

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In Re:

**ROGAN RR, LLC,**

**Debtor-in-Possession.**

Case No.: 13-23532

Chapter: 11

Hon. Robert D. Drain

**AMENDED DISCLOSURE STATEMENT PURSUANT TO SECTION 1125  
OF THE BANKRUPTCY CODE DESCRIBING CHAPTER 11 PLAN OF  
REORGANIZATION PROPOSED BY WB DEBT HOLDINGS, LLC**

**I. INTRODUCTION**

WB Debt Holdings, LLC, as assignee of the Eastern Savings Bank (“WB” or “Plan” Proponent”), a secured creditor in this Chapter 11 case, submits this Disclosure Statement dated July 19, 2016 pursuant to section 1125(b) of Title 11, United States Code, 11 U.S.C. §§ et seq. (the “Bankruptcy Code”) and Rule 3017 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), to all known holders of Claims<sup>1</sup> against or Interests in the Debtor in order to adequately disclose information deemed to be material, important and necessary to make a reasonably informed judgment about the Plan, including, who is entitled to vote to accept or reject the Plan. A full copy of the Plan is attached to this Disclosure Statement as Exhibit “A”.

**A. Purpose of This Document**

This Disclosure Statement summarizes what is in the Plan, and tells you certain information relating to the Plan and the process the Court follows in determining whether or not to confirm the Plan.

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<sup>1</sup> Unless otherwise stated, defined terms used herein shall have the same meaning ascribed to them in the Plan.

This Disclosure Statement cannot tell you everything about your rights. You should consider consulting your own lawyer to obtain more specific advice on how this Plan will affect you and what is the best course of action for you. Be sure to read the Plan as well as the Disclosure Statement. If there are any inconsistencies between the Plan and the Disclosure Statement, the Plan provisions will govern.

Bankruptcy Code section 1125 requires a Disclosure Statement to contain "adequate information" concerning the Plan. The term "adequate information" is defined in Bankruptcy Code section 1125(a) as "information of a kind, and in sufficient detail," about a debtor and its operations "that would enable a hypothetical reasonable investor typical of holders of claims or interests" of the debtor to make an informed judgment about accepting or rejecting the Plan. The Bankruptcy Court ("Court") has determined that the information contained in this Disclosure Statement is adequate, and it has approved this document in accordance with Bankruptcy Code section 1124.

This Disclosure Statement is provided to each creditor whose claim has been scheduled by the Debtor or who has filed a proof of claim against the Debtor and to each interest holder of record as of the date of approval of this Disclosure Statement. Under the Bankruptcy Code, your acceptance of the Plan may not be solicited unless you receive a copy of this Disclosure Statement prior to or concurrently with such solicitation.

**B. Confirmation Procedures and Key Deadlines**

Persons Potentially Eligible to Vote on the Plan

In determining acceptance of the Plan, votes will only be counted if submitted by a creditor whose claim is duly scheduled by the Debtor as undisputed, non-contingent and unliquidated, or who, prior to the hearing on confirmation of the Plan, has filed with the Court a proof of claim which has not been disallowed prior to computation of the votes on the Plan. All shareholders of record as of the date of approval of this Disclosure Statement may vote on the Plan.

The Ballot that you received does not constitute a proof of claim. If you are uncertain whether your claim has been correctly scheduled, you should check the Debtor's Schedules, which are on file at the office of the Clerk of the Bankruptcy Court located at: United States Bankruptcy Court, U.S. Court House, 300 Quarropas Street, Room 248, White Plains, New York 10601. The Clerk of the Bankruptcy Court will not provide this information by telephone.

THE COURT HAS NOT YET CONFIRMED THE PLAN DESCRIBED IN THIS DISCLOSURE STATEMENT. IN OTHER WORDS, THE TERMS OF THE PLAN ARE NOT YET BINDING ON ANYONE. HOWEVER, IF THE COURT LATER CONFIRMS THE PLAN, THEN THE PLAN WILL BE BINDING ON THE DEBTOR AND ON ALL CREDITORS AND INTEREST HOLDERS IN THIS CASE.

**1. Time and Place of the Confirmation Hearing**

The hearing at which the Court will determine whether to confirm the Plan will take place on August 23, 2016 at 10 o'clock am. in the United States Bankruptcy Court for the Southern District of New York, 300 Quarropas Street, Courtroom 118, White Plains, New York 10601-4140.

**2. Deadline For Voting For or Against the Plan**

If you are entitled to vote, it is in your best interest to timely vote on the enclosed ballot and return the ballot in the enclosed envelope to Counsel for the Debtor at the address below:

DELBELLO DONNELLAN WEINGARTEN WISE & WIEDERKEHR, LLP  
Attn: Jonathan S. Pasternak, Esq.  
One N. Lexington Avenue  
White Plains, New York 10601

Your ballot must be received by August 19, 2016 or it will not be counted.

