

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE**

In re:

CHAPTER 11

ADM VENDING, INC.

Case No. 16-10477-BAH

Debtor

**DEBTOR'S DISCLOSURE STATEMENT DATED NOVEMBER 29, 2016
PERTAINING TO PLAN OF REORGANIZATION OF EVEN DATE**

Pursuant to Section 1125 of the Code of 1978, *as amended*, 11 U.S.C. §101 *et seq.*, the debtor and debtor in possession, **ADM Vending, Inc.**, respectfully submits this Disclosure Statement to the United States Bankruptcy Court for the District of New Hampshire, creditors and parties in interest and other Plan Parties that have filed an appearance in this Bankruptcy Case pursuant to Section 1127 of the Bankruptcy Code. The Executive Summary Table, which appears on Pages 3-4 hereof, provides Plan Parties with a tabular summary of the Classes to be created by the Plan and the dividend and/or dividend formula or range of dividends projected to be paid to creditors holding allowed claims in each Class. This Disclosure Statement is based on the information available to the Debtor on November 29, 2016, which is known as the "Disclosure Date," except as otherwise disclosed herein. Except as otherwise defined herein, all capitalized words, terms and phrases used herein shall have and be given the meaning attributed to them in the Glossary attached to the Plan when used in the Plan or this Disclosure Statement.

Respectfully submitted,

Dated: November 29, 2016

/s/ William S. Gannon

William S. Gannon

Attorney for:

ADM VENDING, INC.

WILLIAM S. GANNON, PLLC

889 Elm Street, 4th Floor

Manchester, NH 03101

PH: (603) 621-0833

CERTIFICATE OF SERVICE

I hereby certify that on this date I served the foregoing pleading on all persons and entities named on the CM/ECF Electronic Service List by causing it to be filed electronically via the CM/ECF filing system.

DATED: November 29, 2016

/s/ Beth E. Venuti
Beth E. Venuti

PART ONE

In the following Executive Summary Table, the Debtor provides Plan Parties with a summary of the Classes to be created by the Confirmation of the Plan and their voting rights, the maximum and estimated allowed amount of claims in each Class, the dividends or range of dividends projected to be paid on account of allowed claims in each Class and other information deemed significant as well as a reference to the part of this Disclosure Statement and Plan where more information may be found. The Executive Summary Table does not appear in the Plan.

EXECUTIVE SUMMARY TABLE

Class Nos. and Class Titles	Dividend Projection by Class:	Allowed to Vote
Class 1: NBT Bank Secured Claims Class <i>For more details see <u>Summary of Class Dividends and Treatment</u>, Class 1, Pg. 9, Article IV, Section A.</i>	Projected Dividend: No Dividends will be paid to this Class, which will foreclose its liens on the Debtor's personal property in exchange for the NBT Carve-out <i>See <u>Ex. A</u> at Line 6</i> Projected Date of First Dividend Payment: Not Applicable	Yes
Class 2: Motor Vehicle Secured Claims Class <i>For more details see <u>Summary of Class Dividends and Treatment</u>, Class 2, Pg. 10, Article IV, Section B.</i>	Projected Dividend: No Dividends will be paid to this Class, which will foreclose its liens on the Debtor's personal property <i>See <u>Ex. A</u> at Line 12</i> Projected Date of First Dividend Payment: Not Applicable	Yes
Class 3: Contingent Firestone and Vistar Secured Claims Class <i>For more details see <u>Summary of Class Dividends and Treatment</u>, Class 3, Pg. 10, Article IV, Section C.</i>	Projected Dividend: No Dividends will be paid to this Class, which will foreclose its liens on the Debtor's personal property <i>See <u>Ex. A</u> at Line 17</i> Projected Date of First Dividend Payment: Not Applicable	Yes
Class 4: Administrative Expense Class <i>For more details see <u>Summary of Class Dividends and Treatment</u>, Class 4, Pg. 11, Article V, Section A.</i>	Projected Dividend: 59.78 % <i>See Ex. A at Line 25</i> Projected Date of First Dividend Payment: March 31, 2017	No
Class 5: Contingent Priority Tax Claims Class <i>For more details see <u>Summary of Class Dividends and Treatment</u>, Class 5, Pg. 11, Article V, Section B.</i>	Projected Dividend: 0 % <i>See Ex. A at Line 32</i> Projected Date of First Dividend Payment: March 31, 2017	No

Class 6: General Unsecured Claims Class <i>For more details see <u>Summary of Class Dividends and Treatment</u>, Class 6, Pg. 11, Article VI, Section A.</i>	Projected Dividend: 0 % <i>See Ex. A at Line 76</i> Projected Date of First Dividend Payment: March 31, 2017	Yes
Class 7: Subordinate Claims Class <i>For more details see <u>Summary of Class Dividends and Treatment</u>, Class 7, Pg. 12, Article VI, Section B.</i>	Projected Dividend: 0 % <i>See Ex. A at Line 81</i> Projected Date of First Dividend Payment: March 31, 2017	No
Class 8: Equity Interest Class <i>For more details see <u>Summary of Class Dividends and Treatment</u>, Class 8, Pg. 12, Article VI, Section C.</i>	Projected Dividend: None Projected Date of First Dividend Payment: Not Applicable	No

CAUSES OF BANKRUPTCY, PLAN OVERVIEW, AND DISCLOSURE STATEMENT OVERVIEW

During 2013, the Debtor terminated the employment of its Director of Sales, Thomas Holmes. A Sales Representative, Eric Willis, resigned. Competitors quickly took \$1,200,000 in annual sales and revenues from the Debtor. Both Holmes and Willis went to work for A&B Vending, Inc., which is referred to in this Disclosure Statement and the Plan as “AB Vending.” AB Vending has taken most of the Debtor’s major accounts during the last 60 days. As a result of the loss of its largest customers, the Debtor withdrew its Plan of Reorganization Dated September 16, 2016 [Doc. 91], entered into stipulations for relief from the automatic stay with NBT in exchange for the NBT Carve-out and with Chrysler Credit to minimize cost and expense to the estate.

