

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION**

IN RE: DEI TRANSPORTATION, LLC Debtor	§ § § §	CASE NO. 16-70078 CHAPTER 11 SMALL BUSINESS CASE
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**DISCLOSURE STATEMENT OF DEBTOR DEI TRANSPORTATION, LLC
DATED JANUARY 27, 2017**

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I. INTRODUCTION

This is the disclosure statement (the “Disclosure Statement”) in the small business chapter 11 case of DEI TRANSPORTATION LLC (the “Debtor”). This Disclosure Statement contains information about the Debtor and describes the Debtor’s PLAN OF REORGANIZATION (the “Plan”) filed by the Debtor on the same date that this Disclosure Statement is filed. A full copy of the Plan is attached to this Disclosure Statement as Exhibit A. *Your rights may be affected. You should read the Plan and this Disclosure Statement carefully and discuss them with your attorney. If you do not have an attorney, you may wish to consult one.*

The proposed distributions under the Plan are discussed at pages 6-9 of this Disclosure Statement. General unsecured creditors are classified in Class 5; the two claims in said class are disputed and, consequently, will receive nothing under the Plan, subject to final determination by the Court (a hearing on the pending objections to those claims is set for February 17, 2017 at 9am).

A. Purpose of This Document

This Disclosure Statement describes:

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

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

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

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

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

The hearing at which the Court will determine whether to finally approve this Disclosure Statement and confirm the Plan will take place on [the date and time thereof will be set forth in the Court's order fixing same, which is anticipated to be entered in the near future, and said date and time will be inserted herein before this Disclosure Statement is mailed out] in the 10th Floor Bankruptcy Courtroom of the United States Courthouse located at 1701 W. Business Hwy 83, McAllen, Texas 78501.

2. *Deadline For Voting to Accept or Reject the Plan*

If you are entitled to vote to accept or reject the plan, vote on the enclosed ballot and return the ballot in the enclosed envelope to the **United States Bankruptcy Court, 1701 W. Business Hwy 83, 10th Floor, McAllen, Texas 78501. With a copy to:**

Antonio Villeda
THE VILLEDA LAW GROUP
6316 N. 10th Street, Building B
McAllen, Texas 78504

See Section IV.A. below for a discussion of voting eligibility requirements.

Your ballot must be received by [the date of this deadline will be set forth in the Court's order fixing same, which is anticipated to be entered in the near future, and said date will be inserted herein before this Disclosure Statement is mailed out] or it will not be counted.

3. *Deadline For Objecting to the Adequacy of Disclosure and Confirmation of the Plan*

Objections to this Disclosure Statement or to the confirmation of the Plan must be filed with the Court and served upon the Debtor by [the date of this deadline will be set forth in the Court's order fixing same, which is anticipated to be entered in the near future, and said date will be inserted herein before this Disclosure Statement is mailed out].

4. *Identity of Person to Contact for More Information*

If you want additional information about the Plan, you should contact the Villeda Law Group, the law firm representing the Debtor. See contact info on the last page.

C. **Disclaimer**

The Court has conditionally approved this Disclosure Statement as containing adequate information to enable parties affected by the Plan to make an informed judgment about its terms. The Court has not yet determined whether the Plan meets the legal requirements for confirmation, and the fact that the Court has approved this Disclosure Statement does not constitute an endorsement of the Plan by the Court, or a

recommendation that it be accepted. The Court's approval of this Disclosure Statement is subject to final approval at the hearing on confirmation of the Plan. Objections to the adequacy of this Disclosure Statement may be filed until [the date of this deadline will be set forth in the Court's order fixing same, which is anticipated to be entered in the near future, and said date will be inserted herein before this Disclosure Statement is mailed out].

II. BACKGROUND

A. Description and History of the Debtor's Business

The Debtor started in business in 2013. The Debtor is in the trucking business including the operation of multiple semi-tractors, pneumatic tank trailers and utility trailers, predominately serving the oil industry.

B. Insiders of the Debtor

The insiders of the Debtor are Edgar Guajardo and Daniela Guajardo, hereinafter "The Insiders." The Insiders are the Members (equity interest holders) of the Debtor. All compensation paid by the Debtor or its affiliates to the Insiders during the two years prior to the commencement of the Debtor's bankruptcy case, as well as compensation paid during the pendency of this bankruptcy case are as follows:

Date	Amount	Description
11/30/16	\$3,000.00	Draw-Edgar Guajardo
11/30/16	\$3,000.00	Draw-Edgar Guajardo

C. Management of the Debtor Before and During the Bankruptcy

During the two years prior to the date on which the bankruptcy petition was filed, the officers, directors, managers or other persons in control of the Debtor (collectively the "Managers") were Edgar Guajardo and Daniela Guajardo.

