extent taken prior to the Effective Date, ratified in all respects without any requirement of further action by holders of Claims or Equity Interests, members of the Debtor, or any other Entity.

3. **Powers and Duties of the Reorganized Debtor to Implement the Plan**. From and after the Effective Date, the Reorganized Debtor shall implement this Plan, fulfilling its duties and obligations and exercising its rights and powers under this Plan and conducting any activity consistent with this Plan and Orders entered in the Chapter 11 Case and shall do so without further action, consent or approval of its Board, officers, or managers, and in connection therewith shall be vested with authority and responsibility for, among other things: (i) prosecuting the Retained Actions for the benefit of parties in interest, including reviewing, objecting to, negotiating, settling or otherwise compromising any Retained Action; (ii) executing agreements, instruments, and other documents; (iii) resolving Disputed Claims; (iv) making distributions and paying expenses of administering the Plan; (v) employing and compensating professionals; (vi) exercising the rights, power and authority of the Reorganized Debtor under

applicable provisions of this Plan and bankruptcy and non-bankruptcy law; (vii) furnishing such information regarding administration of the Plan as may be requested by parties in interest unless otherwise ordered by the Court; and (viii) closing the Chapter 11 Case.

4. **Effectuating Documents; Further Transactions.** On and after the Effective Date, the Reorganized Debtor and the members thereof, are authorized to and may issue, execute, deliver, file, or record such contracts, securities, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of the Plan and the New Equity issued pursuant to the Plan in the name of and on behalf of the Reorganized Debtor, without the need for any approvals, authorization, or consents except for those expressly required pursuant to the Plan. Nothing in this Plan shall impair or prevent the Reorganized Debtor from merging with another business, selling substantially all of its assets or effectuating a Real Estate Transaction (without any further authorization from the Bankruptcy Court or any other Entity).

5. **Standing.** From and after the Effective Date and continuing through the date on which a final decree closing the Chapter 11 Case is entered pursuant to section 350 of the Bankruptcy Code and Bankruptcy Rule 3022, the Reorganized Debtor shall possess the rights of a party in interest pursuant to section 1109(b) of the Bankruptcy Code for all matters arising in, arising under, or related to the Chapter 11 Case or the Reorganized Debtor.

6. **Post-Confirmation Professionals.** The Reorganized Debtor may retain such personnel or professionals (including, without limitation, legal counsel, financial advisors or other agents) as it deems appropriate, and compensate such professionals without approval of the Bankruptcy Court. Professionals so retained need not be “disinterested” as that term is defined in the Bankruptcy Code. Professionals so retained also need not make any disclosures pursuant to Bankruptcy Rules 2014 and 2016. Notwithstanding the foregoing, professionals retained by the Debtor in the Reorganization Case shall be entitled to compensation for services rendered prior to the Effective Date only in accordance with sections 330 and 331 of the Bankruptcy Code and any applicable Bankruptcy Rules.

7. **Limitation of Liability.** Except for bad faith, dishonesty or willful misconduct in their actions hereunder, the Reorganized Debtor and each of its officers, directors, members, employees, agents, attorneys (including the Debtor’s bankruptcy counsel) and advisors, shall not incur and shall not have any liability to the Debtor, any Holder of a Claim or to any other Entity for any act or failure to act relating to the Plan or the Chapter 11 Case.

I. **Exemption from Certain Taxes and Fees.** Pursuant to section 1146(a) of the Bankruptcy Code, and to the extent permitted under the law, any transfer to any Entity pursuant to, in contemplation of, or in connection with the Plan or pursuant to: (a) the issuance, distribution, transfer, or exchange of any debt, equity security, or other interest in the Debtor or the Reorganized Debtor; (b) the creation, modification, consolidation, or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means; (c) the making, assignment, or recording of any lease or sublease; or (d) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any stamp tax, FERC filing or recording fee, or other similar tax or governmental assessment, and the appropriate state or local



governmental officials or agents shall forego the collection of any such tax or governmental assessment and to accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

J. **Representative of the Estate.** The Reorganized Debtor collectively shall be the representative of the Estate of the Debtor in all respects pursuant to section 1123(b)(3)(B) of the Bankruptcy Code, and the Reorganized Debtor shall be vested as of the Effective Date with all rights and powers of the Debtor under the Bankruptcy Code and other applicable law, this Plan, the prior orders of the Court in this Chapter 11 Case, and in all other respects.