As a result of the termination of Holmes and the resignation of Willis, the Debtor shrunk from a company that had done more than \$3,000,000 per year in sales to one with revenues of just over \$1,000,000 per year. When NBT filed a Proceeding in the Hillsborough County Superior Court in which it requested an order that would have required the Debtor and its equity holder, Daniel A. Mendenhall, who is referred to as “Mendenhall” or the “New Equity Holder,” to turn over the property of the estate to NBT, the Debtor commenced this Bankruptcy Case. Total loss of sales are \$1.2 million.

Until 2013, the Debtor employed Thomas Holmes as a Director of Sales and Eric Willis

as a Sales Representative. The parties did not enter into a covenant not to compete. On January 4, 2011, Mendenhall sold Holmes 12.5 shares of the Debtor's common stock for \$50,000 dollars in hope that Holmes would feel like he was building sales for his benefit as well as that of the Debtor. On or about May 12, 2013, the Debtor learned that Holmes was selling products that belonged to the Debtor to non-customers. Holmes was collecting cash at the time of delivery of products. The Debtor terminated Holmes' employment. In settlement of the claims, Holmes agreed to sell his stock back to the Debtor for \$50,000 pursuant to a Stock Redemption Agreement, which includes a covenant not to compete for 2 years. No payments have been made to Holmes.

Two weeks after the Debtor terminated Holmes, Eric Willis, a Sale Representative, resigned. The Debtor concluded that Willis was involved Holmes. On or about July 29, 2013, Willis signed a Stock Redemption Agreement that permits the Debtor to redeem his 12.5 shares of stock in the Debtor for the sum of \$50,000.

Under the Plan, the Debtor will continue its business under the ownership of Mendenhall, for the benefit of creditors holding allowed claims. Mendenhall will purchase the New Equity Interests in the Debtor by making the New Equity Contribution, which includes (a) consenting to the subordination of all of his claims against the Debtor and the estate to those of all other allowed creditors and their dividend and other rights arising from such claims, (b) executing and delivering to the Debtor for the benefit of each General Unsecured Creditor holding an allowed claim a Limited Plan Guaranty, and (c) executing and delivering to the Debtor an employment agreement which, among other things, obligates Mendenhall to serve as the sole Director and President of the Debtor for the term of this Plan, limits his compensation to the amounts permitted by this Plan and includes a restrictive covenant that prevents him from engaging the vending machine business within 20 miles of the Debtor's Business Premises for a period of one (1) year from the date thereof in the event that NBT should foreclose its liens on the Debtor's assets.

The Plan promotes the best interests of all Classes of creditors in the Debtor's opinion. If the Plan is Confirmed, the Debtor expects that creditors in all Classes will receive a dividend on account of their allowed claims. The Executive Summary Table provides creditors with the

amount or range of dividends projected to be paid to them. In a liquidation – a forced sale of the property of the estate – unsecured creditors would more probably than not suffer a total loss. In a best case liquidation scenario, even NBT Bank would recover approximately \$65,000 less than the \$225,000 projected to be paid to it under the Plan.

This Disclosure Statement is divided into Parts. This Part provides Plan Parties with an overview or executive summary of the Plan and this Disclosure Statement. Parts Two and Three summarize the most important articles, sections and paragraphs of the Plan itself in the sequence in which they appear in the Plan using the same article and section titles¹ as those used in the Plan for easy reference and comparison. In the remaining Parts of this Disclosure Statement, which have no Plan counterpart, the Debtor provides information considered necessary to evaluate the merits of the Plan.

The purpose of this Disclosure Statement is to provide Plan Parties with information adequate for them to make an informed judgment regarding the merits and benefits of the Plan, but is not an exhaustive discussion of the Plan. This Disclosure Statement provides Plan Parties with a summary in lay terms the most important provisions of the Plan and the means for implementing the Plan and provides the other information mandated by the Code and generally required by Courts as a condition to the approval of a disclosure statement. Since the Plan confirmed by the Court will establish and govern the parties' Plan obligations following Confirmation, Plan Parties must read the Plan carefully.

PART TWO

PLAN SUMMARY

I. Conditions Precedent, Confirmation and Effective Date.

On Confirmation and the satisfaction or waiver of the conditions precedent described in this Plan Article, the Plan will become a valid, binding and enforceable contract between the Debtor and each Plan Party. The obligation of the Debtor to implement the Plan is conditioned on (i) the entry of a Confirmation order that is satisfactory in form and substance to the Debtor.

¹ The numbers and letters used in this Disclosure Statement will not correspond to the Plan because this Disclosure Statement does not discuss each provision of the Plan.

The Debtor expects the Plan to become effective on **February 15, 2017**. On the Effective Date, the Plan will become a valid and binding contract and shall be enforceable by and against the Debtor and all Plan Parties in accordance with applicable state and federal law. In essence, the Plan creates a new relationship between the Debtor and the other Plan Parties although it may be based in whole or in part on pre-petition documents in the Bankruptcy Case of allowed secured creditors.

The Plan establishes and governs the Debtor's and Plan Parties' financial liabilities and obligations and privileges, remedies and rights following Confirmation. The entry of the Confirmation Order will (1) create the Classes described in the *Executive Summary Table*, prescribe the treatment of the claims in each Class, (2) result in the complete satisfaction of all claims against the Debtor and liens in, to and on the property of the estate other than the liens specifically preserved hereby and equity interests in the Debtor and (3) enjoin Plan Parties from taking any action against the Debtor or the Debtor's property prohibited by Code Section 524 with respect to claims. If, and to the extent that there should be any conflict or apparent conflict between the Disclosure Statement and this Plan, the conflict shall be resolved in favor of the Plan.