**3. Deadline For Objecting to the Confirmation of the Plan**

Any objections to the confirmation of the Plan must be filed with the Court and served upon the following so as to be received by August 16, 2016:

Jonathan S. Pasternak, Esq  
DELBELLO DONNELLAN WEINGARTEN WISE & WIEDERKEHR, LLP  
One N. Lexington Avenue  
White Plains, NY 10601  
Attorneys for WB Debt Holdings, LLC, Plan Proponent

**4. Identity of Person to Contact for More Information Regarding the Plan**

Any interested party desiring further information about the Plan should contact Jonathan S. Pasternak, Esq. at the address above, at telephone number 914-681-0200 or by e-mail: [jpasternak@ddw-law.com](mailto:jpasternak@ddw-law.com).

**C. Disclaimer**

The financial data relied upon in formulating the Plan is based on information provided by the Debtor through its filings with the Court and the Plan Proponent's understanding of the Debtor's assets, the market and the industry in which the Debtor operates. The information contained in this Disclosure Statement is provided by the Plan Proponent. The Plan Proponent represents that everything stated in the Disclosure Statement is true to the best of its knowledge.

**PLEASE NOTE THAT THE APPROVAL OF THIS DISCLOSURE STATEMENT BY THE BANKRUPTCY COURT DOES NOT CONSTITUTE A RULING ON THE MERITS, FEASIBILITY OR DESIRABILITY OF THE PLAN.**

**II. BACKGROUND**

**A. Description and History of the Debtor's Business**

The Debtor owns certain land and buildings located at 225 Railroad Avenue, Bedford Hills, New York 10507. The Property consists of recycling facility and transfer station, although the permits and licenses for operating the facility and transfer station are not held by the Debtor.

The Debtor acquired title to the Property pursuant to a deed conveyed by DD&S LLC to the Debtor in 2005. The deed states that the transfer was subject to the existing mortgages of record on the Property and the transfer of the Property was done without notice to or authorization of the mortgage holders and in violation of the underlying loan agreements. Other than the Property, the Debtor has no other property or assets.

The Debtor's sole shareholder and principal officer is James Rogan. Upon information and belief, there are several month-to-month tenants on the Property who occupy the Property without formal written leases. One of the tenants is the ex-spouse of James Rogan, who claims to be operating the transfer station by and through one or more entities, although it is unclear as to whether the transfer station is operating in compliance with applicable local and State laws.

The Debtor is a “single asset real estate” within the meaning of section 101(51D) of the Bankruptcy Code, as it has no business or operations other than the ownership of title to the Property.

**B. Events Leading to Chapter 11 Filing**

Pursuant to a certain Consolidated Secured Promissory Note (“Note”) and Mortgage, Consolidation and Extension Agreement, Assignment of Leases and Rents and Security Agreement (“Mortgage”) each dated November 14, 2003, ESB made a loan to DD&S and Hoboken, LLC, secured by a first priority mortgage on the Property. On or about February 19, 2016, ESB assigned the Loan Documents<sup>2</sup> to WB.

On October 26, 2011, ESB commenced an action styled *Eastern Savings Bank, FSB. v. DD&S, LLC, et al*<sup>3</sup>, Index No. 57696/11, in the Supreme Court of the State of New York, County of Westchester (the “Prepetition Action”), which resulted in the issuance of a “Decision and Order” entered December 10, 2012 by the Honorable William J. Giacomo, J.S.C. (the “Decision and Order”), and a Judgment of Foreclosure and Sale entered on August 2, 2013 in the amount of \$1,201,858.75, together with costs and attorneys’ fees thereon (the “Judgment”). As of the Petition Date, as a result of, *inter alia*, statutory interest accrued on the Judgment and certain fees, costs and expenses as permitted under the Loan Documents, the ESB secured claim totaled \$1,547,969.64 (see ESB Proof of Claim No. 6, originally filed on December 18, 2013 and amended on September 3, 2015; exclusive of any post-judgment fees, expenses, attorneys’ fees and payments).

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<sup>2</sup> For purposes of this Disclosure Statement, the term “Loan Documents” shall mean and include: the Note, Mortgage and all other documents ancillary to or incorporated within the foregoing.

<sup>3</sup> The Debtor was a named defendant in the Prepetition Action and in fact actively appeared in the action

The imminent foreclosure sale of the Property precipitated this bankruptcy filing on September 13, 2013.

