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**IN THE UNITED STATES BANKRUPTCY COURT**  
**NORTHERN DISTRICT OF TEXAS**  
**DALLAS DIVISION**

<b>In re:</b>	§	
	§	
<b>ELEVEN-BAR-SEVEN,</b>	§	<b>Case No. 17-31273</b>
	§	
<b>Debtor.</b>	§	<b>(Chapter 11)</b>

**FIRST AMENDED DISCLOSURE STATEMENT DATED APRIL 24, 2018**

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## **ARTICLE I.**

### **INTRODUCTION**

#### **Identity of the Debtor**

1.1 Eleven-Bar-Seven, Ltd. ("Debtor"), filed a voluntary petition for reorganization under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. Section 101, et seq. ("Code") on April 4, 2018 in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division ("Court"), initiating the above-styled and referenced bankruptcy proceeding. The Debtor is operating its business as a Debtor-in-Possession pursuant to Sections 1107 and 1108 of the Code. The principal of the Debtor is Phillip Lynn Lloyd.

#### **Purpose of Disclosure Statement; Source of Information**

1.2 Debtor submits this Disclosure Statement pursuant to Section 1125 of the Code to all known Claimants of Debtor for the purpose of disclosing that information which the Court has determined is material, important, and necessary for Creditors of, and the equity owners of, Debtor in order to arrive at an intelligent, reasonably informed decision in exercising the right to vote for acceptance or rejection of the Debtor's First Amended Plan (the "Plan"). This Disclosure Statement describes the operations of the Debtor contemplated under the Plan. You are urged to study the Plan in full and to consult with your counsel about the Plan and its impact upon your legal rights. Any accounting information contained herein has been provided by the **Debtor** and has been prepared using the cash method of accounting.

#### **Explanation of Chapter 11**

1.3 Chapter 11 is the principal reorganization chapter of the Code. Pursuant to Chapter 11, a debtor is authorized to reorganize its business for its own benefit and that of its creditors and equity interest holders. Formulation of a plan of reorganization is the principal purpose of a Chapter 11 reorganization case. A plan of reorganization sets forth the means for satisfying claims against and interests in the debtor. After a plan of reorganization has been filed, it must be accepted by holders of claims against, or interests in, the debtor. Section 1125 of the Code requires full disclosure before solicitation of acceptances of a plan of reorganization. This Disclosure Statement is presented to Claimants to satisfy the requirements of Section 1125 of the Code.

#### **Explanation of the Process of Confirmation**

1.4 Even if all Classes of Claims accept the plan, its confirmation may be refused by the Court. Section 1129 of the Code sets forth the requirements for confirmation and, among other things, requires that a plan of reorganization be in the best interests of Claimants. It generally requires that the value to be distributed to Claimants and Equity Interest Holders may not be less than such parties would receive if the debtor were liquidated under Chapter 7 of the Code.

1.5 Acceptance of the plan by the Creditors and Equity Interest Holders is important. In order for the plan to be accepted by each class of claims, the creditors that hold at least two thirds (2/3) in amount and more than one-half (1/2) in number of the allowed claims actually voting on the plan in such class must vote for the plan and the equity interest holders that hold at least two-thirds (2/3) in amount of the allowed interests actually voting on the plan in such class must vote for the plan. Chapter 11 of the Code does not require that each holder of a claim against, or interest in, the debtor vote in favor of the plan in order for it to be confirmed by the Court. The plan, however, must be accepted by: (I) at least the holder of one (1) class of claims by a majority in number and two-thirds (2/3) in amount of those claims of such class actually voting; or (ii) at least the holders of one (1) class of allowed interests by two-thirds (2/3) in amount of the allowed interests of such class actually voting.

1.6 The Court may confirm the plan even though less than all of the classes of claims and interests accept it. The requirements for confirmation of a plan over the objection of one or more classes of claims or interests are set forth in Section 1129(b) of the Code.

1.7 Confirmation of the plan discharges the debtor from all of its pre-confirmation debts and liabilities except as expressly provided for in the plan and Section 1141(d) of the Code. Confirmation makes the plan binding upon the debtor and all claimants, equity interest holders and other parties-in-interest, regardless of whether or not they have accepted the plan.

### **Voting Procedures**

1.8 **Impaired Classes.** The Class 1 and 2 Claimants are impaired as defined by Section 1124 of the Code. The Debtor is seeking the acceptance of the Plan by Claimants in Classes 1 and 2 and the Equity Interest Holders in Class 3. Each holder of an Allowed Claim in Classes 1 and 2 may vote on the Plan by completing, dating and signing the ballot sent to each holder and filing the ballot as set forth below. One ballot will be sent to each Claimant or Equity Interest Holder eligible to vote on the Plan. For all Classes, the ballot must be returned to Debtor's attorney, Martin K. Thomas, Attorney at Law, P.O. Box 36528, Dallas, TX 75235. In order to be counted, ballots must be RECEIVED no later than at the time and on the date stated on the ballot.