The Managers of the Debtor during the Debtor's Chapter 11 case have been: Edgar Guajardo and Daniela Guajardo.

After the effective date of the order confirming the Plan, the directors, officers, and voting trustees of the Debtor, any affiliate of the Debtor participating in a joint Plan with the Debtor (if any), or successor of the Debtor under the Plan (if any) (collectively the "Post Confirmation Managers"), will be: Edgar Guajardo and Daniela Guajardo. The responsibilities of the Post Confirmation Managers are to operate the Debtor in a manner not inconsistent with the provisions of the Plan, once confirmed. The compensation of these Post Confirmation Managers is anticipated to be none until all of the Plan payments are made.

D. Events Leading to Chapter 11 Filing

Starting in 2015, the Debtor began to experience a decline in demand for hauling sand and cement as a result of the oil industry collapse. The Debtor's largest and most frequent clients are in the oil industry.

The Debtor fell behind in its payments to BMO Harris Bank (which claims a lien in the equipment) and was forced to file for bankruptcy to prevent foreclosure of its equipment, and to restructure its debts with BMO Harris Bank and other creditors.

E. Significant Events During the Bankruptcy Case

- The Bankruptcy was filed on February 19, 2016 [Doc. 1].
- The Bankruptcy Schedules were filed on March 21, 2016 [Doc. 15].
- The Bankruptcy Court approved the engagement of Villeda Law Group as counsel for the Debtor on April 4, 2016 [Doc. 26].
- The Bankruptcy Court granted the motion to extend the exclusivity period until October 1, 2016 and to extend the 1121(e)(2) deadlines for filing the Plan and Disclosure Statement until January 30, 2017 [Doc. 61].
- Debtor filed Objection to Proof of Claim # 5 (Claimant: Mack Financial) on January 13, 2017 [Doc 69]
- Debtor filed Objection to Proof of Claim # 6 (Claimant: Element Financial) on January 13, 2017 [Doc 70]
- The IRS amended it's Proof of Claim [#1] to reflect a balance owed of zero (0) on January 13, 2017.

F. Projected Recovery of Avoidable Transfers

The Debtor has completed its investigation with regard to prepetition transactions. The Debtor does not intend to pursue any actions for preference, fraudulent conveyance, or other avoidance actions.

G. Claims Objections

On January 13, 2017, the Debtor filed Objection to Proof of Claim # 5 (Claimant: Mack Financial) [Doc 69].

On January 13, 2017, the Debtor filed Objection to Proof of Claim # 6 (Claimant: Element Financial) [Doc 70].

Except to the extent that claims are already allowed pursuant to any final non-appealable orders, the Debtor reserves the right to object to any claim. Therefore, even if your claim is allowed for voting purposes, you may not be entitled to a distribution if an objection to your claim is later upheld.

H. Current and Historical Financial Conditions

The identity and fair market value of the Estate's assets are as follows:

DESCRIPTION AND CATEGORY OF ASSETS	FAIR MARKET VALUE (ESTIMATED FMV)	AMOUNT OF LIENS HELD AGAINST THIS ASSET	VALUE AVAILABLE TO ESTATE
Vehicles			

2 Peterbilt Tractors & 16 Trailers	\$563,000.00 ¹	\$530,072.00 ²	\$32,928.00
Office Equipment/Furnishings/Supplies	\$1,540.00 ³		\$1,540.00
Cash	\$13,440.10 ⁴		\$13,440.10
TOTAL VALUE OF ASSETS:	\$577,980.1	\$530,072.00	\$47,908.1

The Debtor is the source for and has provided the bases for the above valuations. The Debtor's two most recent post-petition operating reports (November 2016 and December 2017) filed since the commencement of the Debtor's bankruptcy case are attached as Exhibit B.

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

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

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

B. Unclassified Claims

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

1. *Administrative Expenses*

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

The following-named professionals, which have been approved by the Court, have the following administrative expense claims:

¹ The source for this value estimate is the Debtor's opinion.