**C. Outstanding Debt of the Debtor**

As set forth in more detail in Article III of this Disclosure Statement, the outstanding debt of the Debtor is summarized as follows:

- Two proofs of claim (unsecured) filed by Capital One Bank (USA), N.A. in the aggregate amount of \$3,083.04;
- Proof of Claim (unsecured) filed by Trustees of the Local 813 Pension Trust Fund in the amount of \$946,736.20;
- Proof of Claim (unsecured) filed by Trustees of the Local 813 & 1034 Severance/Retirement in the amount of \$52,431.50;
- Proof of Claim (secured) filed by Palfam Equities, LLC in the amount of \$1,452,975;
- Proof of Claim (secured) filed by ESB (foreclosure judgment claim assigned to WB) in the amount of \$1,547,969.64.

The Debtor did not schedule *any* priority or unsecured debt.

**D. Significant Events During the Bankruptcy**

The following is a chronological list of significant events which have occurred during this Chapter 11 bankruptcy proceeding:

- September 13, 2013, bankruptcy petition filed by the Debtor.
- Bar Date for filing claims set for December 18, 2013.
- ESB Motion for Relief From Stay filed on February 19, 2014. Motion heard on March 19, 2014 and resulted in an Order granting conditional relief from stay conditioned upon Debtor making ongoing monthly adequate protection payment.

- **Debtor is currently in default of such arrangement by virtue of failing to make any adequate protection payments since May, 2015.**
- US Trustee filed a motion to convert or dismiss the Chapter 11 case on July 3, 2014. The Court has not ruled on the motion to date.
- The Court approved the Debtor's retention of initial attorneys on August 26, 2014, although NOT *nunc pro tunc* to the petition date.
- On December 30, 2014, Debtor's counsel filed a motion to withdraw as counsel to the Debtor. The motion was granted pursuant to an order of the Court dated February 13, 2015.
- On February 23, 2015, the Court entered an order authorizing Kurtzman Matera, P.C. as substitute counsel to the Debtor.
- No monthly operating reports have been filed since December, 2015 (which was for the October, 2015 reporting period).
- No substantive matters have occurred in the Chapter 11 case since early 2015.
- The Debtor has failed to file a plan of reorganization, and the exclusive period for which to do so expired on January 12, 2014.

### **III. SUMMARY OF THE CHAPTER 11 PLAN**

#### **A. What Creditors and Interest Holders Will Receive Under the Proposed Plan**

The Plan classifies claims and interests in various classes. The Plan states whether each class of claims or interests is impaired or unimpaired. The Plan provides the treatment each class will receive.

#### **B. Unclassified Claims**

Certain types of claims are not placed into voting classes. They are not considered impaired and they do not vote on the Plan because they are automatically entitled to specific treatment provided for them in the Bankruptcy Code. As such, the Debtor has not placed the following claims in a class:

**1. Administrative Expenses and Fees**

Administrative expenses are claims for fees, costs or expenses of administering the Debtor's Chapter 11 case which are allowed under Bankruptcy Code section 507(a)(1), including all professional compensation requests pursuant to Sections 330 and 331 of the Code. The Bankruptcy Code requires that all allowed administrative expenses including fees payable to the Bankruptcy Court and the Office of the United States Trustee which were incurred during the pendency of the case must be paid on the Effective Date of the Plan, unless a particular claimant agrees to a different treatment

The Debtor's retained professionals claim to be owed approximately \$100,000 in the aggregate. In addition, as contemplated under the Plan, an Auctioneer's commission will need to be paid. In addition to a \$10,000 "carve out" from the proceeds of sale for payment toward advertising expenses actually incurred by the Auctioneer, the Auctioneer shall be entitled to a commission as follows: (a) if the Proponent is the successful bidder at Auction, 1% of the maximum credit bid plus 10% of any increase in the final purchase price in excess of the maximum credit bid, or (b) if the Proponent is not the successful bidder at Auction, 10% of the successful bid amount, which shall be paid by the successful bidder, in addition to its bid amount, as a buyer's premium.

**2. Court Approval of Professional Compensation Required:**

Pursuant to the Bankruptcy Code, all professionals seeking to be paid in connection with the Plan must file and timely serve a properly noticed fee application for compensation and reimbursement of expenses so as to be considered by the Court no later than the Confirmation Hearing. Only the amount of compensation and reimbursement of expenses allowed by the Court

will be owed and required to be paid under the Plan as an administrative claim. Failure to file such an application timely shall result in the professional person's claim being forever barred from seeking payment on such claim.

### **3. Priority Tax Claims**

Priority tax claims are certain unsecured income, employment and other taxes described by Code section 507(a)(8). The Code requires that each holder of such a section 507(a)(8) priority tax claim receive the present value of such claim in deferred cash payments, over a period not exceeding five years from the date of Petition Date. Debtor has not scheduled any such claims, nor has any taxing authority filed a Priority Tax Claim that has not otherwise been withdrawn. The bar date for filing Priority Tax Claims expired on March 12, 2014.