## VII. CLAIMS AND DISTRIBUTIONS

A. **Distributions Under the Plan.** The Reorganized Debtor shall act as the Distribution Agent for the purpose of making all distributions required or provided for under this Plan.

B. **Delivery of Distributions.** Subject to Bankruptcy Rule 9010 and except as otherwise provided herein, Distributions to be made to Holders of Allowed Claims shall be made at (a) the address of each Holder as set forth in the Schedules filed with the Court unless superseded by the address set forth on proofs of Claim filed by such Holder, or (b) the last known address of such Holder if no proof of Claim is filed or if the Debtor has been notified in writing of a change of address. If any Distribution is returned as undeliverable, the Reorganized Debtor may, in its discretion, make such efforts to determine the current address of the Holder of the Claim or Interest with respect to which the Distribution was made as the Reorganized Debtor deems appropriate, but no Distribution to any Holder shall be made unless and until the Reorganized Debtor has determined the then-current address of the Holder, at which time the Distribution to such Holder shall be made to the Holder without interest. Amounts in respect of any undeliverable Distributions made through or by the Reorganized Debtor shall be returned to, and held in trust by, the Reorganized Debtor until such Distributions are claimed or are deemed to be unclaimed property under section 347(b) of the Bankruptcy Code or as set forth herein.

C. **Undeliverable Distributions as Unclaimed Property.** Except with respect to property not distributed because such property is being held in a disputed claim reserve, Distributions that are not claimed by the expiration of six (6) months from the later of the (a) Effective Date or (b) the date of final Distributions under Section VII.B., shall be deemed to be unclaimed property under section 347(b) of the Bankruptcy Code and shall vest in and be retained by the Reorganized Debtor, and the Claims with respect to which such Distributions are to be made shall be automatically canceled and extinguished. After the expiration of the six-month period referenced in the preceding sentence, the claim of any Person or Entity to such Distributions shall be discharged and forever barred, and such unclaimed property as well as further Distributions to that party shall be Distributed to Holders of Claims as provided in Article 4 hereof. Nothing contained in this Plan shall require the Reorganized Debtor to attempt to locate any Holder of an Allowed Claim.

D. **Objections to Claims.** Objections to Claims other than Administrative Claims and governmental Proofs of Claim shall be filed by the date that is seventy-five (75) days after the Effective Date and Objections to Administrative Claims and governmental Proofs of Claims shall be filed with the Bankruptcy Court no later than sixty (60) days after the applicable Bar Date (the “*Claim Objection Deadlines*”); provided, however, that these deadlines may be

extended by the Bankruptcy Court upon motion of the Reorganized Debtor. Scheduled claims that are subject to an objection shall not be deemed Allowed Claims pending resolution of the objection with respect thereto. Notwithstanding the foregoing, (i) the Bankruptcy Court shall overrule any objections to Claims that are deemed Allowed Claims under this Plan and (ii) any proof of Claim filed after the Bar Date shall be automatically disallowed as a late filed Claim, without any action by Debtor, unless and until the party filing such Claim obtains the written consent of the Debtor, or after the Effective Date, the Reorganized Debtor, to file such Claim late or obtains an order of the Bankruptcy Court upon notice to the Debtor that permits the late filing of the Claim, in which event, the Debtor, or after the Effective Date, the Reorganized Debtor, shall have thirty (30) days from the date of such written consent or order to object to such Claim, which deadline may be extended with the written consent of the Holder of such Claim or by the Bankruptcy Court upon motion of the Debtor, or after the Effective Date, the Reorganized Debtor, without notice or a hearing. Nothing herein shall be construed to extend the Bar Dates or the Bar Date for rejection damages set forth in Section VIII.C. of this Plan. Subject to Bankruptcy Court approval, objections to Claims may be litigated to judgment, settled or withdrawn. Distributions with respect to and on account of Claims to which objections have been filed will be made as soon as practicable after an order, judgment, decree or settlement agreement with respect to such Claim becomes a Final Order.