² BMO's proof of claim alleges a total amount owed of \$597,572.59; however, adequate protection payments totaling \$67,500 were subsequently paid by the Debtor to BMO, resulting in said adjusted total.

³ The source for this value estimate is the Debtor's opinion.

⁴ This amount is based on the Debtor's cash on hand on the petition date.

- a. Antonio Villeda and Christopher Cheatham, both of the Villeda Law Group, are professionals employed by Debtor for services rendered and expenses incurred (the "Debtor's Attorney"). To date, the Debtor's attorney has received \$15,109.10 in Court-approved fees. Following said fee application, additional fees have been incurred (est \$19,062, to date), for which the Debtor's attorney will submit a fee application for the Court's approval.
- b. There are no other known administrative claims.

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

Type	Estimated Amount Owed	Proposed Treatment
Expenses Arising in the Ordinary Course of Business After the Petition Date	None claimed.	Paid in full on the effective date of the Plan, or according to terms of obligation if later
The Value of Goods Received in the Ordinary Course of Business Within 20 Days Before the Petition Date	None claimed.	Paid in full on the effective date of the Plan, or according to terms of obligation if later
Professional Fees, as approved by the Court.	\$15,109.10 [already paid], approved by the Bankruptcy Court to date Approval of additional fees (est \$19,062 incurred since the prior fee application) will be requested.	Paid in full on the effective date of the Plan, or according to separate written agreement, or according to court order if such fees have not been approved by the Court on the effective date of the Plan
Clerk's Office Fees	0	Paid in full on the effective date of the Plan
Other administrative expenses	0	Paid in full on the effective date of the Plan or according to separate written agreement
Office of the U.S. Trustee Fees	\$0 None known to be outstanding, at this time.	Paid in full on the effective date of the Plan
TOTAL	\$15,109 - approved by Court \$19,062 - subject to Court approval	

2. *Priority Tax Claims*

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

Priority tax claims: **none.**

C. Classes of Claims and Equity Interests

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

1. Classes of Secured Claims

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

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

Secured Claims				
Class	Creditor	Impairment	Amount Claimed Owed	Treatment
1	Internal Revenue Service [Proof of Claim #1], Amended on 1/13/17 to reflect balance of \$0 [zero]	Unimpaired	\$0 [zero]	As zero (0) is owed, nothing will be paid under the Plan.
2	Hidalgo County [Proof of Claim #2]	Impaired	\$20,158.13	\$448.41 monthly for 60 months [12% interest]
3	City of McAllen [Proof of Claim #3]	Impaired	\$4,499.31	\$100.08 monthly for 60 months [12% interest]
4	BMO Harris Bank [Proof of Claim #4], Adjusted to Reflect Adequate Protection Payments Totaling \$67,500	Impaired	\$530,072	\$10,063.94 monthly for 60 months [5.25% interest]

With respect to each of the monthly payouts described above, the first payment is due on the tenth day of the month following the month of the Effective Date of this Plan.

2. *Classes of Priority Unsecured Claims*

Certain priority claims that are referred to in §§ 507(a)(1), (4), (5), (6), and (7) of the Code are required to be placed in classes. The Code requires that each holder of such a claim receive cash on the effective date of the Plan equal to the allowed amount of such claim. However, a class of holders of such claims may vote to accept different treatment.

Priority unsecured claims: **none**.

3. *Class of General Unsecured Claims*

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

General Unsecured Claims				
Class	Creditor	Impairment	Amount Claimed Owed	Treatment
5	Mack Financial Services [Proof of Claim #5]	Impaired	\$14,858.33	\$0; claim is disputed, thus valued at zero, subject to final determination by the Court.
5	Element Financial Corp [Proof of Claim #6]	Impaired	\$41,905.00	\$0; claim is disputed, thus valued at zero, subject to final determination by the Court

4. *Class of Equity Interest Holders*

Equity interest holders are parties who hold an ownership interest (*i.e.*, equity interest) in the Debtor. In a corporation, entities holding preferred or common stock are equity interest holders. In a partnership, equity interest holders include both general and limited partners. In a limited liability company ("LLC"), the equity interest holders are the members. Finally, with respect to an individual who is a debtor, the Debtor is the equity interest holder.