1.9 **Acceptances.** Ballots that are signed and returned but fail to indicate either an acceptance or rejection will not be counted.

### **Best Interests of Creditors Test**

1.10 Section 1129(a)(7) of the Code requires that each impaired class of claims or interests accept the Plan or receive or retain under the Plan on account of such claim or interest, property of a value as of the Effective Date of the Plan, that is not less than the amount that such holder would so receive or retain if the Debtor were liquidated under Chapter 7 of the Bankruptcy Code. If Section 1111(b)(2) of the Code applies to the claims of such class, each holder of a claim of such class will receive or retain under the Plan, on account of such claim, property of a value, as of the Effective Date of the Plan, that is not less than the value of such holder's interest in the estate's interest in the property that secures such claims. In order for the Plan to be

confirmed, the Court must determine that the Plan is in the best interests of the Debtor's creditors. Accordingly, the proposed plan must provide the Debtor's creditors with more than they would receive in a Chapter 7 liquidation. Accordingly, since the Plan proposes to pay all secured creditors in full and the unsecured creditors a substantial dividend, Debtor believes that the creditors are receiving more than they would receive in a Chapter 7 liquidation. Accordingly, the Plan satisfies the requirements of Section 1129(a)(7).

### **Cramdown**

1.11 The Court may confirm the Plan even though less than all of the classes of claims and interests accept it. The requirements for confirmation of a plan over the objection of one or more classes of claims or interests are set forth in Section 1129(b) of the Code. Accordingly, Debtor, as the plan proponent, requests the Court to determine that the Plan does not discriminate unfairly and is fair and equitable with respect to any objecting creditor. A discussion of the specific requirements for Cramdown of a Plan are set forth starting in Section 1.17 below.

### **Definition of Impairment**

1.12 As set forth in section 1124 of the Bankruptcy Code, a class of claims or equity interests is impaired under a plan of reorganization unless, with respect to each claim or equity interest of such class, the plan:

- (a) leaves unaltered the legal, equitable, and contractual rights of the holder of such claim or equity interest; or
- (b) notwithstanding any contractual provision or applicable law that entitles the holder of a claim or equity interest to demand or receive accelerated payment of such claim or equity interest after the occurrence of a default:
  - (i) cures any such default that occurred before or after the commencement of the case under the Bankruptcy Code, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code;
  - (ii) reinstates the maturity of such claim or interest as it existed before such default;
  - (iii) compensates the holder of such claim or interest for any damages incurred as a result of any reasonable reliance on such contractual provision or such applicable law; and
  - (iv) does not otherwise alter the legal, equitable or contractual rights to which such claim or interest entitles the holder of such claim or interest.

### **Classification and Treatment of Claims and Interests**

1.13 The Plan classifies Claims separately in accordance with the Bankruptcy Code and provides different treatment for different classes of Claims.

1.14 Only holders of Allowed Claims are entitled to receive distributions under the Plan. Allowed Claims are Claims that are not in dispute, are not contingent, are liquidated in amount, and are not subject to objection or estimation. Initial distributions or other transfers of Cash or other consideration specified in the Plan otherwise available to the holders of Allowed Claims will be made on the Effective Date, or (b) the date on which such Claim becomes an Allowed Claim), as otherwise provided in the Plan, or as may be ordered by the Bankruptcy Court.

1.15 In accordance with the Plan, unless otherwise provided in the Plan or the Confirmation Order, the treatment of any Claim under the Plan will be in full satisfaction, settlement, release, and discharge of and in exchange for each and every Claim.

### **Requirements for Confirmation of the Plan**

1.16 At the confirmation hearing, the Bankruptcy Court must determine whether the Bankruptcy Code's requirements for confirmation of the Plan have been satisfied, in which event the Bankruptcy Court will enter an order confirming the Plan. As set forth in section 1129 of the Bankruptcy Code, these requirements are as follows:

The plan complies with the applicable provisions of the Bankruptcy Code.

The proponents of the plan comply with the applicable provisions of the Bankruptcy Code.

The plan has been proposed in good faith and not by any means forbidden by law.

Any payment made or promised by the Debtor, by the plan proponents, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in, or in connection with, the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of the Bankruptcy Court as reasonable.

(A) The proponent of the plan has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer, or voting trustee of the Debtor, an affiliate of the Debtor participating in a joint plan with the Debtor, or a successor to the Debtor under the plan; and

(B) the appointment to, or continuance in, such office of such individual, is consistent with the interests of creditors and equity security holders and with public policy; and

the proponent of the plan has disclosed the identity of any insider that will be employed or retained by the reorganized Debtor, and the nature of any compensation for such insider.