E. **Withholding Taxes.** Any federal, state, or local withholding taxes or other amounts required to be withheld under applicable law shall be deducted from Distributions hereunder. All Persons holding Claims shall be required to provide any information necessary to effect the withholding of such taxes.

F. **Fractional Cents.** Any other provision of this Plan to the contrary notwithstanding, no payment of fractions of cents will be made. Whenever any payment of a fraction of a cent would otherwise be required, the actual Distribution made shall reflect a rounding of such fraction to the nearest whole cent (up or down), with half cents or less being rounded down and fractions in excess of half a cent being rounded up.

G. **Setoffs.** Except as otherwise provided for herein, the Debtor, or after the Effective Date, the Reorganized Debtor, may, but shall not be required to, set off against any Claim and the Distributions to be made pursuant to this Plan in respect of such Claim, claims of any nature whatsoever that the Debtor or its Estate, either individually or collectively, may have against the Holder of such Claim, but neither the failure to do so nor the allowance of a Claim hereunder shall constitute a waiver or release by the Debtor, the Reorganized Debtor or the Estate of any Claim they may have against such creditor; provided that such right of setoff shall be subject to Article X of this Plan and in no event shall the Debtor or the Reorganized Debtor set off, or be permitted to set off, against any Claims Allowed under this Plan.

H. **Interest on Claims.** Interest shall not accrue or be payable on Claims after the Effective Date, including on Disputed Claims, provided that interest may accrue and be payable on the Replacement Note as provided in Section IV.B. of this Plan.

I. **Ordinary Course Liabilities.** If not otherwise paid in full by the Debtor in the ordinary course of its business subsequent to the Petition Date, or fixed in amount by stipulation between the Debtor and each Holder prior to the Administrative Claims Bar Date, Holders of Claims against the Debtor for liabilities incurred after the Petition Date shall be required to file a request for payment of Administrative Claims not later than the Administrative Claims Bar Date.

J. **Assumption of Obligations Under the Plan.** On the Effective Date, the obligations to make the Distributions required by this Plan shall be assumed by the Reorganized Debtor, which shall have the obligation to make all Distributions as set forth herein.

### VIII. UNEXPIRED LEASES AND EXECUTORY CONTRACTS

A. **Contracts Deemed Accepted or Rejected.** The Debtor shall assume the tenant lease title “Lease Agreement” dated March 1, 2015 with Rajeh Jibawi as of the Effective Date. Within sixty (60) days of the Effective Date, the Reorganized Debtor shall be authorized, without further order of the Bankruptcy Court, to assume or reject any of the executory contracts or unexpired leases by giving thirty (30) days’ prior written notice to the parties thereto, not later than the expiration of the foregoing 60-day period, by which such contract or lease shall be deemed assumed or rejected, as the case may be. The notice to the contract counterparty of any executory contract or unexpired lease to be assumed shall contain the Debtor’s proposed cure amount for such contract or lease, which such cure amount shall be determined pursuant to agreement of the parties or by further order of the Court if no such agreement can be reached. Any rejection damages arising pursuant to a notice of rejection shall constitute Class 2 Claims.

B. **Postpetition Contracts and Leases.** All contracts and leases entered into by the Debtor after the Petition Date and remaining in effect on the Effective Date shall be deemed assigned to the Reorganized Debtor on the Effective Date.

C. **Bar Date For Rejection Damages.** All proofs of Claim with respect to Claims arising from the rejection of executory contracts or unexpired leases shall, unless another order of the Bankruptcy Court provides for a different date, be filed with the Bankruptcy Court, within thirty (30) days of the Effective Date, except that such Claims arising under Section VIII.A. of the Plan shall be filed with the Bankruptcy Court within thirty (30) days after the date the related executory contract or unexpired lease is deemed rejected thereunder. Any such proof of Claim that is not timely filed shall be released, discharged and forever barred from assertion against the Debtor, its Estate or Property, Purchaser or any Property acquired by Purchaser under the Purchase Agreement, including the Purchased Interests. All objections to such Claims shall be filed in accordance with Section VII.D. hereof.