Here, the equity interest holders are Edgar Guajardo and Daniela Guajardo, the members of the Debtor. The following chart sets forth the Plan's proposed treatment of the class of equity interest holders:

Equity Interest Holders				
Class	Equity Interest Holders	Impairment	Amount Claimed Owed	Treatment
6	Edgar Guajardo and Daniela Guajardo	Unimpaired	n/a	Will retain their equity interests

D. **Means of Implementing the Plan**

1. *Source of Payments*

Payments and distributions under the Plan will be funded in the below-described manner:

Debtor will fund the Plan with income generated from its trucking operations. The Debtor has made substantial efforts toward getting all of the Debtor's trucks in operation. In particular, the Debtor recently made several new trucking deals that will realize additional income in the coming months.

The Debtor's income is on the rise. **Over the past 3 months, the Debtor's average net income was \$12,464.**⁵ The Debtor believes that future income will resemble the past 3-month period, particularly given that the new trucking deals should further increase the number of Debtor's trucks in operation. Additionally, the Debtor continues to seek new contracts with other companies that will further increase the number of Debtor's trucks in operation.

With future net monthly income projected to be inline with the above monthly average (\$12,464), this provides more than sufficient funds to pay the \$10,612.43 Plan Payments.

The Debtor will retain all property of the Estate (except as otherwise specifically provided in this Plan).

2. *Post-confirmation Management*

The Post-Confirmation Managers of the Debtor, and their compensation, are as follows: Edgar Guajardo and Daniela Guajardo, with post-confirmation compensation of: **none**.

E. **Risk Factors**

The proposed Plan has the following risks:

- There are certain risks inherent in the confirmation process under the Bankruptcy Code. If certain standards set forth in the Bankruptcy Code are not met, the Bankruptcy Court will not confirm the Plan even if holders of Allowed Claims / Interests vote to accept the Plan. Although the Debtor believes that the Plan meets such standards, there can be no assurance that the Bankruptcy Court will reach the same conclusion. If the Bankruptcy Court were to determine that such requirements were not met, it may convert the case to a case under Chapter 7.
- The valuations of assets and other figures contained in the Plan and this Disclosure Statement are estimates based on various assumptions. Should one or more of the underlying assumptions ultimately prove to be incorrect, the actual

⁵ Said 3-month average net income is calculated as follows. Average gross income for past 3 months (\$81,520 per month) minus average gross expenses for past 3 months (\$63,974 per month) equals \$17,546. Said figure reduced by income taxes at 28.97% (with said percentage based upon the Debtor's 2014 tax return adjusting for deductions) equals \$12,464.

value / number may significantly vary, which could materially affect, among other things, recoveries under the Plan.

- The Debtor cannot determine with any certainty at this time the number or amount of claims that will ultimately be allowed. Such differences may materially and adversely affect, among other things, the recoveries under the Plan. Some claimants / holders are not entitled to any recovery, including pursuant to the terms of the Plan, and, depending on the accuracy of the Debtor's various assumptions, even those entitled to a recovery under the terms of the Plan may ultimately receive no recovery.
- The Debtor, subject to the law and the terms and conditions of the Plan, reserves the right to modify the terms and conditions of the Plan. Any such modifications may result in a less favorable treatment of you / your claim.
- Although the Debtor believes that the Effective Date may occur quickly after the Confirmation Date, there can be no assurance as to such timing or as to whether such an Effective Date will, in fact, occur.
- In preparing this Disclosure Statement and Plan, the Debtor relied on financial data derived from its books and records that was available at the time of such preparation. This data is un-audited. The Debtor's representatives (including the lawyers representing the Debtor) have not made any effort to confirm the accuracy of such data. While the Debtor believes that such financial information fairly reflects the financial condition of the Debtor, the Debtor is unable to warrant that the financial information, or any such conclusions or estimates drawn therefrom, is without inaccuracies.
- With respect to the Debtor's trucking contracts / deals and with respect to developing new customers and maintaining existing customers (collectively "matters"), the Debtor holds the belief that existing matters will continue and new matters will be developed; however, these are assumptions that could ultimately prove to be incorrect. Such risks including recessions and industry slow-downs, especially with this particular industry (oil and gas) which encompass most of the Debtor's matters.
- The contents of this Disclosure Statement and Plan are not legal, business, or tax advice. You assume various risks if you decide not to consult your own legal counsel, accountant, and other applicable advisor.