Any governmental regulatory commission with jurisdiction, after confirmation of the plan, over the rates of the Debtor has approved any rate change provided for in the plan, or such rate change is expressly conditioned on such approval.

With respect to each impaired class of claims or interests:

- (i) each holder of a claim or interest of such class has (A) accepted the plan or (B) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the Debtor were liquidated on such date under chapter 7 of the Bankruptcy Code on such date; or
- (ii) if section 1111(b)(2) of the Bankruptcy Code applies to the claims of such class, the holder of a claim of such class will receive or retain under the plan on account of such claim property of a value, as of the effective date of the plan, that is not less than the value of such holder's interest in the estate's interest in the property that secures such claims.
- (iii) With respect to each class of claims or interests:
  - (i) such class has accepted the plan; or
  - (ii) such class is not impaired under the plan.

Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that:

- (i) with respect to a claim of a kind specified in section 507(a)(1) or 507(a)(2) of the Bankruptcy Code, on the effective date of the plan, the holder of such claim will receive on account of such claim cash equal to the allowed amount of such claim;
- (ii) with respect to a class of claims of a kind specified in section 507(a)(3), 507(a)(4), 507(a)(5) or 507(a)(6) of the Bankruptcy Code, each holder of a claim of such class will receive: (I) if such class has accepted the plan, deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or (ii) if such class has not accepted the plan, cash on the effective date of the plan equal to the allowed amount of such claim; and
- (iii) with respect to a claim of a kind specified in section 507(a)(7) of the Bankruptcy Code, the holder of a claim will receive on account of such claim deferred cash payments, over a period not exceeding six years after the date of assessment of such claim, of a value, as of the effective date of the plan, equal to the allowed amount of such claim.

If a class of claims is impaired under the plan, at least one class of claims that is impaired has accepted the plan, determined without including any acceptance of the plan by any insider holding a claim of such class.

Confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtor or any successor to the Debtor under the plan, unless such liquidation or reorganization is proposed in the plan.

All fees payable under 28 U.S.C. § 1930, as determined by the Bankruptcy Court at the hearing on confirmation of the plan, have been paid or the plan provides for the payments of all such fees on the effective date of the plan. The plan provides for the continuation after its effective date of payment of all retiree benefits, as that term is defined in section 1114 of the Bankruptcy Code, at the level established pursuant to subsection (e)(1)(B) or (g) of section 1114, at any time prior to confirmation of the plan, for the duration of the period the Debtor has obligated itself to provide such benefits.

The Debtor believes that the Plan satisfies all the statutory requirements of chapter 11 of the Bankruptcy Code, that the Debtor has complied with or will have complied with all the requirements of chapter 11, and that the Plan is proposed in good faith.

At the Confirmation Hearing, the Bankruptcy Court will determine whether holders of Allowed Claims or Allowed Equity Interests would receive greater distributions under the Plan than they would receive in a liquidation under chapter 7.

The Debtor believes that the feasibility requirement for confirmation of the Plan is satisfied by the fact that the future operating revenues will be sufficient to satisfy the obligations under the Plan in addition to supporting sustainable growth of the enterprise. These facts and others demonstrating the confirmability of the Plan will be shown at the Confirmation Hearing.

### **Cramdown**

1.17 The bankruptcy court may confirm a plan of reorganization even though fewer than all the classes of impaired claims and interests accept it. For a plan of reorganization to be confirmed despite its rejection by a class of impaired claims or interests, the proponents of the plan must show, among other things, that the plan does not “discriminate unfairly” and that the plan is “fair and equitable” with respect to each impaired class of claims or interests that has not accepted the plan.

1.18 “Fair and equitable” has different meanings with respect to the treatment of secured and unsecured claims. As set forth in section 1129(b)(2) of the Bankruptcy Code, those meanings are as follows:

With respect to a class of secured claims, the plan provides:

- (a) (i) that the holders of such claims retain the liens securing such claims, whether the property subject to such liens is retained by the Debtor or transferred to another entity, to the extent of the allowed amount of such claims; and
- (ii) that each holder of a claim of such class receive on account of such claim deferred cash payments totaling at least the allowed amount of such claim, of



a value, as of the effective date of the plan, of at least the value of such holder's interest in the estate's interest in such property;

(b) for the sale, subject to section 363(k) of the Bankruptcy Code, of any property that is subject to the liens securing such claims, free and clear of such liens, with such liens to attach to the proceeds of such sale, and the treatment of such liens on proceeds under clause (a) and (b) of this subparagraph; or

(c) the realization by such holders of the "indubitable equivalent" of such claims. With respect to a class of unsecured claims, the plan provides:

(a) that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or

(b) the holder of any claim or interest that is junior to the claims of such class will not receive or retain under the plan on account of such junior claim or interest any property.

