

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

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In re: CHAPTER 11  
**ADM VENDING, INC.** Case No. 16-10477-BAH  
Debtor

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**DEBTOR'S DISCLOSURE STATEMENT DATED SEPTEMBER 16, 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 September 15, 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: September 16, 2016

/s/ William S. Gannon  
William S. Gannon  
Attorney for:  
**ADM VENDING, INC.**

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**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: September 16, 2016

/s/ Beth E. Venuti  
Beth E. Venuti

**PART ONE**

In the following chart, 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.

**EXCECUTIVE SUMMARY TABLE**

	<b>Dividend Projection by Class:</b>	<b>Allowed to Vote</b>
<b>Class 1: Santander Secured Claims Class</b> <i>For more details see <u>Summary of Class Dividends and Treatment</u>, Class 1, Pg.9, Article IV, Section A.</i>	Projected Dividend: 100 % <i>See Ex. A at Line 8</i> Projected Date of First Dividend Payment January 31, 2017	<b>YES</b>
<b>Class 2: Vistar Secured Claims Class</b> <i>For more details see <u>Summary of Class Dividends and Treatment</u>, Class 2, Pg. 6, Article IV, Section B.</i>	Projected Dividend: 100 % <i>See Ex. A at Line 12</i> Projected Date of First Dividend Payment January 31, 2017	<b>YES</b>
<b>Class 3: Firestone Secured Claims Class</b> <i>For more details see <u>Summary of Class Dividends and Treatment</u>, Class 3, Pg. 10, Article IV, Section C.</i>	Projected Dividend: 100 % <i>See Ex. A at Line 16</i> Projected Date of First Dividend Payment January 31, 2017	<b>YES</b>
<b>Class 4: NBT Bank Secured Claims Class</b> <i>For more details see <u>Summary of Class Dividends and Treatment</u>, Class 4, Pg.10, Article IV, Section D.</i>	Projected Dividend: 100 % <i>See Ex. A at Line 20</i> Projected Date of First Dividend Payment January 31, 2017	<b>YES</b>
<b>Class 5: Non-professional Administrative Expense Claims Class</b> <i>For more details see <u>Summary of Class Dividends and Treatment</u>, Class 5, Pg. 11, Article V, Section A.</i>	Projected Dividend: 100 % <i>See Ex. A at Line 25</i> Projected Date of First Dividend Payment January 3, 2017	<b>NO</b>

<p><b>Class 6: Professional Administrative Expense Claims Class</b></p> <p><i>For more details see <u>Summary of Class Dividends and Treatment</u>, Class 6, Pg. 11, Article V, Section B.</i></p>	<p>Projected Dividend: 100 %  <i>See Ex. A at Line 29</i>  Projected Date of First Dividend Payment January 31, 2017</p>	<p><b>NO</b></p>
<p><b>Class 7: Priority Tax Claims Class</b></p> <p><i>For more details see <u>Summary of Class Dividends and Treatment</u>, Class 7, Pg. 12, Article V, Section C.</i></p>	<p>Projected Dividend: 100 %  <i>See Ex. A at Line 36</i>  Projected Date of First Dividend Payment January 31, 2017</p>	<p><b>NO</b></p>
<p><b>Class 8: General Unsecured Claims Class</b></p> <p><i>For more details see <u>Summary of Class Dividends and Treatment</u>, Class 8, Pg. 12, Article VI, Section A.</i></p>	<p>Projected Dividend: 35 %  <i>See Ex. A at Line 77</i>  Projected Date of First Dividend Payment January 31, 2017</p>	<p><b>YES</b></p>
<p><b>Class 9: Subordinate Claims Class</b></p> <p><i>For more details see <u>Summary of Class Dividends and Treatment</u>, Class 9, Pg. 12, Article VI, Section B.</i></p>	<p>None.</p>	<p><b>NO</b></p>
<p><b>Class 10: Equity Interest Class</b></p> <p><i>For more details see <u>Summary of Class Dividends and Treatment</u>, Class 10, Pg. 13, Article VI, Section C.</i></p>	<p>None.</p>	<p><b>NO</b></p>

### **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. 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 Thomas 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. Thomas was collecting cash at the time of delivery of products. The Debtor terminated Thomas' employment. In settlement of the claims, Thomas 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 Thomas.

