Docket #0218 Date Filed: 05/25/2026

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
Charlotte Division

IN RE: BRD LAND & INVESTMENT, et al. Debtors.	Chapter 11 Case No. 26-30215 (Jointly Administered)

DLP LENDING FUND LLC AND DLP CAPITAL LENDING CH LLC'S OBJECTION TO DEBTORS' MOTION FOR ENTRY OF AN ORDER (A) APPROVING CERTAIN VOTING PROCEDURES AND THE FORM OF CERTAIN DOCUMENTS TO BE DISTRIBUTED IN CONNECTION WITH SOLICITATION OF THE PLAN; AND (B) APPROVING PROPOSED VOTING AND GENERAL TABULATION PROCEDURES

DLP Lending Fund LLC ("DLP Lending") and DLP Capital Lending CH LLC ("DLP LendingCH" and, together with DLP Lending, collectively, "DLP") by their attorneys, hereby file this objection (the "Objection") to *Debtors' Motion for Entry of an Order (A) Approving Certain Voting Procedures and the Form of Certain Documents to be Distributed in Connection with Solicitation of the Plan; and (B) Approving Proposed Voting and General Tabulation Procedures* [ECF. No. 172] (the "Solicitation Procedures Motion").[1] [2] In support of its Objection, DLP states as follows:

[1] All references to ECF docket numbers refer to the ECF number in the lead case, BRD Land & Investment, unless stated otherwise.

[2]The Solicitation Procedures Motion established a Friday, May 22, 2026, deadline for responses and scheduled a hearing for June 3, 2026. DLP maintains that no party will be prejudiced by the timing of this objection and respectfully requests that the Court consider it at the June 3, 2026, hearing, at which the Court will also address the Debtors' Disclosure Statement.

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PRELIMINARY STATEMENT

1. The Motion, filed on May 8, 2026, seeks entry of an order approving certain voting and solicitation procedures in connection with the Debtors' Joint Plan of Liquidation [ECF No. 136] (the "Plan"). While ostensibly limited to procedural matters regarding the mechanics of solicitation, the Motion and the proposed Solicitation Procedures Order improperly seek the Court's implicit approval of the Plan's classification scheme before the Confirmation Hearing. DLP holds secured claims against the Debtors (and potentially unsecured deficiency claims) and is directly impacted by the classification and treatment of claims under the Plan. This Objection is filed to preserve DLP's rights and to prevent the premature judicial endorsement of a classification scheme that DLP contends is improper under section 1122 of the Bankruptcy Code.

BACKGROUND

2. On February 24, 2026 (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. On April 21, 2026, the Debtors filed their Disclosure Statement and the Plan. The Plan proposes to classify holders of claims and interests into eight classes for all purposes, including with respect to voting on the Plan: Class 1 (Allowed Secured Tax Claims), Class 2 (Allowed DLP Warden Station Secured Claim), Class 3 (Allowed DLP Clark Secured Claim), Class 4 (Allowed DLP Pinewood Secured Claim), Class 5 (Allowed Other Secured Claims), Class 6 (Allowed Priority Claims), Class 7 (Allowed General Unsecured Claims), and Class 8 (Allowed Equity Interests). All eight classes are designated as impaired and entitled to vote.

4. On May 8, 2026, the Debtors filed the Motion seeking approval of certain voting and solicitation procedures, the forms of ballots, and the proposed voting and general tabulation procedures.

OBJECTION

A. The Motion Improperly Seeks Implicit Approval of the Plan's Classification Scheme

5. The Motion and the proposed Solicitation Procedures Order do far more than merely establish the logistical mechanics for distributing ballots and counting votes. By requesting approval of ballots that are tailored to specific classes and by embedding the Plan's classification structure and proposed substantive consolidation into the very fabric of the solicitation process, the Debtors are effectively seeking a premature judicial imprimatur on the Plan's classification scheme. Approval of those ballots and the associated solicitation procedures would implicitly ratify the classification designations set forth in the Plan despite the Plan's failure to properly address all claims and substantive consolidation.

6. Classification of claims is a matter that the Bankruptcy Code reserves for the confirmation hearing under sections 1122 and 1129. Section 1122(a) of the Bankruptcy Code provides that "a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class." The propriety of the Debtors' classification scheme, including whether claims have been improperly gerrymandered into separate classes or whether substantially similar claims have been artificially separated, is a contested issue that cannot and should not be resolved at the solicitation procedures stage of these cases.

7. The Plan separately classifies secured claims held by DLP into three distinct classes: Class 2 (Allowed DLP Warden Station Secured Claim), Class 3 (Allowed DLP Clark

Secured Claim), and Class 4 (Allowed DLP Pinewood Secured Claim), while grouping all claims across all the Debtors into single classes and not by each debtor. DLP reserves all rights to challenge this classification at the Confirmation Hearing, including but not limited to the argument that certain creditors have been lumped in classes without adequate justification, and/or that the classification violates section 1122 of the Bankruptcy Code.

8. Approval of the solicitation procedures should not be construed as, and should not operate as, approval of the underlying classification structure. To the extent the proposed Solicitation Procedures Order can be read to prejudice DLP's right to challenge classification at the Confirmation Hearing, DLP objects.

B. The Proposed Solicitation Procedures Order Should Include a Reservation of Rights Regarding Classification

9. To the extent the Court is inclined to approve the Motion, DLP respectfully requests that the Solicitation Procedures Order include an express provision stating that approval of the voting and solicitation procedures, including the forms of ballots, does not constitute approval of the Plan's classification scheme and does not prejudice any party's right to object to classification at the Confirmation Hearing or at any other appropriate time.