With respect to a class of interests, the plan provides:

(a) that each holder of an interest of such class receive or retain on account of such interest property of a value, as of the effective date of the plan, 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 such interest; or

(b) that the holder of any interest that is junior to the interests of such class will not receive or retain under the plan on account of such junior interest any property.

1.19 In the event that one or more classes of impaired Claims or Equity Interests reject the Plan, the Bankruptcy Court will determine at the Confirmation Hearing whether the Plan is fair and equitable with respect to, and does not discriminate unfairly against, any rejecting impaired class of Claims. The Debtor believes that its unsecured creditors will vote for the Plan. The absolute priority rule requires that prior to equity retaining an interest in the Debtor the senior classes of claims must be paid in full or vote to accept the Plan. This means that when the unsecured creditors are not being paid in full, the Debtor's shareholders or equity interest holders cannot retain their stock in the Debtor or receive any financial benefit under the Plan because such retention or receipt violates the absolute priority rule and may make the Plan non-confirmable by the Court.

Moreover, the Plan as proposed does not allow the Debtor's equity interest holders to retain nor receive any property or value as part of the Confirmation of the Plan and the equity interests in the Debtor are being cancelled.

For the reasons set forth above, the Debtor believes the Plan does not discriminate unfairly against, and is fair and equitable with respect to, each impaired class of Claims or Equity interests.

## ARTICLE II.

### REPRESENTATIONS

2.1 [Note: Subsequent paragraphs in brackets are to be included after the Court approves this Disclosure Statement.]

2.2 [This Disclosure Statement is provided pursuant to Section 1125 of the Code to all of the Debtor's known Creditors, Equity Interest Holders, and other parties in interest in connection with the solicitation of acceptance of its Plan of reorganization, as amended or modified. The purpose of this Disclosure Statement is to provide such information as will enable a hypothetical, reasonable investor, typical of the holders of Claims, to make an informed judgment in exercising its rights either to accept or reject the Plan. A copy of the Plan is attached hereto as Exhibit "1".]

2.3 [After a hearing on notice, the Court approved this Disclosure Statement as containing information of the kind and in sufficient detail adequate to enable a hypothetical, reasonable investor typical of the classes being solicited to make an informed judgment about the Plan.]

2.4 The information contained in this Disclosure Statement has been derived from information submitted by the Debtor, unless specifically stated to be from other sources.

2.4 All initially capitalized and bolded words used in this Disclosure Statement have the definitions provided for in Article I of the Plan.

2.5 No representations concerning the Debtor are authorized by the Debtor other than those set forth in this Disclosure Statement. The Debtor recommends that any representation or inducement made to secure your acceptance or rejection of the Plan which is not contained in this Disclosure Statement should not be relied upon by you in reaching your decision on how to vote on the Plan. Any representation or inducement made to you not contained herein should be reported to the attorneys for Debtor who shall deliver such information to the Court for such action as may be appropriate.

**2.6. ANY BENEFITS OFFERED TO THE CREDITORS ACCORDING TO THE PLAN WHICH MAY CONSTITUTE "SECURITIES" HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION ("SEC"), THE TEXAS SECURITIES BOARD, OR ANY OTHER RELEVANT GOVERNMENTAL AUTHORITY IN ANY STATE OF THE UNITED STATES. IN ADDITION, NEITHER THE SEC, NOR ANY OTHER GOVERNMENTAL AUTHORITY HAS PASSED UPON THE ACCURACY OR ADEQUACY OF THIS DISCLOSURE STATEMENT OR UPON THE MERITS OF THE PLAN. ANY REPRESENTATIONS TO THE CONTRARY MAY BE A CRIMINAL OFFENSE.**

**2.7. THE INFORMATION CONTAINED HEREIN HAS NOT BEEN SUBJECT TO A CERTIFIED AUDIT. FOR THE FOREGOING REASON, AS WELL AS BECAUSE OF THE IMPOSSIBILITY OF MAKING ASSUMPTIONS, ESTIMATES AND PROJECTIONS INTO THE FUTURE WITH ACCURACY, THE DEBTOR IS UNABLE TO WARRANT OR REPRESENT THAT THE INFORMATION CONTAINED HEREIN IS COMPLETELY ACCURATE, ALTHOUGH EVERY REASONABLE EFFORT HAS BEEN MADE TO ENSURE THAT SUCH INFORMATION IS ACCURATE. THE APPROVAL BY THE COURT OF THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE AN ENDORSEMENT BY THE COURT OF THE PLAN OR GUARANTEE THE ACCURACY OR COMPLETENESS OF THE INFORMATION CONTAINED HEREIN.**