### IX. CONDITIONS PRECEDENT TO EFFECTIVENESS OF THE PLAN

A. **Effective Date Conditions.** The Plan shall become effective (the “*Effective Date*”), when each of the following conditions has been satisfied:

1. The Bankruptcy Court shall have entered the Confirmation Order;
2. The Confirmation Order shall have become a Final Order; and
3. All other actions and documents necessary to implement this Plan as of the Effective Date shall have been effected or duly executed and delivered, including the delivery of the joint letter of direction under the Plan Escrow Agreement.

B. **Waiver of Conditions.** The Debtor, in its discretion, may at any time, without notice or authorization of the Bankruptcy Court, waive any or all of the conditions set forth in Section IX.A. of the Plan, other than clause (a) thereof. The Debtor, and after the Effective Date, the Reorganized Debtor, reserves the right to assert that any appeal from the Confirmation Order shall be moot after substantial consummation of this Plan.

C. **Notice of Effective Date.** On or before five (5) Business Days after the occurrence of the Effective Date, the Reorganized Debtor shall mail or cause to be mailed to all known Holders of Claims, Administrative Claims and parties to executory contracts and unexpired leases a Notice that informs such Holders and parties of (a) entry of the Confirmation Order; (b) the occurrence of the Effective Date; and (c) such other matters as the Reorganized Debtor deems to be appropriate.

## **X. EFFECTS OF PLAN CONFIRMATION**

A. **Releases and Injunction.** Except as otherwise expressly provided in the Plan or for obligations issued pursuant to the Plan, all Entities who have held, hold, or may hold, Claims or Interests that have been released, compromised or are subject to exculpation pursuant to Article X of the Plan, are permanently enjoined, from and after the Effective Date, from: (a) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests; (b) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Entities on account of or in connection with or with respect to any such Claims or Interests; (c) creating, perfecting, or enforcing any encumbrance of any kind against such Entities or the property or estates of such Entities on account of, in connection with or with respect to any such Claims or Interests; (d) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from such Entities or against the property or estates of such Entities on account of, in connection with or with respect to any such Claims or Interests unless such Holder has filed a motion requesting the right to perform such setoff on or before the Effective Date, and notwithstanding an indication in a proof of Claim or interest or otherwise that such Holder asserts, has, or intends to preserve any right of setoff pursuant to section 553 of the Bankruptcy Code or otherwise; and (e) commencing or continuing in any manner any action or other proceeding of any kind on account of, in connection with or with respect to any such Claims or Interests released or settled pursuant to the Plan, provided that notwithstanding anything to the contrary herein, no such release is granted by this paragraph.

B. **Exculpation.** Except as otherwise specifically provided in the Plan, no Entity shall have or incur, and each such Entity is released and exculpated from any Claim, obligation, Cause of Action, or liability to one another or to any exculpating party for any Claim (except for gross negligence, willful misconduct, or fraud, but in all respects such Entities shall be entitled to reasonably rely upon the advice of counsel) with respect to their duties and responsibilities pursuant to the Plan and their conduct in connection with the bankruptcy case. The Debtor and each of its affiliates, officers, directors, principals, employees, agents, advisors, attorneys, accountants, consultants, representatives, and other Professionals have, and upon the Effective Date shall be deemed to have, participated in good faith and in compliance with the applicable provisions of the Bankruptcy Code with regard to Distributions set forth pursuant to the Plan, and therefore are not, and on account of any such Distribution shall not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or any such Distribution made pursuant to the Plan.