10. Without such a reservation, the Debtors may later argue that the Court's approval of the solicitation procedures constituted an implicit finding that the classification scheme is proper, thereby shifting the burden at the Confirmation Hearing or creating a presumption of validity that is inconsistent with the Bankruptcy Code.

C. The Disclosure Statement Has Not Yet Been Finally Approved

11. The Motion contemplates that the Disclosure Statement has been approved only on an interim basis. DLP reserves all rights to object to the adequacy of the Disclosure Statement, including whether it contains adequate information as required by section 1125(a) of the

Bankruptcy Code regarding, among other things, the treatment and classification of DLP's secured claims.

D. The Tabulation Procedures May Improperly Dilute Creditor Voting Rights

12. The proposed tabulation procedures establish a hierarchy for determining claim amounts for voting purposes and grant the Debtors broad discretion regarding the counting of ballots. Specifically, the Solicitation Procedures provide that claims for which proofs of claim are filed in "unliquidated or unknown" amounts shall be counted as claims in the amount of $1.00 solely for purposes of satisfying the dollar amount provisions of section 1126(c) of the Bankruptcy Code. DLP objects to the extent these tabulation procedures could be applied in a manner that artificially inflates the number of creditors in a particular class or otherwise dilutes the voting power of secured creditors with liquidated claims.

13. Additionally, the Solicitation Procedures grant the Debtors broad authority to waive "any defects or irregularities as to any particular Ballot at any time, either before or after the close of voting." This unfettered discretion, exercisable solely by the Debtors without prior court approval, creates the potential for abuse and may be exercised in a manner that prejudices DLP's interests.

E. The Release, Exculpation, and Injunction Provisions

14. The Solicitation Procedures provide that the "release, exculpation, and injunction language in the Plan will be included in the Disclosure Statement and further notice is provided with respect to such provisions in the Confirmation Hearing Notice." DLP objects to the extent the solicitation procedures and ballot forms do not provide adequate and conspicuous notice to creditors regarding the release, exculpation, and injunction provisions of the Plan, including

whether such provisions may operate to release claims held by DLP against non-debtor third parties. DLP reserves all rights to challenge any such provisions at the Confirmation Hearing.

F. The Solicitation Materials Fail to Adequately Disclose the Proposed Substantive Consolidation

15. The Debtors' proposed voting and solicitation procedures assume substantive consolidation of the Debtors for purposes of voting and distribution. Yet, nowhere in the proposed Disclosure Statement, Solicitation Procedures, the ballots, or any accompanying materials do the Debtors ever explain (i) what substantive consolidation is; (ii) the benefits of substantive consolidation to creditors; (iii) the identification of creditor constituencies for each individual Debtor entity; (iv) the identification of assets held by each individual Debtor entity; (v) the risks to creditors of substantive consolidation, including the potential dilution of claims against asset-rich entities; (vi) the business reasons justifying substantive consolidation; (vii) the requirement that the Court must independently approve the substantive consolidation of the Debtors before it may take effect; or (viii) any other material information regarding substantive consolidation necessary for creditors to make an informed voting decision. Substantive consolidation is such a draconian remedy that creditors cannot be asked to vote on a plan premised upon it without first receiving adequate notice and a meaningful explanation of its consequences. Approving solicitation procedures that fail to disclose this information would deprive creditors of the ability to cast a truly informed vote, rendering the entire solicitation process fundamentally deficient. The Court should deny the Debtors' Motion to Approve Voting and Solicitation Procedures unless and until the Debtors supplement their solicitation materials with adequate disclosure regarding the proposed substantive consolidation.

RESERVATION OF RIGHTS

16. DLP expressly reserves all rights to: (a) object to the Plan, including without limitation the classification and treatment of claims thereunder; (b) object to the adequacy of the Disclosure Statement; (c) challenge the classification of claims at the Confirmation Hearing; (d) assert that the Plan does not satisfy the requirements of section 1129 of the Bankruptcy Code, including without limitation the requirements of sections 1129(a)(1), (a)(3), (a)(7), (a)(8), (a)(10), and (b); (e) object to any release, exculpation, or injunction provisions of the Plan; (f) object to failure to adequately disclose and meet the standards of substantive consolidation; and (g) raise any other objections to the Plan or the solicitation process as may be appropriate.

CONCLUSION

WHEREFORE, DLP Lending Fund LLC and DLP Capital Lending CH LLC respectfully request that the Court: (a) sustain this Objection; (b) deny the Motion to the extent it seeks implicit approval of the Plan's classification scheme; (c) in the alternative, if the Court approves the Motion, include in the Solicitation Procedures Order an express provision preserving all parties' rights to challenge the Plan's classification scheme at the Confirmation Hearing; (d) require that the ballots and solicitation materials include adequate disclosures regarding the release, exculpation, and injunction provisions of the Plan; (e) require fulsome disclosure of any proposed substantive consolidation of the Debtors via the Plan; and (f) grant such other and further relief as the Court deems just and proper.

Dated: May 25, 2026

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CERTIFICATE OF SERVICE

I, Esther McKean, hereby certify that on this 25th day of May 2026, I caused the foregoing DLP LENDING FUND LLC AND DLP CAPITAL LENDING CH LLC'S OBJECTION TO DEBTORS' MOTION FOR ENTRY OF AN ORDER (A) APPROVING CERTAIN VOTING PROCEDURES AND THE FORM OF CERTAIN DOCUMENTS TO BE DISTRIBUTED IN CONNECTION WITH SOLICITATION OF THE PLAN; AND (B) APPROVING PROPOSED VOTING AND GENERAL TABULATION PROCEDURES filed herewith to be served by this Court's CM/ECF System.

Dated: May 25, 2026.

/s/ Esther McKean
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