**2.8. THE DEBTOR BELIEVES THAT THE PLAN WILL PROVIDE CLAIMANTS AND EQUITY INTEREST HOLDERS WITH AN OPPORTUNITY ULTIMATELY TO RECEIVE MORE THAN THEY WOULD RECEIVE IN A LIQUIDATION OF THE DEBTOR'S ASSETS AND SHOULD BE ACCEPTED. CONSEQUENTLY, THE DEBTOR URGES THAT CLAIMANTS AND EQUITY INTEREST HOLDERS VOTE FOR THE PLAN.**

**2.9. DEBTOR DOES NOT WARRANT OR REPRESENT THAT THE INFORMATION CONTAINED HEREIN IS CORRECT, ALTHOUGH GREAT EFFORT HAS BEEN MADE TO BE ACCURATE. THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE AS OF THE DATE HEREOF UNLESS ANOTHER TIME IS SPECIFIED HEREIN. THIS DISCLOSURE STATEMENT CONTAINS ONLY A SUMMARY OF THE PLAN. THE PLAN WHICH ACCOMPANIES THIS DISCLOSURE STATEMENT IS AN INTEGRAL PART OF THIS DISCLOSURE STATEMENT, AND EACH CREDITOR AND INTEREST HOLDER IS URGED TO CAREFULLY REVIEW THE PLAN PRIOR TO VOTING ON IT.**

### **ARTICLE III.**

#### **FINANCIAL PICTURE OF THE DEBTOR**

##### **Financial History and Background of the Debtor**

3.1 The Debtor was formed in or about December of 2015, for the purpose of purchasing and developing a tract of farm land (the "Land"). Debtor obtained the Land from me, Phillip Lynn Lloyd, in return for a promissory note in the amount of \$1,564,200.00. No security interest was retained. On or about December 31, 2015, the Debtor obtained a loan in the original amount of \$600,000 from H & I Joint Venture in order to pay part of the purchase price owed Phillip Lynn Lloyd and to provide funds for the development of the Land (the "Loan"). Immediately prior to the filing of this bankruptcy, H & I Joint Venture advised the debtor the Loan balance was \$740,855.00. The Land was conveyed under a deed of trust as security for the Loan. The Loan was intended as a short-term loan and matured on December 31, 2016.

### **Current Operations**

3.2 A summary of the Debtor's gross income, expenses and net operating income during the time it has been in bankruptcy is available on line at [www.txnb.uscourts.gov](http://www.txnb.uscourts.gov).

### **Future Income and Expenses Under the Plan**

3.3 The Debtor does not intend to operate further other than to liquidate the Property.

### **Management of the Debtor**

3.4 No insider of the Debtor has received a transfer.

## **ARTICLE IV.**

### **ANALYSIS AND VALUATION OF PROPERTY**

#### **Real Property**

4.1 The Debtor owns real property located at 200 Fairway Lane, Georgetown, Texas 78628 valued at \$1,564,200.

#### **Personal Property**

4.2 Debtor owns the personal property described as follows:

Property	Value
Bank Accounts and Cash (as of April 4, 2018)	\$366

#### **Liquidation Value of Assets**

4.3 A liquidation analysis of the Debtor's assets is set forth as follows. The Debtor believes the assets listed in paragraph 4.1 would bring less in a foreclosure or liquidation scenario:

Real property and Improvements	\$1,564,200
Cash Accounts (as of April 4, 2018)	\$366

4.4 The Debtor has not obtained an MAI appraisal of the property or the equipment. The opinions of value herein are those solely of the Debtor and have been acquired from its owner's experience with these types of businesses as set forth above. It is clear that in a liquidation there will not be enough money to pay anything beyond the taxes and the secured claim of Motiva. Under the Debtor's plan the unsecured creditors receive a distribution.

## ARTICLE V.

### **SUMMARY OF PLAN OF REORGANIZATION**

The description of the Plan contained in this Disclosure Statement summarizes only certain provisions of the Plan and is not, nor is it intended to be, a complete description of the Plan. The parties are urged to read the Plan in its entirety.

5.1 The Plan is intended to deal with all Claims and Debts against the Debtor and property of the estate of Debtor of whatever character, whether or not the Claims have been allowed by the Court pursuant to Section 502 of the Code. However, only those Claims allowed pursuant to Section 502 of the Code will receive any distributions or property as provided for under the Plan. The provisions of the Plan are without prejudice to the objections held by Debtor to the allowance of said Claims.

### **Classification and Treatment of Claims Under the Plan**

5.2 Unclassified Claims. All trade and service debts and obligations incurred in the normal course of business by the Debtor on or after the Petition Date will be paid when due in the ordinary course of the Debtor's business. The Debtor estimates that upon confirmation it will have the following administrative claims that will be paid in cash, in full on the effective date from the Sale Proceeds and cash on hand from operations:

The Debtor's attorney fees (estimated at \$15,000) will be paid by the Debtor in cash in full upon approval of said fees by this Court.