C. **Discharge of Claims; Termination of Interests and Rights.** Except as otherwise provided in this Plan or the Confirmation Order, pursuant to section 1141(d)(1) of the Bankruptcy Code, all Claims against the Debtor or the Reorganized Debtor arising before the entry of the Confirmation Order shall be discharged as of the Effective Date, regardless of

whether the Holder of the Claim or any other Person filed a proof of Claim based on the debt, and whether or not a Claim is allowed under section 502 of the Bankruptcy Code or whether the Holder of the Claim has accepted this Plan.

D. **Reservation of Rights.** Notwithstanding any term or provision thereof to the contrary, nothing contained in Sections X.A. through X.E. hereof shall be deemed to be a waiver or release of any of the rights or obligations of any of the Holders of Claims under the other terms and provisions of this Plan or the Confirmation Order.

E. **Term of Injunctions and Stays.** Unless otherwise provided herein or in the relevant orders applicable thereto, all injunctions or stays provided for in any adversary proceeding or the Chapter 11 Case and in effect on the Confirmation Date shall remain in full force and effect until the Effective Date, whereupon the discharge and permanent injunctions set forth in this Plan and in the Confirmation Order shall take effect.

F. **Compromises and Settlements.** After the Effective Date, the Reorganized Debtor may compromise and settle any Claims, or any claims against others, without further approval of the Bankruptcy Court.

## **XI. RETENTION OF JURISDICTION**

A. **Retained Jurisdiction after Confirmation.** Following the Confirmation Date and until such time as all payments and Distributions required to be made and all other obligations required to be performed under this Plan have been made and performed by the Debtor or Reorganized Debtor, as the case may be, initiated in the Bankruptcy Court are resolved, the Bankruptcy Court shall retain sole jurisdiction to the full extent that retention thereof is legally permissible, including, without limitation, for the following purposes:

1. To determine the amount, allowability, allocability, classification, or priority of Claims against the Debtor, including (without limitation) rejection claims arising pursuant to section 502(g) of the Bankruptcy Code, upon motion or upon objection to any Claim by the Debtor or any other party in interest;

2. To estimate Claims for purposes of allowance pursuant to section 502(c) of the Bankruptcy Code, including (without limitation) estimation of Claims of customers asserting setoff or rights of recoupment against amounts owed to the Debtor;

3. To issue injunctions or take such other actions or make such other orders as may be necessary or appropriate to restrain interference with this Plan or its execution or implementation by any Person, to construe and to take any other action to enforce and execute this Plan, the Confirmation Order, or any other order of the Bankruptcy Court, to issue such orders as may be necessary for the implementation, execution, performance and consummation of this Plan and all matters referred to herein, and to determine all matters that may be pending before the Bankruptcy Court in the Chapter 11 Case on or before the Effective Date with respect to any Person or Entity;

4. To determine any and all applications for allowance of compensation and expense reimbursement of Professionals for periods before the Effective Date, as provided for in this Plan;

5. To determine any Administrative Claims or any requests for payment of Administrative Claims;

6. To resolve any dispute arising under or related to the implementation, execution, consummation or interpretation of this Plan and the making of Distributions thereunder, including, without limitation, any dispute concerning payment of Professional Fees and expenses;

7. To determine any and all motions for or relating to the rejection, assumption, or assignment of executory contracts or unexpired leases, and to determine the allowance of any Claims resulting from the rejection of executory contracts and unexpired leases or cure Claims resulting from the assumption of executory contracts and unexpired leases;

8. To determine any and all Claims of the Debtor including, without limitation, all surcharge Claims arising under section 506(c) of the Bankruptcy Code, if any;

9. To determine all applications, motions, adversary proceedings, contested matters, actions, and any other litigated matters instituted prior to the closing of the Chapter 11 Case, except any action in which the Debtor is a plaintiff in any state or federal court (other than the Bankruptcy Court) as of the Effective Date;

10. To hear and determine motions by the Reorganized Debtor to sell assets of the Estate pursuant to section 363 of the Bankruptcy Code and all issues and contested matters relating thereto;

11. To determine such other matters, and for such other purposes, as may be provided in the Confirmation Order as may be authorized under provisions of the Bankruptcy Code;