II. Plan Classes; Impairment, Voting and Acceptance.

The Confirmation of the Plan will create the Classes listed in the *Executive Summary Table*. The *Executive Summary Table* and this part of the Plan identify the impaired Classes, their eligibility to vote on the Plan in the Debtor's opinion, the standard for determining acceptance of the Plan and the right of the Debtor to ask the Court to Confirm or "cram down" the Plan over the objection of one or more Classes. A claim or equity interest will be impaired by Confirmation if the Plan changes in any way the "legal, equitable, and contractual rights to which the claim or interest entitles the holder" outside of the Bankruptcy Case unless the treatment of the claim satisfies the complex provisions of Section 1124(2). The following Classes will be impaired by Confirmation and may vote to accept or reject the Plan: 1, 2, 3 and 6. Except for insiders (who may vote to reject the Plan, but not to accept it), creditors holding claims for which the Code prescribes specific treatment and creditors holding claims to which the Debtor has objected, all other creditors may vote to accept or reject the Plan.

III. Generally Applicable Treatment Provisions.

In an effort to avoid repetition and accidental inconsistencies, the Plan article titled *Generally Applicable Treatment Provisions* contains provisions that relate to more than one Class. One of the sections of this Article pertains just to secured claim Classes and the other applies to all Classes of claims. A Class may be exempted from a generally applicable treatment provision in the part of the Plan that addresses specifically the treatment of claims in the Class because that is the exception, not the rule. In this part, the Debtor summarizes the most important provisions applicable to more than one Class.

In the Plan section captioned *Provisions Generally Applicable to Secured Claims*, the Plan sets forth a number of provisions that are generally applicable to secured claims. It includes the following:

1. Except as otherwise provided by orders previously entered by the Court in this Bankruptcy Case, the reorganization value of the Estate property will be the reorganization value proposed by the Debtor in the Plan unless the Court sets a different value based on a timely objection filed by a Plan. A reorganization value objection automatically commences a valuation proceeding as part of the Confirmation process. The Debtor and a secured creditor may stipulate to reorganization and collateral values and the amount of an allowed secured claim subject to Court approval. Whether or not the Court sets the reorganization value of any property, the collateral value of that property to a secured creditor will be determined in accordance with the *Provisions Generally Applicable to Secured Claim Classes*.

2. This part of the Plan also modifies automatically loan documents and other documents evidencing or pertaining to secured claims so that they are conformed automatically to the Confirmed Plan and pre-petition breaches and defaults are automatically waived by the entry of the Confirmation Order.

3. Finally, this part of the Plan limits allowed secured claims and the security provided by preserved liens to the lesser of (i) the collateral value of a secured creditor's collateral, less the principal portion of adequate protection payments made to the creditor or (ii) the amount of the allowed secured claim held by the creditor.

The Plan section captioned *Provisions Generally Applicable to All Claims* sets forth basic rules applicable to secured and unsecured creditors. “Disputed,” as used in Exhibit A, Class, Creditor and Claim Summary means disputed, contingent and/or unliquidated in amount. In the Plan, the Debtor reserves the right to object to a claim or claims not marked disputed in Exhibit A if in any Bankruptcy Case: (1) the Debtor did not have actual knowledge of the circumstances, conditions, events or facts which gave rise to a dispute on or before the Disclosure Date or (2) the objection is limited to an accounting for the amount actually due the creditor as opposed to the Debtor’s liability to the creditor. Finally, this part of the Plan allows creditors in any Class to accept less favorable treatment than proposed in the Plan and preserves their offset and recoupment rights under the Code.

PART THREE

SUMMARY OF CLASSES, CLASS DIVIDENDS AND TREATMENT

IV. SECURED CLAIMS CLASSES.

A. Class 1: NBT Secured Claims Class.

This Class includes the claims held or asserted by NBT arising from, out of or incidental to the NBT Loans made to the Debtor and the NBT Loan Documents executed in connection therewith, whether or not qualifying as secured claims within the meaning of Bankruptcy Code Section 506, because (1) NBT will fund the implementation the Plan through the NBT Carve-out and (2) NBT has agreed to relinquish and waive any right to dividends under the Confirmed Plan on account of any unsecured claim. Plan Parties should review the disclosures, information and projections provided by the Debtor in the Executive Summary Table, Exhibit A and the Plan itself with respect to this Class. Among other things, the Executive Summary and Exhibit A give Plan Parties the Debtor’s estimate of the dividends or range of dividends to be paid to creditors holding allowed claims in this Class as of the Disclosure Date.

The Bankruptcy Court has relieved NBT from the automatic stay. NBT has given the Debtor and secured creditors notice of its intention to liquidate the NBT Collateral in a series of private foreclosure sales on and after November 20, 2016. As a result of the NBT stay relief order and the Chrysler Credit and Hyundai Lease stay relief orders, the estate has no property

other than the proceeds of the NBT Carve-out, the Flavia Coffee equipment or inventory to the extent that such property is subject to a first priority lien held by Firestone and the Retained Proceedings and Causes of Action.

B. Class 2: Motor Vehicle Secured Claims Class.

This Class includes the claims held or asserted by arising from, out of or incidental to the Hyundai Lease and Chrysler Credit Lease and Loans made to the Debtor and the Hyundai and Chrysler Credit Lease and Loan Documents executed in connection therewith, whether or not qualifying as secured claims within the meaning of Bankruptcy Code Section 506, because (1) the Debtor has no equity in the Collateral and (2) Chrysler Credit has agreed to relinquish and waive any right to dividends under the Confirmed Plan on account of any unsecured claim although it may vote on the Plan. Plan Parties should review the disclosures, information and projections provided by the Debtor in the Executive Summary Table, Exhibit A and the Plan itself with respect to this Class. Among other things, the Executive Summary and Exhibit A give Plan Parties the Debtor's estimate of the dividends or range of dividends to be paid to creditors holding allowed claims in this Class as of the Disclosure Date. Under the Plan, the creditors in this Class will keep and apply the proceeds of the liquidation of their Collateral, but will receive no distribution on account of their General Unsecured Claims, both because of Chrysler Credit's agreement with the Debtor and the fact that the remaining property of the estate is not likely to generate sufficient funds to pay a dividend to General Unsecured Creditors holding allowed claims.