F. Executory Contracts and Unexpired Leases

The Plan neither assumes nor rejects any executory contracts or unexpired leases. Accordingly, the Debtor believes that such contracts (if any) and leases (if any) will pass through the bankruptcy unaffected. However, consult your adviser or attorney for information about any particular contract or lease that you have with the Debtor and the impact of the Plan / Bankruptcy on such contract or lease.

G. Tax Consequences of Plan

You should consult your own accountant, attorney and/or advisors as to the tax effects to you of the Plan and related transactions. The following discussion summarizes certain United States

federal income tax consequences of the implementation of the Plan to the Debtors and holders of Claims and Interests. The following summary is based on the Internal Revenue Code of 1986, Treasury regulations thereunder, and some judicial decisions and published rulings and pronouncements of the Internal Revenue Service ("IRS"). Changes in these rules, or new interpretations of these rules, may have retroactive effect and could significantly affect the federal income tax consequences described below. The federal income tax consequences of the Plan are complex and subject to uncertainties. The Debtor(s) have not requested a ruling from the IRS or an opinion of counsel with respect to any of the tax aspects of the Plan. Thus, no assurance can be given as to the interpretation that the IRS will adopt. In addition, this summary does not address foreign, state or local tax consequences of the Plan, and it does not purport to address the federal income tax consequences of the Plan to special classes of taxpayers (such as foreign taxpayers, broker dealers, banks, insurance companies, financial institutions, small business investment corporations, regulated investment companies, tax-exempt organizations or investors in pass through entities). ACCORDINGLY, THE FOLLOWING SUMMARY OF CERTAIN FEDERAL INCOME TAX CONSEQUENCES IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING AND ADVICE BASED UPON THE INDIVIDUAL CIRCUMSTANCES PERTAINING TO THE HOLDER OF A CLAIM. ALL HOLDERS OF CLAIMS AND INTERESTS ARE URGED TO CONSULT THEIR OWN TAX ADVISORS IN DETERMINING THE FEDERAL, STATE, LOCAL AND OTHER TAX CONSEQUENCES TO THEM OF THE PLAN.

Tax Consequences to the Debtor -- Generally, under the terms of the Plan, all claims and interests are to be discharged. Any income corresponding to the satisfaction of claims at a discount might not constitute taxable income to the Debtor since the debt forgiveness arises in connection with a case under title 11 of the United States Code. The Debtor, however, may be required to reduce certain tax attributes, such as net operating loss ("NOL") carryovers. Any NOLs remaining may be subject to utilization limitations imposed by Internal Revenue Code section 382, as amended.

Tax Consequences to Claimants and Holders of Interests -- The federal income tax consequences of the implementation of the Plan to a holder of a claim or interests will depend, among other things, on: (a) whether its claim or interest constitutes a debt or security for federal income tax purposes, (b) whether the holder of a claim receives consideration in more than one tax year, (c) whether the holder of a claim is a resident of the United States, (d) whether all of the consideration by the holder of a claim is deemed received by that holder as part of an integrated transaction, (e) whether the holder of a claim or interest reports income using the accrual or cash method of accounting, and (f) whether the holder of a claim or interest has previously taken a bad debt deduction or worthless security deduction with respect to the claim or interest. Generally, a holder of an allowed claim could realize a gain or loss on the exchange under the plan of his allowed claim for cash and other property in an amount equal to the difference between: (i) the sum of

the amount of any cash and the fair market value on the date of the exchange of any other property received by the holder (other than any consideration attributable to accrued but unpaid interest on the allowed claim), and (ii) the adjusted basis of the allowed claim exchanged therefore (other than basis attributable to accrued but unpaid interest previously included in the holder's taxable income). Any gain recognized generally will be a capital gain (except to the extent the gain is attributable to accrued but unpaid interest or accrued market discount) if the claim was a capital asset in the hand of an exchanging holder, and such gain would be a long-term capital gain if the holder's holding period for the claim surrendered exceeded one (1) year at the time of the exchange. Any loss recognized by a holder of an allowed claim generally will be a capital loss if the claim constitutes a "security" for federal income tax purposes or is otherwise held as a capital asset. For this purpose, a "security" is a debt instrument with interest coupons or in registered form. Holders of claims who receive any consideration under the Plan in respect of allowed claims for accrued but not previously taxed interest must treat the amount of that consideration as ordinary income. A holder of a claim whose allowed claim for accrued and previously taxed interest is not fully satisfied generally may take an ordinary deduction for the unsatisfied portion of that allowed claim, even if the underlying claim is held as a capital asset. Holders of claims should consult their own tax advisors about the proper allocation of consideration between principal and interest. Capital gain or loss will be long-term if the Interest was held by the holder for more than one year and otherwise will be short-term. Any capital gain realized will generally be taxable. Any capital losses realized generally may be used by a corporate holder only to offset capital gains, and by an individual holder only to the extent of capital gains plus a certain sum (e.g., \$3,000) of other income. Under the backup withholding rules of the Internal Revenue Code, holders of claims or interests may be subject to backup withholding including at the rate of thirty percent (30%) with respect to payments made pursuant to the Plan unless such holder comes within certain exempt categories and, when required, demonstrates same. Any amount withheld under these rules will be credited against the holder's federal income tax liability.