5.3 Classes of Claims. A description of the claimants in each class and the treatment of their claims is set forth as follows:

The following is a designation of the Classes of Claims and Equity Interests under this Plan. Administrative Expenses and Priority Tax Claims have not been classified and are excluded from the following Classes in accordance with section 1123(a)(1) of the Bankruptcy Code. A Claim or Equity Interest shall be deemed classified in a Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class. A Claim or Equity Interest is in a Class only to the extent that the Claim or Equity Interest is an Allowed Claim or Equity Interest in that Class.

Class 1— H & I Joint Venture Secured Claim

Class 2 — General Unsecured Claims

Class 3 — Equity Interest Holders

<u>Description</u>	<u>Class of Claims</u>	<u>Class Projected Amount</u>
H & I Joint Venture Secured	1	\$851,389.15
General Unsecured	2	\$891,034.00
Equity Interest Holders	3	

5.4 Treatment of Claims. The following sets forth the detailed treatment from the Plan for each class:

The Debtor designates the following Classes of Claims and Interests pursuant to Bankruptcy Code Section 1123. The Debtor shall pay all fees assessed by the Office of the United States Trustee until this Case is closed by the Court or the Debtor is otherwise released from such obligations by the Court.

5.5 Class 1 - H & I Joint Venture Secured Claim. The H & I Joint Venture Secured Claim shall be treated as follows:

(a) Allowance of Claim and Treatment. The H & I Joint Venture Secured Claim shall be paid its full unpaid principal balance and interest as called for by its loan documents prior to the filing of the case. The Debtor will pay H & I Joint Venture all past due amounts, if any, on the Effective Date or as soon thereafter as the sale of the Property is consummated but no later than six months after the Effective Date. Debtor understands H & I Joint Venture to claim that, at most, the past due amounts owed H & I Joint Venture would be approximately \$851,389.15. Debtor reserves the right to object to the amount of that claim.

(b) Liens. H & I Joint Venture shall retain its liens as set forth in its loan documents with the Debtor until satisfaction of its claim in full.

(c) General Treatment. The Plan does not alter H & I Joint Venture's existing loan documents and liens, except as to the date of payment.

(d) Class 1 - The Class 1 Claimant will be paid in full on the Effective Date. The Class 1 Claimants are impaired under this Plan and are entitled to vote on the Plan.

5.6 Class 2 — Unsecured Creditors. The Allowed Claims of Unsecured Creditors shall be paid the balance of the Sale Proceeds less all administrative and priority claims (but not less than 10% of their Allowed Claim) on the Initial Distribution Date. The Class 2 Claimants are impaired under this Plan and are entitled to vote on the Plan.

5.7 Class 3 – Equity Interests. On the Confirmation Date, all Equity Interests shall be cancelled. The Equity Interest holders are Impaired under the Plan.

## **ARTICLE VI.**

### **FEASIBILITY OF PLAN**

6.1 Debtor believes the Property will sell for sufficient funds to pay Class 1 claimants, Class 2 claimants, and Administrative claimants in full.

### **Procedure for Filing Proofs of Claims and Proofs of Interests**

6.2 All proofs of claims and proofs of interests must be filed by those Claimants and Equity Interest Holder who have not filed such instruments on or before the Bar Date fixed by the Court.

6.3 If Claimants have already filed a proof of claim with the Court or are listed in the Debtor's Schedules as holding non-contingent, liquidated and undisputed claims, a proof of claim need not be filed. The schedules and amendments thereto are on file with the Court and are open for inspection during regular Court hours. If the equity security interest of an Equity Interest Holder is properly reflected in the of the Debtor, a proof of interest need not be filed.

## **ARTICLE VII.**

### **RETENTION OF JURISDICTION**

7.1 The Bankruptcy Court's jurisdiction shall be retained under the Plan as set forth in the Plan.

## **ARTICLE VIII.**

### **ALTERNATIVES TO DEBTOR'S PLAN**

8.1 If the Debtor's Plan is not confirmed, the Debtor's bankruptcy case may be converted to a case under Chapter 7 of the Code, in which case a trustee would be appointed to liquidate the assets of the Debtor for distribution to its Creditors in accordance with the priorities of the Code.

8.2 The Debtor has not obtained an MAI appraisal of the property or the equipment. The opinions of value herein are those solely of the Debtor and have been acquired from its owner's experience with these types of businesses as set forth above. It is clear that in a liquidation there will not be enough money to pay anything beyond the taxes and the secured claim of Motiva. Under the Debtor's plan the unsecured creditors receive a distribution.