C. Class 3: Contingent Firestone and Vistar Claims Class.

The Debtor incorporates the disclosures and information given to Plan Parties in the Executive Summary Table, Exhibit A and the Plan itself with respect to this contingent Class, which includes only the claims held or asserted by Firestone in Proof of Claim No. 15-1 and Vistar in Proof of Claim No. 7 to the extent qualifying and allowed by the Bankruptcy Court as a secured claim within the meaning of Code Section 506. A Bankruptcy Court determination that either Firestone or Vistar does not hold a first priority liens on any property of the estate shall eliminate the creditor from this Class. A creditor holding an Allowed Claim in this Class will keep and apply the proceeds of the liquidation of their Collateral, but will receive no distribution

on account of their General Unsecured Claims. If neither Firestone nor Vistar holds a first priority lien in any property of the estate, this Class shall be eliminated automatically from the Plan and Firestone and Vistar will be allowed a General Unsecured Claim in the amount of their Proofs of Claim although there is almost no possibility that they will receive any dividend.

V. Priority Claims Classes.

A. Class 4: Administrative Claims Class. The Debtor incorporates the disclosures and information given to Plan Parties in the Executive Summary Table, Exhibit A and the Plan itself with respect to this Class, which includes all claims for Administrative Expenses, including without limitation, those identified in Exhibit A. The Executive Summary and Exhibit A give Plan Parties the Debtor's estimate of the dividends or range of dividends to be paid to creditors holding allowed claims in this Class as of the Disclosure Date. Although creditors holding Allowed Claims will share the NBT Carve-out on a pro rata basis, it is unlikely that Allowed Creditors in this Class will be paid in full unless the Debtor makes a significant recovery on account of Retained Causes of Action.

B. Class 5: Contingent Priority Tax Claims Class. The Debtor incorporates the disclosures and information given to Plan Parties in the Executive Summary Table, Exhibit A and the Plan itself with respect to this Class, which includes all claims for Priority Taxes, including without limitation, those asserted in Proofs of Claim 1-2 and 10-1 filed by the Internal Revenue Service and the New Hampshire Department of Revenue Administration. IRS and NH-DRA estimated the tax liability of the Debtor for the year 2015 at \$300 and \$,906.36, respectively. The Debtor will file the federal and state tax returns required for 2015 and a final returns for 2016. The Debtor doubts that it will owe any money to the creditors in this Class given the losses that will flow from the liquidation. Even if the Debtor owes money to Allowed Creditors in this Class, it is extremely unlikely that Allowed Creditors in this Class will be paid in full unless the Debtor makes a significant recovery on account of Retained Causes of Action.

VI. Unsecured Claims and Equity Interest Classes.

A. Class 6: General Unsecured Claims Class. The Debtor incorporates the disclosures and information given to Plan Parties in the Executive Summary Table, Exhibit A

and the Plan itself with respect to this Class, which includes all General Unsecured Creditors and Unsecured Claims, including those listed in the General Unsecured Creditors and Claims Section of Exhibit A, except for those specifically placed in other Classes. The Executive Summary and Exhibit A give Plan Parties the Debtor's estimate of the dividends or range of dividends to be paid to creditors holding allowed claims in this Class as of the Disclosure Date.

B. Class 7: Subordinate Claims Class. The Debtor incorporates the disclosures made to, and information given to Plan Parties in the Executive Summary Table and Exhibit A with respect to this Class. This Class includes only Daniel Mendenhall. The creditor in this Class has agreed or are expected to agree to subordinate his allowable claim and dividend rights on account of such claims to those of all other creditors holding allowed claims. The Debtor has no legal basis for subordinating the allowable claims in this Class over their objection, but Mendenhall has agreed to the less favorable treatment provided for in the Plan. No dividends will be paid to any creditor holding an allowed claim in this Class unless and until all of the dividends due other creditors holding allowed claims have been paid in full. Treating the claims in this Class as General Unsecured Claims would dilute the amount of dividends paid to other creditors holding allowed General Unsecured Claims Class. Undisputed claims in this Class will be allowed in the estimated allowed amount given in Exhibit A on the Effective Date, primarily because there is no reason to incur professional administrative expense claims contesting them.

C. Class 8: Equity Interest Class. The Debtor incorporates the disclosures made to, and information given to Plan Parties in the Executive Summary Table and Exhibit A with respect to this Class. This Class includes the equity interests in the Debtor, its business and the property of the estate held by Mendenhall and any persons or entities claiming equity interests in the Debtor by, through or under him. On the Effective Date, all of the equity interests in this Class shall be canceled by the entry of the Confirmation Order without the payment of any dividend or the distribution of any property on account of the equity interests.

PART FOUR

SUMMARY OF PRIMARY MEANS FOR IMPLEMENTING PLAN.

This part summarizes the means for implementing the Plan, which are set forth in the Articles XI through XVII of the Plan. It explains the purpose of the acts, actions and

transactions important to the successful implementation of the Plan. Like Part Three, this part uses the same article and section titles used in the Plan itself.

VII. Implementation Generally.

This article establishes the Debtor's authority to implement the Plan, which will become a contract between the Debtor and each holder of an allowed claim or interest. It obligates the Debtor and each Plan Party to implement the Plan – pay, perform and satisfy their financial liabilities and other obligations to each other under the Plan and execute any Plan documents in a form that satisfies the requirements of the part of the Plan and Disclosure Statement titled *Plan Documents*. Confirmation may impose on Plan Parties the implied contractual duties of good faith and fair dealing arising under state law. The Debtor and the Plan Parties must do, execute or cause to be done and executed all further acts and documents as may be reasonably necessary to implement the Plan. In addition, the entry of the Confirmation Order will authorize the Debtor to do or take, or cause to be done or taken, close or cause to be closed and execute or cause to be executed any other act, action, document or transaction, which the Debtor reasonably believes to be necessary for the successful implementation of the Plan or incidental thereto.