### **C. Classified Claims and Interests**

Secured claims are claims secured by liens on property of the estate. The Debtor's Plan sets forth two (2) Secured Creditors, consisting of the Allowed Secured Claim of WB as assignee of ESB and Allowed Secured Claim of Palfam Equities, LLC ("Palfam"). To the Plan Proponent's knowledge, no other secured claims exist.<sup>4</sup>

#### **1. Class 1 Secured Claim**

The Debtor's Plan proposes that from the proceeds of sale of the Property, payment will be made on the ESB Secured Claim, which, as of the Petition Date totaled \$1,547,969.64. plus accrued *per diem* interest at \$296.35 per day from and after the Petition Date until paid, all

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<sup>4</sup> Upon information and belief, all pre-petition real estate taxes were paid in full by ESB and the post-petition taxes have been kept current by a combination of ESB and, recently, upon information and belief, the Debtor. In the event that any real estate taxes are outstanding on the Sale closing date, they will be paid in full from the Plan Distribution Funds or, if applicable, by the Proponent.

protective advances and charges permitted by the underlying loan documents or by statute to the extent, if any, permitted by section 506(b) of the Bankruptcy Code, plus reasonable costs and attorneys' fees, less all adequate protection payments made by the Debtor to ESB and its assignor. The Plan Proponent asserts that as of April 30, 2016 the ESB Secured Claim was as follows:

Amount owed as of Petition Date (9/13/13)	\$1,547,969.64
Post –petition interest on Judgment amount at 9% (960 days at 9% on \$1,201,857.75)	\$284,494.55
Post-Petition Protective Advances net of Debtor reimbursements	\$27,184.94
K&F legal fees (ESB Counsel)	\$53,555.70
DDW Legal Fees (est.) (WB Counsel)	\$12,500
Subtotal	\$1,925,704.83
LESS Adequate Protection Payments	(\$185,058.90)
<b>Net Claim as of 4/30/16</b>	<b>\$1,740,645.93</b>

The Class 1 Claim shall be paid up to the amount of its Allowed Claim in full and in Cash on the Effective Date to the extent that Plan Distribution Funds are available after payment of Allowed Administrative Claims or by the successful exercise of its credit bid right under the Plan. To the extent that the Plan Distribution Funds are insufficient to pay Class 1 Claims in full, the unpaid amount of such Claims shall be deemed a Class 4 Unsecured Claim.

Proponent shall have the right, at the Auction, to credit bid up to the aggregate amount of its Allowed Claim and the Allowed Class 2 Secured Claim (discussed below) pursuant to section 363(k) of the Bankruptcy Code. Essentially this will permit the opening purchase price for the Property to be in an amount equal to the ESB Claim and the Allowed Class 2 Secured Claim,

which opening bid shall be held by the Plan Proponent. The Plan Proponent shall also receive the releases set forth in Section IIF of the Plan. In return for, and upon actual receipt of, such treatment, the mortgage of the Class One Claimant will be discharged from the Property upon closing of the Sale. The Class 1 Secured Claim is Impaired under the Plan.

**2. Class 2 Secured Claim**

Class 2 is comprised of the Secured Claim of Palfam in the Allowed amount of \$1,452,975 as of the Petition Date. Palfam has assigned and transferred its Allowed Secured Claim, together with all rights associated therewith including but not limited to its right to credit bid the Allowed amount of its Claim pursuant to section 363(k) of the Code to the holder of the Class 1 Secured Claim. The Allowed Class 2 Secured Claim shall be paid up to the full amount of the Claim in Cash on the Effective Date or by the successful exercise of its credit bid under the Plan. To the extent that Plan Distribution Funds are insufficient to pay the Allowed Class 2 Secured Claim in full, the unpaid amount of such Claim shall be deemed an Allowed Class 4 Unsecured Claim. The Allowed Class 2 Secured Claim is Impaired under the Plan.

On July 9, 2014 the Debtor filed an objection to Palfam's Secured Claim as wholly unsecured. The basis for the Debtor's objection was an appraisal of the Property which the Debtor alleged rendered the Palfam Secured Claim unsecured. Proponent disputes the allegations in the objection. The objection has not been prosecuted by the Debtor and the Proponent asserts that given the treatment of the Class 2 Secured Claim and the proposed Auction of the Property, the objection is mooted.