Two weeks after the Debtor terminated Thomas, Eric Willis, a Sale Representative, resigned. The Debtor concluded that Willis was involved Thomas. 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 titles<sup>1</sup> 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.

The Debtor expects the Plan to become effective on **January 1, 2017**. On the Effective

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<sup>1</sup> 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.

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). Except for insiders (who may vote to reject the Plan, but not to accept it) and creditors holding claims for which the Code prescribes specific treatment, creditors holding impaired claims 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 CLASS DIVIDENDS AND TREATMENT**

**IV. SECURED CLAIMS CLASSES.**

**A. Class 1: Santander Secured 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 impaired, non-voting Class. The only creditor in this Class is Santander Consumer USA Inc., d/b/a Chrysler Capital. The Debtor expects the creditors holding allowed claims in this Class to be paid the projected dividends, plus simple interest at the statutory rate, estimated in the Executive Summary Table in accordance with the provisions of the Plan summarized in the Executive Summary Table. Santander is slightly undersecured. It would be more expensive to bifurcate the secured claim than simply allow and pay the secured claim in accordance with the Santander Loan Documents in the Debtor’s business judgment. As a result, the Debtor will continue making the monthly payments required by the Santander Loan Documents over the remaining term of the loans evidenced by such Documents, except that, if the regular monthly payments are not sufficient to pay the allowed claims in full, the last, scheduled payment will be a balloon payment.

**B. Class 2: Vistar Secured 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 impaired, voting Class. The only creditor in this Class is Vistar Corporation. The claim in this Class will be allowed in the amount of \$22,844.52 on the Effective Date. The Debtor expects Vistar to be paid in full, with interest, as described in the Executive Summary Table.

**C. Class 3: Firestone Secured 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 impaired, non-voting Class. The only creditor in this Class is Firestone Financial Corp. The Debtor expects the creditors holding allowed claims in this Class to be paid the monthly dividends, plus simple interest at the statutory rate, projected in the Executive Summary Table in accordance with the Plan. The Debtor relied on the representation made by the creditor in this Class that it holds first priority, purchase money security interests in and to the Flavia coffee equipment described in its Security Agreement and Financing Statements. The relatively small amount of the Firestone secured claim did not seem to justify filing an adversary proceeding to determine whether Firestone holds a valid and enforceable, first priority purchase money security interest in the Flavia coffee equipment. Under the Plan, (1) the liens held by Firestone on the Flavia coffee equipment will be preserved for the benefit of Firestone and continue to secure the payment of the Allowed Secured Claim held by Firestone, (2) all of the other liens held by Firestone will be avoided because they confer no value on Firestone given the senior Vistar and NBT Bank liens and (3) the Debtor will continue making the \$409.27 per month payments required by the Firestone Loan Documents over the remaining term of the Firestone Loan, except that, if the regular monthly payments are not sufficient to pay the allowed claims in full, the last, scheduled payment will be a balloon payment equal to the unpaid balance of such Loan on that date.

**D. Class 4: NBT Bank Secured 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 impaired, non-voting Class. The only creditor in this Class is NBT Bank, National Association. The Debtor expects the creditors holding allowed claims in this Class to be paid the projected dividends, plus simple interest at the statutory rate, estimated in the Executive Summary Table in accordance

with the provisions of the Plan summarized in the Executive Summary Table. NBT Bank has agreed to support the Confirmation of the Plan. In general, NBT Bank has agreed to reduce its secured claims against the Debtor to a total of \$225,000, less the adequate protection payments made to NBT during this Case with Bankruptcy Court approval, and waive its right to any dividend on account of its General Unsecured Claim on the Effective Date. Under the Plan, (1) the liens held by the Debtor on the NBT Collateral will be preserved for the benefit of NBT and continue to secure the payment of the Allowed Secured Claim held by NBT and (2) NBT has agreed to accept dividend prepayments in exchange for a credit against the principal balance due NBT from time to time equal to \$1.50 for each \$1.00 prepayment made by the Debtor.