12. To modify this Plan under section 1127 of the Bankruptcy Code, remedy any defect, cure any omission, or reconcile any inconsistency in this Plan or the Confirmation Order so as to carry out its intent and purposes;

13. To resolve any matters relating to the Plan Escrow Agreement;

14. To extend any deadline, timetable or timeline set forth in the Plan upon the filing of a motion by any party in interest;

15. To issue such orders in aid of consummation of this Plan and the Confirmation Order notwithstanding any otherwise applicable non-bankruptcy law, with respect to any Entity, to the full extent authorized by the Bankruptcy Code;

16. To enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified or vacated; and

17. To enter a Final Order confirming substantial consummation of the Plan and closing the Chapter 11 Case.

## **XII. MISCELLANEOUS PROVISIONS**

A. **Pre-Confirmation Modification.** This Plan may be altered, amended or modified by the Debtor before the Confirmation Date as provided in section 1127 of the Bankruptcy Code.

B. **Post-Confirmation Immaterial Modification.** The Debtor may, with the approval of the Bankruptcy Court and without notice to all other Holders of Claims and Interests, insofar as it does not materially and adversely affect the interest of Holders of Claims, correct

any defect, omission or inconsistency in this Plan in such manner and to such extent as may be necessary to expedite consummation of this Plan.

C. **Post-Confirmation Material Modification.** This Plan may be altered or amended after the Confirmation Date by the Reorganized Debtor in a manner that, in the opinion of the Bankruptcy Court, materially and adversely affects Holders of Claims, provided that such alteration or modification is made after a hearing as provided in section 1127 of the Bankruptcy Code.

D. **Withdrawal or Revocation of this Plan.** The Debtor reserves the right to revoke or withdraw this Plan prior to the Effective Date. If the Debtor revokes or withdraws this Plan, then the result shall be the same as if the Confirmation Order had not been entered and the Effective Date had not occurred.

E. **Payment of Statutory Fees.** All fees payable pursuant to 28 U.S.C. § 1930 shall be paid on the Effective Date or from assets of Debtor when otherwise due.

F. **Successors and Assigns.** The rights, benefits and obligations of any Entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of, the heirs, executors, administrators, successors or assigns of such Entities.

G. **Governing Law.** Except to the extent that the Bankruptcy Code is applicable, the rights and obligations arising under this Plan shall be governed by and construed and enforced in accordance with the laws of the State of Illinois.

H. **Notices.** Any notice required or permitted to be provided under this Plan shall be in writing and served by either (a) certified mail, return receipt requested, postage prepaid, (b) hand delivery or (c) reputable overnight courier service, freight prepaid, to be addressed as follows:

[insert contact address for Reorganized Debtor]

with a copy to Debtor's Counsel:

Robert W. Glantz  
321 N. Clark, Ste. 800  
Chicago, IL 60654

I. **Saturday, Sunday or Legal Holiday.** If any payment or act under this Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

J. **Section 1146 Exemption.** Pursuant to section 1146(c) of the Bankruptcy Code, the making or delivery of any instrument of transfer pursuant to, in implementation of, or as contemplated by, this Plan or the revesting, transfer or sale of any real or personal property of the Debtor pursuant to, in implementation of, or as contemplated by, this Plan, shall not and may not be taxed under any state or local law imposing a stamp tax, transfer tax, sales tax or similar tax or fee.

K. **Severability.** If any term or provision of this Plan is held by the Bankruptcy Court, prior to or at the time of Confirmation, to be invalid, void or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as so altered or interpreted. In the event of any such holding, alteration, or interpretation, the remainder of the terms and provisions of this Plan may, at the Debtor's option remain in full force and effect and not be deemed affected. However, the Debtor reserves the right not to proceed to Confirmation or consummation of this Plan if any such ruling occurs. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

L. **Headings.** The headings used in this Plan are inserted for convenience only and neither constitute a portion of this Plan nor in any manner affect the provisions of this Plan.

Respectfully submitted,

ESB 1836 Incorporated

Dated: June 1, 2016

By: /s/ Robert W. Glantz

One of its attorneys

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