**3. Class 3 Priority Non-Tax Claims**

Certain priority non-tax Claims that are referred to in Code sections 507(a)(3), (4), (5), (6), and (7) are required to be placed in Classes. The Debtor's schedules show there are no priority non-tax Claims in this case. Nor has any party filed a priority claim prior the expiration of the Bar Date. To the extent any such claims exist, payment in full in Cash is to be made to such Claim holders on their Allowed Claims on the Effective Date of the Plan from either the Plan Distribution Fund to the extent there are funds on hand after payment of Administrative, Class 1 and Class 2 Claims in full or in the event that the Proponent is the successful bidder at Auction, by the Proponent directly. Class 3 Claims are not Impaired under the Plan.

**4. Class 4 General Unsecured Claims**

General Unsecured Claims are Claims not secured by any property of the Debtor's estate and not entitled to priority under Code section 507(a). The Debtor did not disclose any Unsecured Claims in its schedules of assets and liabilities. However, based upon the filed proofs of claim, there is an aggregate general unsecured claim amount of \$1,002,250.74. In addition, Class 4 shall include Class 1 and 2 Claims to the extent such Claims are not paid in full. Distribution will be made to Allowed Claims of Class 4 creditors who will share pro rata in remaining Auction proceeds, only if and to the extent there are sale proceeds available after the claims of administrative, Class 1, 2 and 3 have been paid in full as provided in the Plan. Any such payment is to be made as soon as practicable after the Effective Date of the Plan. Class 4 Claims are Impaired under the Plan.

**5. Class of Equity Interest Holders**

Interest holders are the parties who hold ownership interest (i.e., equity interest) in the Debtor. James Rogan is the sole member of the Debtor. Mr. Rogan shall retain his membership

interest in the Debtor, however, he shall receive no distribution unless and until all other Allowed Claims are paid in full. The Class 5 Interest is unimpaired under the Plan.

**D. Means of Effectuating the Plan: Auction Sale of the Property**

**1. Funding.** The Plan shall be funded with (a) all cash on hand on the Effective Date and (b) the net proceeds of the Auction of the Property to the successful bidder at a public auction (“Auction”). In the event that the Proponent is the successful bidder at Auction, the Proponent shall fund, as necessary, all Cash distributions to Allowed Administrative and Priority Claim holders as required under the Plan. The Proponent has ample liquidity and wherewithal to fund these amounts and can provide proof of funds to the Court at the Confirmation hearing if necessary.

**2. Auction.** Following Confirmation, Auction Advisors (“Auctioneer”), a skilled professional auctioneer, shall conduct a marketing campaign for the Property and Auction for a period of approximately thirty (30) days after which time it shall conduct an Auction of the Property. The Proponent shall be designated as the stalking horse bidder and retain the right to credit bid at Auction pursuant to section 363(k) of the Bankruptcy Code, up to the full amount of the Allowed Class 1 and Class 2 Secured Claims, in the aggregate which the Plan Proponent estimates shall be no less than \$3.1 million dollars. The Property shall be sold to the successful bidder at Auction free and clear of all liens, claims, encumbrances, Interests and tenancies of any kind, other than any putative easements, permits and licenses appurtenant to the land pursuant to section 363 (b) and (f) of the Bankruptcy Code.

**3. Bidding Procedures.** Detailed bidding procedures which are intended to create a fair but robust competitive bidding are set forth in the Plan and shall be distributed to all parties interested in bidding at the Auction.

**E. Other Provisions of the Plan**

**1. Executory Contracts and Unexpired Leases**

The Debtor has no executory contracts or unexpired leases, other than various month to month tenancies, which tenancies are not in writing, were not scheduled by the Debtor nor, to the extent post-petition, approved by the Bankruptcy Court. The Plan provides that all executory contracts and unexpired Leases, whether pre- or post-petition date, shall be deemed rejected as of the Confirmation Date. All proofs of claim with respect to claims arising from said rejection must be filed with the Bankruptcy Court within the earlier of (I) the date set forth for filing claims in any order of the Bankruptcy Court approving such rejection or (ii) thirty (30) days after the Confirmation Date. Any such claims, proofs of which are not filed timely, will be barred forever from assertion. Given that, upon information and belief, the Debtor has no such obligations to third parties, no filings of rejection claims are anticipated.

**2. Procedures for Resolving Contested Claims.**

A bar date for filing proofs of claims in this Case was established by the Court as December 18, 2013. The Plan Proponent has performed a preliminary review of claims and does not believe that any objections are warranted. However, to the extent that the Debtor intends to object to any claims, other than those Claims specifically deemed Allowed in the Plan such as the ESB Secured Claim, such objections must be filed no later than the Effective Date.