VIII. Post-Confirmation Debtor, Ownership, Management and Business Continuation.

A. Corporate Debtor; Ownership and Management.

The reorganized Debtor will continue to be a New Hampshire C-corporation. It will be owned by the New Equity Holder, Mendenhall or his nominee. Mendenhall will be the sole Director. Mendenhall will hold the offices of President, Treasurer and Secretary of the Debtor. No dividends or any other compensation or benefits will be paid to the New Equity Holder on account of the New Equity Interests during the term of the Plan.

B. Use of Extraordinary Income.

1. The net proceeds of any sale or other disposition of all or substantially all of the property of the Debtor following Confirmation will be disbursed by the Debtor in the following order of preference and priority until the allowed claims in a Class have been paid in full: (a) Administrative Expense Creditors, (b) Priority Tax Creditors and (c) General Unsecured

Creditors.

C. Cessation of Business. Subject to the terms hereof, Debtor shall continue to own its property and operate its business without limitation or restriction, except for those specifically imposed by this Plan or federal or state law.

IX. Certain Implementing Acts, Actions and Transactions.

A. Participation in Liquidation of Collateral. In exchange for the NBT Carve-out, the Debtor agreed to find buyers for the NBT Collateral and negotiate the terms of sale subject to the approval and consent of NBT. NBT will not unreasonably withhold or delay or approval of a proposed sale. NBT will execute and deliver Secured Party's Bills of Sale to buyers of the NBT Collateral to prevent the Debtor from incurring liabilities to the buyers. On request, the Debtor will assist Firestone and Vistar in liquidating any Collateral held by them as security for the payment of any Secured Claim or Claims held by them in exchange for a carve-out identical to the NBT Carve-out.

B. Investigation and Prosecution of Causes of Action Against AB Vending. The Debtor will investigate the methods which AB Vending used to take the Debtor's accounts without compensation. The Debtor serviced its customer accounts effectively during the term of this Case. Creditors, who are also officers and/or employees of AB Vending, requested copies of pleadings filed in this Case shortly after the Debtor filed its first Plan of Reorganization. Customers quickly replaced the Debtor with AB Vending. Whether AB Vending engaged in unfair competition or committed unfair or deceptive business acts or practices remains to be seen. For the purposes of the Plan, the Debtor will retain any Causes of Action against AB Vending pending an investigation and prosecution any Causes of Action believed to be meritorious for the benefit of the Debtor and the estate in accordance with the provisions of the Plan Article captioned "Proceedings and Causes of Action."

C. Chapter 5 Actions. Attached as Exhibit B, Potential Chapter 5 Actions. It lists all payments and transfers of property made by the Debtor during (1) the one year period preceding the Petition Date in the case of insiders and (2) the 90 day period preceding the Petition Date in all other cases. Creditors may have defenses, including the ordinary course of

business and new value defenses. The Exhibit lists the gross amount of each payment and transfer. The Debtor doubts that any significant amount will be recovered on the potential Chapter 5 Action because (1) the trade creditors had placed the Debtor C.O.D. terms which means that for every payment made by the Debtor the creditor provided goods of equal value without any “upcharge” or “additional payment” known to the Debtor, (2) Daniel Mendenhall received a discharge in his own Chapter 7 case and (3) Adam Mendenhall was paid in the ordinary course of business for services rendered to the Debtor and is essentially judgment proof. As a general rule, debtors recover only a fraction of the amount claimed in a Chapter 5 Action.

D. Exemption from Certain Taxes. Pursuant to Section 1146(c) of the Bankruptcy Code, no transaction entered into by Debtor pursuant to, or in furtherance or implementation of this Plan shall be subject to any stamp tax, real property transfer tax, sales and use tax or similar tax, including the following: taxes arising from the execution or delivery of any deed or other instrument of transfer, including any merger agreements, agreements of consolidation, restructuring, disposition, liquidation or dissolution, deeds, bills of sale, or assignments executed in connection herewith.

X. Executory Contracts and Unexpired Leases.

The Plan Article captioned *Executory Contracts and Unexpired Leases* governs the assumption, assumption and assignment and rejection of executory contracts and unexpired Business Premises Leases which are referred to collectively as “contracts.” The Debtor will reject all of the Debtor’s executory contracts and unexpired leases of real estate on the Effective Date, whether known or unknown to the Debtor, including without limitation, Hyundai Lease Titling Trust, Watson Tamposi Nash and Xerox. Each non-debtor party or a “counterparty” to a rejected contract shall have a general unsecured, rejection claim against the Debtor in the amount set by the Code if it files a Proof of Claim within 30 days from the Effective Date to file a rejection claim with the Court; failing which such claim will be forfeited and barred forever.

XI. Proceedings and Causes of Action.

The Plan Article titled *Proceedings and Causes of Action* governs the settlement, termination and retention and continued prosecution of pending proceedings and causes of action

held by the Debtor on the Effective Date, which are known as the “Retained Proceedings” and “Retained Causes of Action.”

The Plan is and shall be deemed to be a motion for an order approving the settlement of all Causes of Action that the Debtor holds or may hold against Adam Mendenhall or Adam’s Coffee pursuant to Bankruptcy Rule 9019 in exchange for the subordination of any claims against the Debtor held by Adam Mendenhall, Adam’s Coffee and Danial Mendenhall. The Debtor in the exercise of its business judgment has determined that the cost of liquidating the Causes of Action is less than the amount that could be recovered by the Debtor. One of the Causes of Action is for the fair value of the space in the Business Premises that Adam’s Coffee used to store a very small amount of equipment and inventory estimated to be less than \$400. The other Cause of Action results from a transaction in which Adam Mendenhall and the Debtor traded in encumbered vehicles owned by Adam Mendenhall and the Debtor. The trades satisfied the secured debt on both vehicles. The Debtor took title to the replacement motor vehicle and may owe Adam Mendenhall money for the in equity that he had in his vehicle. In consideration of the subordination of all claims held by Adam Mendenhall and Adam’s Coffee, the parties will exchange mutual, general releases. The entry of the Confirmation Order shall approve automatically the settlement of the Causes of Action against Adam Mendenhall and Adam’s Coffee on the terms set forth herein and shall be deemed to include all of the findings necessary for the approval of the settlement, including those required by F.R.B.P. 9019.