IV. CONFIRMATION REQUIREMENTS AND PROCEDURES

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

requirements for confirmation.

A. Who May Vote or Object

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

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

In this case, the Plan Proponent believes that Classes 2, 3, 4 and 5 are impaired and thus, to the extent that the claims in those classes are allowed, the holders of claims in each of these classes are entitled to vote to accept or reject the Plan. The Plan Proponent believes that Classes 1 and 6 are unimpaired and that holders of claims in each of these classes, therefore, do not have the right to vote to accept or reject the Plan.

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

Only a creditor or equity interest holder with an allowed claim or an allowed equity interest has the right to vote on the Plan. Generally, a claim or equity interest is allowed if either (1) the Debtor has scheduled the claim on the Debtor's schedules, unless the claim has been scheduled as disputed, contingent, or unliquidated, or (2) the creditor has filed a proof of claim or equity interest, unless an objection has been filed to such proof of claim or equity interest. When a claim or equity interest is not allowed, the creditor or equity interest holder holding the claim or equity interest cannot vote unless the Court, after notice and hearing, either overrules the objection or allows the claim or equity interest for voting purposes pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure. *The deadline for filing a proof of claim in this case was July 5, 2016.*

2. *What Is an Impaired Claim or Impaired Equity Interest?*

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

3. *Who is Not Entitled to Vote*

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

- holders of claims and equity interests that have been disallowed by an order of the Court;
- holders of other claims or equity interests that are not “allowed claims” or “allowed equity interests” (as discussed above), unless they have been “allowed” for voting purposes.

- holders of claims or equity interests in unimpaired classes;
- holders of claims entitled to priority pursuant to §§ 507(a)(2), (a)(3), and (a)(8) of the Code; and
- holders of claims or equity interests in classes that do not receive or retain any value under the Plan;
- administrative expenses.

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

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

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

B. Votes Necessary to Confirm the Plan

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

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

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

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

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

impaired class that has not voted to accept the Plan.

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

C. Liquidation Analysis

To confirm the Plan, the Court must find that all creditors and equity interest holders who do not accept the Plan will receive at least as much under the Plan as such claim and equity interest holders would receive in a chapter 7 liquidation.

The Debtor estimates that its assets, after payment of liens, would generate the following amounts in a chapter 7 liquidation:

LIQUIDATION ANALYSIS (UNAUDITED)

DESCRIPTION AND CATEGORY OF ASSETS	FAIR MARKET VALUE (ESTIMATED FMV)	AMOUNT OF LIENS HELD AGAINST THIS ASSET	VALUE AVAILABLE TO ESTATE	LIQUIDATION VALUE (after payment of secured liens)
Vehicles and equipment				
2 Peterbilt Tractors & 16 Trailers	\$563,000.00 ⁶	\$530,072.00 ⁷	\$32,928.00	<\$276,722> ⁸
Office Furnishings/Supplies	\$1,540.00 ⁹		\$1,540.00	693 ¹⁰
Cash	\$13,440.10 ¹¹		\$13,440.10	13,440.10
TOTAL VALUE OF ASSETS:	\$577,980.1	\$530,072.00	\$47,908.1	<262,588.9>
Less Estimated Ch. 7 Trustee Fees				\$7,186.26 [15%]
Less Secured Priority Claims ¹²				\$0
Net Liquidation Funds Available To Unsecured Creditors in a Hypothetical Chapter 7 Liquidation				<269,775.16>

D. Feasibility

The Court must find that 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, unless such liquidation or reorganization is proposed in the Plan.