**F. Tax Consequences of Confirmation.**

**1. Generally.** Confirmation may have federal income tax consequences for the Debtor and holders of Claims and Interests. The Plan Proponent has not obtained and does not intend to request a ruling from the Internal Revenue Service (the "IRS"), nor has the Plan

Proponent obtained an opinion of counsel with respect to any tax matters. Any federal income tax matters raised by Confirmation of the Plan are governed by the Internal Revenue Code and the regulations promulgated thereunder. Creditors and holders of Interests are urged to consult their own counsel and tax advisors as to the tax consequences, under federal and applicable state, local and foreign tax laws of the Plan. The following is intended to be a summary only and not a substitute for careful tax planning with a tax professional. The federal, state and local tax consequences of the Plan may be complex in some circumstances and, in some cases, uncertain. Accordingly, each holder of a Claim or Interest is strongly urged to consult with his or her own tax advisor regarding the federal, state and local tax consequences of the Plan, including but not limited to the receipt of Cash under the Plan.

**2. Tax Consequences to the Debtor.** The Debtor may not recognize income as a result of the discharge of debt pursuant to the Plan because section 108 of the Internal Revenue Code provides that taxpayers in bankruptcy cases do not recognize income from discharge of indebtedness. However, subject to certain exceptions, a taxpayer is required to reduce its "tax attributes" by the amount of the debt discharged. Tax attributes are reduced in the following order: (i) net operating losses, (ii) general business credits, (iii) capital loss carryovers, (iv) basis in assets, (v) passive activity loss and credit carryovers, and (vi) foreign tax credit carryovers.

**3. Tax Consequences to Unsecured Creditors.** An unsecured creditor that receives cash in satisfaction of its Claim may recognize gain or loss, with respect to the principal amount of its Claim, equal to the difference between (i) the creditor's basis in the Claim (other than the portion of the Claim, if any, attributable to accrued interest), and (ii) the balance of the cash received after any allocation to accrued interest. The character of the gain or loss as capital gain or loss, or ordinary income or loss, will generally be determined by whether the Claim is a

capital asset in the creditor's hands. A creditor may also recognize income or loss in respect of consideration received for accrued interest on the Claim. The income or loss will generally be ordinary, regardless of whether the creditor's Claim is a capital asset in its hands.

**4. Modification of Plan.** The Debtor may modify the Plan at any time before confirmation. However, the Court may require a new disclosure statement and/or revoting on the Plan if Debtor modifies the plan before confirmation. The Plan Proponent may also seek to modify the Plan at any time after confirmation so long as (1) the Plan has not been substantially consummated and (2) the Court authorizes the proposed modification after notice and a hearing. Plan Proponent further reserves the right to modify the treatment of any Allowed Claims at any time after the Effective Date of the Plan upon the consent of the Creditor whose Allowed Claim treatment is being modified, so long as no other Creditors are materially adversely affected.

**5. Post-Confirmation Conversion/Dismissal.** A creditor or party in interest may bring a motion to convert or dismiss the case under section 1112(b), after the Plan is confirmed, if there is a default in performance of the Plan or if cause exists under section 1112(b). Quarterly fees pursuant to 28 U.S.C. § 1930(a)(6) continue to be payable to the Office of the United States Trustee post-confirmation until such time as the case is converted, dismissed, or closed pursuant to a final decree. Pursuant to 28 U.S.C. § 1930(a)(6), the quarterly fees continue until the conversion or dismissal of the chapter 11 case. The U S Trustee's Office asserts that the Debtor may be held liable for interest on outstanding quarterly fees pursuant to 31 U.S.C § 3717.

#### **IV. CONFIRMATION REQUIREMENTS AND PROCEDURES**

To be confirmable, the Plan must meet the requirements listed in §§ 1129(a) or (b) of the Bankruptcy Code. These include the requirements that: the Plan must be proposed in good faith;

at least one impaired class of claims must accept the plan, without counting votes of insiders; the Plan must distribute to each creditor at least as much as the creditor would receive in a chapter 7 liquidation case, unless the creditor votes to accept the Plan; and the Plan must be feasible. These requirements are not the only requirements listed in § 1129, and they are not the only requirements for confirmation.

**A. Who May Vote or Object**

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

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

In this case, the Plan Proponent believes that there are classes impaired under the Plan and that the holder of the claims in these classes are entitled to vote to accept or reject the Plan.

**1. What Is an Allowed Claim?**

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

*The deadline for filing a proof of claim in this case was December 18, 2013.*

## **2. What Is an Impaired Claim?**

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

Class 1, 2, 3 and 4 Claims are impaired under the Plan and entitled to vote. As such, each holder of a Claim in those Classes has been sent a ballot together with this Disclosure Statement. The ballot is to be used for voting to accept or reject the Plan.