The entry of the Confirmation Order will terminate all state court proceedings in which the Debtor is a defendant, including without limitation, the following: Bellavance Beverage Co., Inc. v. ADM Vending, Inc., Case No. 457-2015-SC-00284 (9th Cir. Merrimack 2015) and Brokerhouse Distributors, Inc. v ADM Vending, Inc., Docket No. 226-2016-cv-00066. The Confirmation Order result in the dismissal of each of the terminated state court proceedings with prejudice; but the dismissal shall not deprive the Plaintiffs of their dividend rights under this Plan, if any. The Debtor may file a copy of the Confirmation Order with the appropriate courts to terminate the Proceedings. On request, each Plaintiff shall sign and file an Agreement for Docket Markings that terminates a State Court Proceeding on the terms set forth herein.

For the purpose of funding and implementing the Plan, the Debtor will retain and may

prosecute to judgment, compromise, settle or release any one or more of the following Causes of Action:

1. All Causes of Action that the Debtor holds or may hold against AB Vending, including unfair competition and unfair and deceptive business practices claims.
2. Causes of Action arising under Chapter 5 of the Code or the New Hampshire Uniform Fraudulent Transfer Act for amounts in excess of the floor established by Bankruptcy Counsel to the Debtor Section 547.
3. Objections to claims filed pursuant to this Plan and the Confirmation Order.
4. Applications, contested matters or adversary proceedings which fall within the post-Confirmation jurisdiction retained by the Bankruptcy Court.

The Plan permits the Debtor to retain counsel on a standard contingent fee basis or modified contingent fee basis. The Debtor's Counsel, who has already been approved by the Court, may be retained on a standard contingent fee basis without prior Court approval. Any other attorney selected by the Debtor must be approved by the Court. No Retained Proceeding or Cause Of Action may be settled without prior Court approval.

XII. Claims Objections and Payment of Dividends Generally.

This Plan Article establishes the procedures for resolving disputes pertaining to claims and the payment of dividends on allowed claims. The Class and claims summary attached as Exhibit A lists the claims known to the Debtor on a Class-by-Class basis. It identifies as "disputed" each claim known to be contingent, disputed or unliquidated in amount. Undisputed claims will be allowed in the Estimated Allowed Amount thereof, as shown in Exhibit A, except for accounting disputes and disputes unknown to the Debtor on the Disclosure Date. In this regard, creditors should understand that the Debtor will more probably than not object to any claims marked disputed in Exhibit A.

The Debtor will pay the dividends becoming due under the Plan by mailing a check to the allowed creditor. Dividend checks will be mailed to the addresses given by allowed creditors in

(1) their proofs of claim or (2) any written notice of change of address delivered to the Debtor. Since “undeliverable dividends” will become the property of the Debtor, creditors should make sure that they notify the Court and the Debtor of any change of address.

PART FIVE

THE DEBTOR AND HISTORY RELEVANT TO PLAN

This Part does not have a Plan counterpart. It provides Plan Parties with pre-petition information regarding the ownership and management of the Debtor and the primary reason or reasons that the Debtor sought protection under the Code and a summary of the significant events that occurred during the Bankruptcy Case.

XIII. Affiliates; Insiders and Related Entities.

The Debtor has no affiliates. The insiders of the Debtor are Daniel Mendenhall, Karen Mendenhall, his spouse, Adam Mendenhall, his son and Diane Mendenhall, his mother. Neither Karen Mendenhall nor Adam Mendenhall received money or property from the Debtor during the year preceding the bankruptcy. Except for salary paid in the ordinary course of business, Daniel Mendenhall has received no money or property from the Debtor during the year preceding the bankruptcy.

PART SIX

SIGNIFICANT PROPERTY, PLAN USE, VALUE AND HYPOTHETICAL LIQUIDATION

This Part has no counterpart in the Plan.

XVIII. Significant Property of the Estate, Plan Use and Values.

A. Scope and Liquidation Analysis and Summary.

This Article describes for Plan Parties the property of the estate, the proposed use of the property under Plan and the projected reorganization and liquidation values of the property. The values are summarized in the *Hypothetical Liquidation and Distribution Summary* included in the Appendix as Exhibit C. Property worth less than \$5,000 seemed to be inconsequential in terms of value and immaterial to an evaluation of the merits of the Plan.

B. Property to be Retained by the Estate; Valuation Methodology. The Debtor has and will retain very little property under the Plan. The property to be retained consists of the Debtor's cash on hand and deposits, the NBT Carve-out, any carve-outs offered by Firestone and Vistar if either or both of them should hold Allowed Secured Claims and the Retained Causes of Action. In order to determine the reorganization and liquidation value of the property of the estate, the Debtor relied on the opinion and expertise of Daniel Mendenhall with respect to the value of the tangible personal property owned by the Debtor if sold to buyers located by the Debtor on terms negotiated by the Debtor. The Debtor relied on its professionals in valuing the intangible property.