⁶ The source for this value estimate is the Debtor's opinion.

⁷ BMO's proof of claim alleges a total amount owed of \$597,572.59; however, adequate protection payments totaling \$67,500 were subsequently paid by the Debtor to BMO, resulting in said adjusted total.

⁸ This amount is based upon a 45% liquidation rate of recovery on these items of personal property.

⁹ The source for this value estimate is the Debtor's opinion.

¹⁰ This amount is based upon a 45% liquidation rate of recovery on these items of personal property.

¹¹ This amount is based on the Debtor's cash on hand on the petition date.

¹² None

1. *Ability to Initially Fund Plan*

The Plan Proponent believes that the Debtor will have enough cash on hand on the effective date of the Plan to pay all the claims and expenses that are entitled to be paid on that date. The amount of cash on hand on the effective date of the Plan, and the sources of that cash, are estimated to be: \$ 20,000¹³; and the source of that cash is trucking operations. *See Id.*

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

The Plan Proponent must also show that it will have enough cash over the life of the Plan to make the required Plan payments.

The Plan Proponent has provided projected financial information. Those projections are listed in Exhibit "C."

The Plan Proponent's financial projections show that the Debtor will have an aggregate annual average cash flow, after paying operating expenses and post-confirmation taxes, of **\$149,540.00** (*See Ex. C*) and said cash flow, after paying the monthly Plan Payments, of \$22,190.84.

The final Plan payment is expected to be paid on March 1, 2022 (this is an approximation that depends on, e.g., the date of confirmation / the effective date).

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

V. **EFFECT OF CONFIRMATION OF PLAN**

A. **DISCHARGE OF DEBTOR**

Discharge. On the effective date of the Plan, the Debtor shall be discharged from any debt that arose before confirmation of the Plan, subject to the occurrence of the effective date, to the extent specified in § 1141(d)(1)(A) of the Code, except that the Debtor shall not be discharged of any debt (i) imposed by the Plan, (ii) of a kind specified in § 1141(d)(6)(A) if a timely complaint was filed in accordance with Rule 4007(c) of the Federal Rules of Bankruptcy Procedure, or (iii) of a kind specified in § 1141(d)(6)(B). After the effective date of the Plan your claims against the Debtor will be limited to the debts described in clauses (i) through (iii) of the preceding sentence.

B. **THIRD PARTY RELEASES**

Third Party Releases. **The Plan contains third-party releases such that, upon the Effective Date of the Plan, every entity and person -- including Hidalgo County, the City of McAllen, BMO Harris Bank, Mack Financial Services, and Element Financial Corp -- that has not opted out of the Plan's third-party releases in writing prior to the Effective Date (collectively "Third Party Releasers") shall be deemed to have conclusively,**

¹³ This estimate is based on the Debtor's current bank account balance, which is \$25,022.64 as of 1/26/17.

absolutely, unconditionally, irrevocably, and forever, released and discharged Guajardo Guajardo and Daniela Guajardo ("Third Party Releasees") from any and all claims, interests, obligations, rights, suits, damages, causes of action, remedies and liabilities that arise out of or in any way relate to the Debtor -- including but not limited to claims against the Third Party Releasees that arise out of Debtor's business dealings including all guarantees -- whether such claims are known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, including but not limited to the release by the Third Party Releasors of all claims against the Third Party Releasees that are based on or relating to, or in any manner arising from, in whole or in part, the Debtor, the subject matter of, or the transactions or events giving rise to, any claim or interest that is treated in the Plan, the business or contractual arrangements between the Debtor, Edgar Guajardo, Daniela Guajardo, and/or any of the Third Party Releasors, the negotiation, formulation or preparation of the Plan and Disclosure Statement or related agreements, instruments or other documents, upon any other act or omission, transaction, agreement, event or other occurrence taking place on or before the Effective Date.

C. Modification of Plan

The Plan Proponent may modify the Plan at any time before confirmation of the Plan. However, the Court may require a new disclosure statement and/or revoting on the Plan. The Plan Proponent may also seek to modify the Plan at any time after confirmation only if (1) the Plan has not been substantially consummated and (2) the Court authorizes the proposed modifications after notice and a hearing.

D. Final Decree

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

DATED: JANUARY 27, 2017

DEI TRANSPORTATION, LLC

By: 
Edgar Guajardo, Member

Respectfully submitted,
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