**V. Priority Claims Classes.**

**A. Class 5: Non-professional Administrative Expense 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 non-voting Class.<sup>2</sup> This Class includes the claims held by the United States Trustee for quarterly fees and creditors that provided goods or services to the Debtor after the Petition Date to the extent entitled to priority under Code Section 507(a) (2), but excludes by agreement the Debtor's Counsel for the benefit of this Class. On the Effective Date, the Debtor will pay in full in cash all quarterly fees then due (1) the UST and (2). All of the Allowed Non-Professional Administrative Expense Claims in this Class will be paid from in full from the Debtor's ordinary income.

**B. Class 6: Professional Administrative Expense 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 non-voting Class. This Class includes all claims held or asserted against the Debtor by the attorneys, accountants, consultants and other professionals retained by the Debtor pursuant to Code Section 327 with Court approval, including without limitation, the Debtor's Counsel, the Debtor's Business Consultant and the Debtor's Special Accountant. The unpaid claims in this Class are entitled to priority under Section 507(a) (2) if, and to the extent approved by the Court. No dividends will be paid to any

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<sup>2</sup> The Non-professional and Professional Administrative Classes are not technically "Classes," but are treated as Classes for Plan accounting, payment and cash flow purposes.

professional until the Court enters an order granting a fee application filed by the professional in whole or in part. The Debtor's Counsel will accept payment of any allowed administrative expense claims in this Class in 60 consecutive, monthly installments of principal, with interest at the rate of 4% per annum. As security for the payment of the allowed administrative expense claim, the Debtor will grant the Debtor's Counsel present and continuing security interests in and to all of the Debtor's personal property from time to time.

**C. Class 7: 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 non-voting Class. The only creditor in this Class is the New Hampshire Department of Revenue Administration. On the Effective Date, the claim in this Class will be allowed in the Estimated Allowed Amount given in the Executive Summary Table. The Debtor expects to pay NHDRA in full in cash on the Effective Date.

## **VI. Unsecured Claims and Equity Interest Classes.**

**A. Class 8: General Unsecured Claims Class.** The Debtor incorporates the disclosures and information given to Plan Parties in the Executive Summary Table and Exhibit A with respect to this Class, which includes all of the creditors named as General Unsecured Creditors in Exhibit A and any other non-priority unsecured claims against the Debtor, except for those specifically placed in the Subordinate Claims Class. Using the Better Business Bureau, which holds a \$286.30 claim in this Class, as an example, the creditor will be paid \$100.21. Creditors holding Allowed Claims in this Class may be offered dividend prepayments in exchange for a credit against the allowed amount of their claims to be agreed to by the parties in accordance with the provisions of the Section hereof titled "Optional Prepayment of Certain Claims; Effect on Dividends." A creditor in this Class may accept or reject a dividend prepayment offer. Unless the Debtor implements the Plan successfully, Allowed Creditors in this Class may not receive some or all of the projected dividends.

**B. Class 9: 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 10: 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. 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. The Debtor may distribute to the New Equity Holder an amount equal to any liability for federal or state tax taxes imposed on the New Equity Holder by reason of Debtor's revenues or payroll.

The Board of Directors or Board will have and exercise all of the powers, authorities, duties and responsibilities granted to and imposed on boards of directors by the New Hampshire Business Corporations Act and the Debtor's Articles of Incorporation and Bylaws, including the duty and responsibility to manage the business and affairs of the Debtor. Mendenhall will be the sole Director. The Director will be compensated for serving as a director, but may be reimbursed for costs and expenses reasonably incurred in connection with the performance of their duties.

Mendenhall will hold the offices of President, Treasurer and Secretary of the Debtor. There will be no Vice President. Subject to the control of the Board of Directors, the President will manage the day-to-day business activities of the Debtor. Mendenhall (1) will be paid an annual salary of \$26,000 to \$42,000 for serving as President and managing the business of the Debtor as shown in the Projected Financial Statement and reimbursed for reasonable costs and expenses incurred in connection with services provided to the Debtor and (2) may be given a tax distribution if, and as permitted by the following Paragraph. Mendenhall will not receive any

other compensation or benefits during the term of the Plan. If the Board of Directors should appoint additional officers and managers to grow the business, the Debtor may pay them a reasonable salary.