C. Hypothetical Liquidation Analysis.

1. In this Section, the Debtor presents creditors with a hypothetical liquidation of the property of the estate. A liquidation is a forced sale or disposition of property by a secured creditor pursuant to the Uniform Commercial Code, known as the UCC, or a sale by a trustee appointed pursuant to Chapter 7 of the Bankruptcy Code, who will be referred to as a "Trustee." The Debtor made a number of assumptions, including the following:

- a.** Liquidations never realize more than a fraction of the reorganization or fair market value of property.
- b.** The only unencumbered property is the Debtor's cash on hand and bank deposits.
- c.** NBT, Chrysler Credit and Hyundai Lease have already been relieved from the automatic stay. Their Collateral is no longer property of the estate. Following a foreclosure, Chrysler Credit and NBT would have deficiency claims of nearly \$10,460.17 and \$791,935.79, respectively, in a best case liquidation scenario. The estimated Chrysler Credit and NBT deficiency claims would be non-priority, unsecured claims in a liquidation. Under the Plan, Chrysler Credit and NBT will waive their right to dividends.
- d.** Hyundai Lease and Xerox would sell the property leased to the Debtor. Neither creditor would have a deficiency claim.

e. A Trustee will charge the statutory fee against the proceeds of the unencumbered property.

D. Value of Remaining Property of Estate.

1. The Debtor's cash on hand and bank deposits have the same value in a reorganization pursuant to the Plan and a liquidation. The Debtor has deposited all cash on hand into its bank account and estimates the current value of its bank deposits to be \$7,084.02.

2. The Debtor expects the NBT Carve-out to generate approximately \$3,125.00 (12.5% of \$30,000.00) for distribution to creditors holding Allowed Claims pursuant to the Plan. Approximately \$2,468.75 (12.5% of \$19,750.00) has already been earned by the Debtor assuming that NBT approves sales negotiated by the Debtor. The Debtor is currently holding \$13,750.00 in sale proceeds and has pending sales totaling \$6,000.00. Since neither NBT nor a Chapter 7 Trustee would not likely be as successful as the Debtor in finding buyers and negotiating satisfactory sale terms, the Debtor values the NBT Carve-out at \$1,500 on a liquidation basis.

3. The gross value of the Debtor's Chapter 5 Actions is estimated to be \$0.00. ~~The Debtor estimates that approximately // // % of that amount will be recovered under the Plan.~~ In a liquidation, a Chapter 7 Trustee would likely recover the same ~~percentage~~amount.

4. The potential AB Vending Causes of Action may have no value. The AB Vending Causes of Action may be worth as much as \$100,000 in a reorganization, but have been valued at 50,000 to allow for the payment of a contingent fee that might be as high as \$50,000, including fees and expenses. An investigation must be conducted by a party familiar with the workings of the vending industry, AB Vending and the customers taken by AB Vending in order to determine the merits of the claim. In a liquidation, the Debtor doubts that the AB Vending Causes of Action would have any value in a liquidation although it has set \$35,000 as the high value for comparison purposes.

E. Hypothetical Liquidation Summary. Exhibit C, Hypothetical Liquidation Summary projects the results of the hypothetical liquidation of the remaining property of the estate. NBT and Chrysler Credit will suffer significant losses. Administrative Expense

Creditors holding Allowed Claims will recover less than 60 % of the Estimated Allowed Amounts of their claims, as shown by Exhibit A. No other creditors would receive any distribution from the hypothetical liquidation.

PART SEVEN

CONFIRMATION GENERALLY, FEASIBILITY, BEST INTERESTS OF CREDITORS AND CRAM DOWN

This Part discusses the risks inherent in the Plan, its feasibility and explains why the Debtor believes that the Plan satisfies the best interests of creditors test.

XIX. Confirmation Generally.

At the Confirmation Hearing, the Court will confirm the Plan only if all of the requirements of section 1129 of the Code are met. The requirements for Confirmation of the Plan are that:

1. The Plan is feasible,
2. The Plan is accepted by all impaired Classes of claims and equity interests, and
3. To the extent that any holder of a claim or interest in an impaired Class does not vote for the Plan, it will receive or retain under the Plan property of a value that is not less than the amount that would have been received or retained if the Debtor were liquidated under Chapter 7 of the Code.

If one impaired voting Class accepts the Plan, the Court may confirm the Plan by “cramming it down” on objecting creditors if the Plan satisfies all of the requirements of Code Section 1129(a), except (a)(8), and "does not discriminate unfairly" and is "fair and equitable" as to such Class:

XX. Financial Projections, Risk and Feasibility.

A. Risk Factors and Analysis.

The Debtor believes the Plan to be relatively risk free. It has already negotiated the NBT

Carve-out. It may not be able to reach a carve-out agreement with Vistar or Firestone if either or both of them hold Allowed Secured Claims, but Vistar signed a Subordination Statement and the value of the potential Firestone Collateral is small. Liquidating the Chapter 5 Actions should not be too difficult. Although the AB Vending Causes of Action may be problematic at the moment, the Debtor has not assigned any value to them.

B. Plan Is Feasible.

The successful implementation of the Plan does not require the Debtor or Mendenhall to do anything extraordinary. It requires the Debtor to continue to operate its business as it has over the course of this Bankruptcy Case. Funding the Plan requires revenue growth of 3 % per year and allows for an annual increase in expenses of between 2 % and 4 %. As a result, the Plan is feasible.

XXI. Best Interests of Creditors, Acceptance and Cram Down.

A. Plan Is in the Best Interests of Creditors.

Confirmation of the Plan is in the best interests of creditors within the meaning of the Code. Determining whether or not the Plan satisfies the “best interests test” requires a comparison of the dividends are expected to receive under the Plan to the distributions that impaired creditors would receive in the hypothetical liquidation described earlier in this Disclosure Statement.

Included in the Appendix as Exhibit D is the *Liquidation and Plan Comparison*. It compares in a tabular format the dividends projected to be paid to holders of allowed claims in each Class pursuant to the Plan to the amount or liquidation distribution that the Class would receive from the hypothetical liquidation of the Debtor’s property, as shown by Exhibit C. The comparison of the expected results of the Confirmation of the Plan to the expected results of the hypothetical liquidation can be summarized as follows:

1. NBT, Chrysler Credit, Hyundai Lease, Firestone and Vistar will recover the value of their Collateral in the hypothetical liquidation or through the Plan. Each creditor will suffer a significant loss.