The Bankruptcy Court has directed that, to be counted for voting purposes, ballots for the acceptance or rejection of the Plan must be mailed or delivered by hand or courier so that they are ACTUALLY RECEIVED no later than 5:00 p.m. (Eastern Standard Time) on August 19, 2016 at the following address:

DELBELLO DONNELLAN WEINGARTEN  
WISE & WIEDERKEHR, LLP  
One North Lexington Avenue  
White Plains, New York 10601  
Attn: Jonathan S. Pasternak, Esq.  
Erica R. Aisner, Esq.

Each Holder of an Allowed Claim in each voting Class shall be entitled to vote to accept or reject the Plan as provided for in the order approving the Disclosure Statement. A vote may be disregarded if the Bankruptcy Court determines that such vote was not solicited or procured in good faith and in accordance with the Bankruptcy Code.

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

The holders of the following five types of claims are *not* entitled to vote:

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

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

#### **4. Who Can Vote in More Than One Class**

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

#### **B. Votes Necessary to Confirm the Plan**

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

##### **1. Votes Necessary for a Class to Accept the Plan**

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

##### **2. Treatment of Nonaccepting Classes**

Even if one or more impaired classes reject the Plan, the Court may nonetheless confirm the Plan if the nonaccepting classes are treated in the manner prescribed by § 1129(b) of the

Bankruptcy Code. A plan that binds nonaccepting classes is commonly referred to as a “cram down” plan. The Bankruptcy Code allows the Plan to bind nonaccepting classes of claims if it meets all the requirements for consensual confirmation except the voting requirements of § 1129(a)(8) of the Bankruptcy Code, does not “discriminate unfairly,” and is “fair and equitable” toward each impaired class that has not voted to accept the Plan.

*You should consult your own attorney if a “cramdown” confirmation will affect your claim as the variations on this general rule are numerous and complex.*

### **3. Feasibility and Best Interests Test**

The Bankruptcy Code requires that in order to confirm the Plan, the Bankruptcy Court must find that confirmation of the Plan is not likely to be followed by liquidation or the need for further financial reorganization of the Debtor (the “Feasibility Test”).

Typically, for a plan to meet the Feasibility Test, the Bankruptcy Court must find that the Debtor will possess the resources to meet its obligations under the Plan. Here, given that the Plan Proponent is not the Debtor, feasibility will be determined on whether the Plan itself will result in sufficient funds to meet the financial obligations under the Plan. Since the Plan contemplates a liquidation of the Debtor’s assets, Confirmation of the Plan is not likely to be followed by the need for further financial reorganization of the Debtor or any successor to the Debtor under the Plan. Moreover, on the Effective Date, the Plan Proponent will have sufficient funds on hand to fund the Plan.

In addition, the Bankruptcy Court must determine that the values of the distributions to be made under the Plan to each Class will equal or exceed the values which would be allocated to such Class in a liquidation under Chapter 7 of the Bankruptcy Code (the “Best Interest Test”).

The Best Interest Test with respect to each impaired Class requires that each holder of a Claim or Interest in such Class either (i) accept the Plan or (ii) receive or retain under the Plan property of a value, as of the Effective Date, that is not less than the value such holder would receive or retain if the Debtor was liquidated under Chapter 7 of the Bankruptcy Code. Because the Plan proposes a liquidation of the assets of the Debtor, and a distribution of all proceeds thereof to holders of Allowed Claims in order of priority, no scenario exists, including but not limited to Chapter 7 liquidation, under which the creditors would be entitled to receive a distribution greater than that which the Debtor has proposed in its Plan. In fact, were the Debtor's assets liquidated in a Chapter 7 case, the creditors of the estate would stand to receive far less as the Administrative costs associated with such a case would be significantly higher.

The Plan Proponent believes that the Plan satisfies all of the statutory requirements of Chapter 11 of the Bankruptcy Code, including the "best interest" and feasibility requirements. The Plan is "fair and equitable" and "does not discriminate unfairly". The Plan complies with all other requirements of Chapter 11 of the Bankruptcy Code and the Plan has been proposed in good faith.

## **V. EFFECT OF CONFIRMATION OF PLAN**

A. **Discharge.** Since the Plan contemplates a liquidation of the Debtor's assets through a sale of the Debtor's Property, in accordance with section 1141(d)(3), no discharge would be available to the Debtor.