## **ARTICLE IX.**

### **RISKS TO CREDITORS UNDER THE DEBTOR'S PLAN**

9.1. Claimants and Equity Interest Holders should be aware that there are a number of substantial risks involved in consummation of the Plan. The Plan contemplates that the Debtor's business will generate revenue sufficient to pay the obligations accruing from its operations. The Debtor does not "guarantee" that the expenses will equal those in the projections; however, the Debtor believes that the projections are reasonable. The costs of operating the Debtor's business may be adversely affected, however, by factors beyond the control of the Debtor. To date the Debtor has been able to hold onto its slice of the marketplace. The price of gasoline is always a concern in this type of business.

## **ARTICLE X.**

### **TAX CONSEQUENCES TO THE DEBTOR**

TO ENSURE COMPLIANCE WITH U.S. TREASURY DEPARTMENT CIRCULAR 230, HOLDERS OF CLAIMS ARE HEREBY NOTIFIED THAT: (A) ANY DISCUSSION OF UNITED STATES FEDERAL TAX ISSUES IN THIS DISCLOSURE STATEMENT IS NOT INTENDED OR WRITTEN TO BE USED OR RELIED UPON, AND CANNOT BE USED OR RELIED UPON, BY HOLDERS OF CLAIMS OR INTERESTS OR ANY OTHER PERSONS FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON HOLDERS OF CLAIMS OR ANY OTHER PERSONS UNDER THE INTERNAL REVENUE CODE; (B) SUCH DISCUSSION IS INCLUDED HEREIN IN CONNECTION WITH THE PROMOTION OR MARKETING (WITHIN THE MEANING OF U.S. TREASURY DEPARTMENT CIRCULAR 230) OF THE TRANSACTIONS OR MATTERS ADDRESSED HEREIN; AND (B) HOLDERS OF CLAIMS AND INTERESTS SHOULD SEEK ADVICE BASED ON THEIR PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISER.

#### **A. Introduction**

The following discussion summarizes certain material U.S. federal income tax consequences of the Plan to the Debtor and holders of Claims and Interests. The summary is provided for general informational purposes only and is based on the United States Internal Revenue Code of 1986, as amended (the "Tax Code"), the treasury regulations promulgated thereunder, judicial authority and current administrative rulings and practice, all as in effect as of the date hereof (except as otherwise noted below with regard to the American Recovery and Reinvestment Act of 2009), and all of which are subject to change, possibly with retroactive effect. Changes in any of these authorities or in their interpretation could cause the United States federal income tax consequences of the Plan to differ materially from the consequences described below. The United States federal income tax consequences of the Plan are complex and in important respects uncertain. No ruling has been requested from the Internal Revenue Service (the "Service"); no opinion has been requested from Debtor's counsel concerning any tax consequence of the Plan; and no tax opinion is given by this Disclosure Statement.



The following discussion does not address all aspects of federal income taxation that may be relevant to a particular holder of a Claim or Interest in light of its particular facts and circumstances or to particular types of holders of Claims subject to special treatment under the Tax Code. For example, the discussion does not address issues of concern to broker-dealers or other dealers in securities, or foreign (non-U.S.) persons, nor does it address any aspects of state, local, or foreign (non-U.S.) taxation, or the taxation of holders of Interests in a Debtor. In addition, a substantial amount of time may elapse between the Confirmation Date and the receipt of a final distribution under the Plan. Events subsequent to the date of this Disclosure Statement, such as the enactment of additional tax legislation, court decisions or administrative changes, could affect the federal income tax consequences of the Plan and the transactions contemplated hereunder.

**On February 13, 2009, the House of Representatives and the Senate passed H.R.1, the American Recovery and Reinvestment Act of 2009 (the Recovery Act), a stimulus bill that includes tax breaks for businesses and individuals. The President signed the Recovery Act on February 17, 2009. The following discussion does not address any aspects of the Recovery Act, some of which may be relevant to a particular holder of a Claim or an Interest.**

**THE DISCUSSION THAT FOLLOWS IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING AND PROFESSIONAL TAX ADVICE BASED ON THE INDIVIDUAL CIRCUMSTANCES OF EACH HOLDER OF A CLAIM OR INTEREST. EACH HOLDER OF A CLAIM OR INTEREST IS URGED TO CONSULT WITH ITS TAX ADVISORS REGARDING THE FEDERAL, STATE, LOCAL AND NON-U.S. TAX CONSEQUENCES OF THE PLAN.**

#### B. Certain Definitions

Except as expressly otherwise provided or unless the context otherwise requires, all capitalized terms not otherwise defined herein or in the Plan shall have the respective meanings assigned to them in this Article.

“**COD**” shall mean cancellation of indebtedness income.

“**NOL**” shall mean net operating loss.

#### C. Certain Material Federal Income Tax Consequences to the Debtor

Cancellation of a Debtor's debt is generally taxable income to the Debtor. COD is the amount by which the indebtedness of a Debtor discharged exceeds any consideration given in exchange therefore. Cancellation of a debt may not necessarily be COD, however. To the extent that the Debtor is insolvent, or if the Debtor is in bankruptcy, as is the case here, the Tax Code permits the Debtor to exclude the COD from its gross income. The statutory exclusion for COD in a title 11 case generally excludes COD from gross income if the discharge is granted by a court to a Debtor under its jurisdiction in a title 11 case, as is sought herein.