2. Administrative Expense Creditors holding Allowed Administrative Expense Claims will share between \$0.00 and \$35,000.00 on a pro rata basis in a liquidation, but may divide as much as \$60,209.02 under the Plan.

3. No other Class of creditors would be paid any dividend in a liquidation. The Allowed Priority Tax Creditors may be paid in full under the Plan if the Debtor manages to recover more than \$100,725.00 from the Retained Chapter 5 Actions and the AB Vending Causes of Action. Under the Plan, the payment of a dividend to General Unsecured Creditors holding Allowed Claims is a very remote possibility.

Since all impaired creditors will receive more under the Plan than they would receive through a liquidation, the Plan satisfies the "best interests of creditors" test.

B. Acceptance of Plan.

Pursuant to Section 1126(c) of the Code, a Class of impaired claims has accepted a plan of reorganization when such plan has been accepted by creditors (other than an entity designated under Section 1126(e) of the Code) that hold at least two-thirds in aggregate dollar amount of allowed claims in such Class and more than one-half in number of the allowed claims of such Class held by creditors (other than any entity designated under Section 1126(e) of the Code) that have actually voted to accept or reject the plan. Section 1126(e) of the Code allows the Court to designate the votes of any party that did not vote in good faith or whose vote was not solicited or procured in good faith or in accordance with the Code. Holders of claims who fail to vote are generally not counted as either accepting or rejecting the plan.

C. Cramdown and Absolute Priority.

Section 1129(b) of the Code permits a court to confirm a plan even if an impaired voting Class rejects the plan or a creditor objects to its Confirmation through a procedure commonly known as "cram down," so long as the plan does not "discriminate unfairly" and is "fair and equitable" with respect to each Class of claims or equity holders that is impaired under, and has not accepted, the plan. The Debtor will seek nonconsensual Confirmation of the Plan with respect to each Class of claims that is entitled to vote to accept or reject the Plan if such Class rejects the Plan. The Debtor reserves the right to alter, amend, modify, revoke or withdraw the

Plan or any Plan Exhibit or schedule, including amending or modifying it to satisfy the requirements of section 1129(b) of the Code, if necessary.

Nonconsensual Confirmation requires the Court to find that the Plan "does not discriminate unfairly" and is "fair and equitable" with respect to each impaired, rejecting Class. This Plan does not violate the absolute priority rule because New Equity Holder is providing substantial and tangible New Value. Further, New Equity Holder will give General Unsecured Creditors New Equity Holder Plan Guarantee of the payment of the dividends due them hereunder.

Only the Confirmation of the Plan prevents the liquidation of the property of the estate by secured creditors. The Debtor expects creditors to reach the conclusion that Confirmation of the Plan is in their best interests simply by comparing the dividends that they will be paid pursuant to the Plan with the disastrous results of a liquidation. Given the treatment of all Classes of claims and interests under the Plan, the Debtor believes that the Plan satisfies "cramdown" requirements for the nonconsensual Confirmation of the Plan.

PART EIGHT

ADDITIONAL DISCLOSURES

XXII. Tax Returns and Tax Consequences to Creditors.

A. Status of Federal and State Tax Returns. The Debtor will file all federal and state tax returns before the Effective Date.

B. Tax Consequences to Creditors. The Confirmation and implementation of the Plan may result in federal income and/or state tax consequences to creditors. The tax consequences may and more probably than not will vary among the creditors because of their unique business and tax considerations and the claim itself. Consequently, creditors are urged to consult with their tax advisors in order to determine the tax implications of the Plan under federal and state law.

C. Acquisition of Claims by Insiders. No claims have been acquired by any insider since the Petition Date.

D. Required Proofs of Claim.

1. In Schedules D, E and F to the Petition and Appendix Exhibit A, the Debtor described some of the claims asserted by creditors as being contingent, disputed or unliquidated. The Notice of First Meeting of Creditors warned each creditor holding a disputed claim that the creditor had to file a Proof of Claim on or before the Bar Date, which has now passed. As a result, the Debtor will object to any disputed claim listed in the Petition with respect to which the creditor did not file a Proof of Claim.

2. **Rejection Claims.** Any creditor that wishes to assert a claim resulting from the rejection of an executory contract or unexpired lease of real estate must file a Proof of Claim within the period of time specified in the Plan.

E. Qualifications and Limitations.

1. **Primary Source of Information.** The information contained in this Disclosure Statement came from the Debtor's management and its books of account and other business and financial records.

2. **Dating of Information and Statements.** All of the statements contained in this Disclosure Statement are being made as of the Disclosure Date unless otherwise stated in the body of this Disclosure Statement.

3. **Limited Use of Disclosure Statement.** Only Plan Parties are intended to receive and use the information contained in this Disclosure Statement. It has been prepared by the Debtor to provide Plan Parties with adequate information to permit them to make an informed decision about the merits of the Plan. Although the Court determined that this Disclosure Statement provides adequate information, its Order approving the Disclosure Statement does not mean and should not be interpreted to mean that the Court has endorsed or determined that the Plan will or will not be successful or that creditors should vote for it.

4. **No Approval of Securities Regulators.** No benefits offered to Plan Parties under the Plan have been approved or disapproved by the SEC, NASD or any other governmental authority. Neither the SEC, NASD nor any other governmental authority has

passed, or will pass upon the merits of the Plan except for the Court.

5. No Other Representations. No representations concerning the Debtor, particularly regarding future business operations or the value of the Debtor's assets, have been authorized by the Debtor, except as set forth in this statement.

6. Projections. Much of the information contained herein consists of projections of future performance of a very complicated and uncertain business. The Debtor has made a reasonable effort to insure that the assumptions, estimates, financial projections and predictions have a reasonable basis in fact. The Plan term is five years. During that period, factors beyond the control of the Debtor and its management will affect the implementation and success of the Plan. Under no circumstances should any Plan Party view the information as a guaranty, representation or warranty.