B. **Releases, Exculpations and Injunctions.** *In consideration for the guaranteed funding of the Plan, including all Allowed Administrative and Priority Claims in full, regardless of the results of the Auction of the Property, upon the entry of the Confirmation*

*Order, the Debtor, its estate and its present and former shareholders, officers, partners, members, directors and assigns, and all persons claiming by or through any of them (collectively, the “Debtor Entities”), release, acquit and forever discharge the Proponent, ESB and their respective direct and indirect affiliates, subsidiaries, parents, officers, board members, shareholders, trustees, directors, partners, members, employees, beneficial owners, attorneys-in-fact, attorneys-at-law, servicers, predecessors in interest, and agents of all of the foregoing and their respective heirs, executors, administrators, attorneys, successors, legal representatives and assigns (collectively, the “Proponent Released Parties”) from and against any and all actions, causes of actions, privileges, suits, debts, dues, sums of money, compensation, accounts, obligations, liabilities, damages, losses, costs, expenses, judgments, claims and demands whatsoever, whether known or unknown, foreseen or unforeseen (regardless of by whom raised) in law or in equity, which the Debtor Entities, and/or any of them, and/or anyone claiming by, through or under any of the Debtor Entities, ever had or may ever have against the Proponent Released Parties from the beginning of time through the date of entry of the Confirmation Order.*

*Notwithstanding any other provision of the Plan, none of the Proponent Released Parties shall have or incur any liability to, or be subject to any right of action by, any holder of a Claim or Interest, or any other party in interest, or any of their related persons acting in such capacity, or affiliates, or any of their successors or assigns, for any act or omission in connection with, relating to, or arising out of, the Debtor’s Chapter 11 case, including without limitation, commencement of the Chapter 11 case, formulating, negotiating or implementing this Plan, the solicitation of acceptances of the Plan, the pursuit of confirmation of the Plan, the confirmation of the Plan, the consummation of the Plan or the administration of the Plan*

*or the property to be distributed under the Plan, except for their gross negligence, willful misconduct or fraud, as determined by a Final Order, and in all respects shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities under the Plan. Notwithstanding any other provision hereof, nothing contained in this Section shall (a) effect a release of any claim by the United States Government or any state and local authority whatsoever, nor shall anything in this section enjoin the United States or any federal governmental agency or any state or local authority, from bringing any claim, suit, action or other proceedings against any Proposed Released Party referred to herein for any liability whatever, including, without limitation, any claim, suit or action arising under the Internal Revenue Code, ERISA, the environmental laws or any criminal laws of the United States or any state and local authority, including the New York State Tax Law, nor shall anything in this Plan exculpate any party from any liability to the United States Government or any of its agencies or any state and local authority whatsoever, including liabilities arising under the Internal Revenue Code, ERISA, the environmental laws or any criminal laws of the United States or any state and local authority, including the New York State Tax Law, against the Parties referred to herein, or (b) limit the liability of the Debtor's professionals pursuant to Rule 1.8(h)(1) of the New York Rules of Professional Conduct.*

*All persons and entities that hold, have held, or may hold a Claim or any other obligation, suit, judgment, damages, debt, right, remedy, causes of action or liability of any nature whatsoever, or any Equity Interest or other right of a holder of an equity security or other ownership interest, relating to the Debtor or the Reorganized Debtor or any of its assets, property and estate, that is released pursuant to the terms of the Plan, and all other parties in interest shall be, permanently, forever and completely stayed, restrained prohibited,*

*barred and enjoined from taking any of the following actions, whether directly or indirectly, derivatively or otherwise: (i) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding (including, without limitation, any judicial, arbitral, administrative or other proceeding) in any forum; (ii) enforcing, attaching (including, without limitation, any prejudgment attachment), collecting, or in any way seeking to recover any judgment, award, decree, or other order; (iii) creating, perfecting or in any way enforcing in any matter, directly or indirectly, any Lien against the Property or any assets of the Debtor's estate; (iv) setting off, seeking reimbursement or contributions from, or subrogation against, or otherwise recouping in any manner, directly or indirectly, any amount against any liability or obligation owed to any of the Proponent Released Parties; and (v) commencing or continuing in any manner, in any place of any judicial, arbitration or administrative proceeding in any forum, that does not comply with or is inconsistent with the provisions of the Plan or the Confirmation Order.*

*The terms and provisions of the releases and exculpations contained above shall not be deemed to modify, limit, restrict, condition or suspend, in whole or in part any rights, title, interests, privileges of Proponents elsewhere set forth in the Plan or the Confirmation Order.*

**VI. RECOMMENDATION**

The Plan Proponent believes that Confirmation of the Plan is in the best interests of all creditors of the estate. No other alternative available to the Debtor or the creditors will result in any greater recovery than that which is proposed and recommended in the Plan. All other alternative would cause significant delay and uncertainty, as well as substantial additional administrative costs.

WB DEBT HOLDINGS, LLC  
*Plan Proponent*

Dated: July 19, 2016

By: /s/ Joseph Winters  
Joseph Winters, Managing Member

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