The price for the bankruptcy COD exclusion (as well as the insolvency exclusion) is reduction of the Debtor's tax attributes to the extent of the COD income, generally in the following order: NOLs for the year of the discharge and NOL carryovers from prior years; general business tax credit carryovers; minimum tax credit available as of the beginning of the year following the year of

discharge; net capital loss for the year of discharge and capital loss carryovers from prior years; basis of the Debtor's assets; passive activity loss and credit carryovers from the year of discharge; and foreign tax credit carryovers to or from the year of discharge. The reduction of attributes does not occur until after the end of the Debtor's tax year in which the COD occurred, so they are available to the Debtor in determining the amount of its income, loss and tax liability for the year of discharge.

As a result of the implementation of the Plan, the Debtors will have COD and potential attribute reduction. Because any reduction in tax attributes does not effectively occur until the first day of the taxable year following the taxable year in which the COD is incurred, the resulting COD, on its own, should not impair the ability of the Debtor to use their tax attributes (to the extent otherwise available) to reduce their tax liability, if any, otherwise resulting from the implementation of the Plan.

Under section 382 of the Tax Code, if a corporation undergoes an "ownership shift," the amount of its Pre-Change Losses that may be utilized to offset future taxable income generally is subject to an annual limitation. Although the Plan allows for an ownership change it is doubtful that one will occur and as such any owner of the Debtor should consult his own tax adviser concerning the effect of the Plan.

The United States federal income tax consequences of payment of Allowed Claims pursuant to the Plan will depend on, among other things, the consideration received, or deemed to have been received, by the holder of the Allowed Claim, whether such holder reports income on the accrual or cash method, whether such holder receives distributions under the Plan in more than one taxable year, whether such holder's Claim is allowed or disputed at the Effective Date, whether such holder has taken a bad debt deduction or worthless security deduction with respect to its Claim.

In general, a holder of a Claim should recognize gain or loss equal to the amount realized under the Plan in respect of its Claim less the amount of such holder's basis in its Claim. Any gain or loss recognized in the exchange may be long-term or short-term capital gain or loss or ordinary income or loss, depending upon the nature of the Claim and the holder, the length of time the holder held the Claim and whether the Claim was acquired at a market discount. If the holder realizes a capital loss, its deduction of the loss may be subject to limitations under the Tax Code. The holder's aggregate tax basis for any property received under the Plan generally will equal the amount realized. The amount realized by a holder generally will equal the sum of the cash and the fair market value of any other property received (or deemed received) by the holder under the Plan on the Effective Date and/or any subsequent distribution date, less the amount (if any) allocable to Claims for interest. All holders of Allowed Claims are urged to consult their tax advisors. A holder of a Claim constituting an installment obligation for tax purposes may be required to recognize currently any gain remaining with respect to the obligation if, pursuant to the Plan, the obligation is considered to be satisfied at other than its face value, distributed, transmitted, sold or otherwise disposed of within the meaning of Section 453B of the Tax Code.

#### D. Importance of Obtaining Professional Tax Assistance

The foregoing discussion is intended only as a summary of certain U.S. federal income tax consequences of the Plan and is not a substitute for careful tax planning with a tax professional. The above discussion is for general information purposes only and is not tax advice. The tax consequences are in many cases uncertain and may vary depending on a holder's individual circumstances.

HOLDERS OF CLAIMS ARE URGED TO CONSULT WITH THEIR TAX ADVISORS ABOUT THE FEDERAL, STATE, LOCAL AND NON-U.S. TAX CONSEQUENCES OF THE PLAN.

#### **ARTICLE XI.**

##### **PENDING LITIGATION**

11.1 As of the date of the filing of this Disclosure Statement H & I Joint Venture has a motion to modify stay pending hoping to foreclose the Property.

11.2 As described in paragraph 3.4, the Debtor does not believe that it has any avoidance actions against insiders. Further, it does not know of any claims it could assert to avoid pre or post-petition transfers.

#### **ARTICLE XII.**

##### **SUMMARY OF SIGNIFICANT ORDERS ENTERED DURING THE CASE**

12.1 As of the date of the filing of this Disclosure Statement the following significant orders have been entered in this case: Order Approving Post Petition Financing.

Dated: April 24, 2018

Respectfully submitted,

Eleven-Bar-Eleven, Ltd.

By: /s/ Phillip Lynn Lloyd  
Its: Owner

Respectfully Submitted,

Eleven Bar Seven

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/s/ Lynn Lloyd

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ATTORNEYS FOR DEBTOR