**B. Use of Ordinary and Extraordinary Income.**

1. Ordinary income derived from the Debtor's on-going business operations will be used to pay: (a) first, to the dividends due creditors holding an allowed claim secured by a Preserved Lien or Liens on the Debtor's property following Confirmation, (b) second, to pay the Ordinary Costs incurred by the Debtor, (c) third, to pay the dividends due unsecured creditors holding allowed claims as provided for herein and (d) then, to fund the Working Capital Reserve.

2. 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) first, in payment of the Debtor's Customary Closing Costs, (b) second, in satisfaction of any allowed claim secured by a preserved lien or liens on the property sold to the extent possible, (c) third, in payment of the costs and expenses incurred by the Debtor in the ordinary course of business and (d) last, in payment of the dividends due creditors holding allowed unsecured claims in the following order of preference and priority: (1) Administrative Expense Creditors, (2) Priority Tax Creditors, (3) General Unsecured Creditors and (4) Subordinate Creditors. If the proceeds of a sale or other disposition shall not be sufficient to pay the dividends due allowed creditors in a Class in full, such creditors shall be paid a fractional portion of the total dividends due them under the Plan, the numerator of which shall be the amount of an allowed claim and the denominator of which shall be the total amount of allowed claims in the Class.

**C. Debtor's Financial Covenants.** Until such time as Debtor has paid all of the dividends due creditors under this Plan:

1. The Debtor shall manage and conduct its business and affairs in accordance with the terms of the Confirmation Order, this Plan and applicable federal and state law.

2. The Debtor shall keep true, complete and accurate records and books of account on a consistent basis, which fairly depict the results of the Debtor's business and permit any creditor holding an allowed claim at the Debtor's business premises at any mutually convenient time during the normal business week.

3. The Debtor shall not pay to any person any salary, benefits or other compensation in excess of the lesser of the amounts permitted hereby or those reasonably and necessarily incurred for services or work done for the Debtor in the ordinary course of the Debtor's business.

4. The Debtor will not redeem any of the New Equity Interests during the term of the Plan or make any distributions on account thereof, except for such distributions as may be necessary to pay any federal income or state tax liability of the New Equity Holder arising directly from the ownership of the New Equity Interests.

**D. Continued Business Operation Subject to Plan and Applicable Law.** 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. Working Capital Reserve.** To address the mild seasonality of the Debtor's Business, the Plan creates a Working Capital Reserve. After the Debtor has paid its Ordinary Costs and the dividends due creditors holding Allowed Claims in accordance with the provisions of the Section hereof captioned "Use of Ordinary Income," the balance of the Debtor's cash on hand from time to time will be held by the Debtor in trust as working capital for the purpose of implementing the Plan. The working capital will be deposited in an interest-bearing depository account opened and maintained by the Debtor with NBT Bank if it is a Qualified Depository and agrees that it does not have a security interest in or control over the money on deposit in such account and waives any right of offset, recoupment or any other right to freeze, take or apply the funds to its Allowed Secured Claim or any other liability or another Qualified Depository in the absence of an agreement. Notwithstanding any other provision hereof, the Debtor shall not use the working capital for any purpose other than paying the Ordinary Costs and dividends provided

for in the “Use of Ordinary Income” Section and such other purposes as may be specifically required or permitted by this Plan, including the optional prepayment of certain Allowed Claims pursuant to the Section hereof titled “Optional Prepayment of Certain Claims.”

**B. Optional Prepayment of Certain Claims; Effect on Dividends.**

**1.** The Financial Projections show that the Debtor may accumulate a small amount of cash each year. The Debtor may decide to offer to make prepayments on account of the dividends due creditors holding Allowed Claims on a Class by Class basis in exchange for a discount on the total amount of dividends to be paid to creditors that accept the offer and the re-amortization of the payments due such creditors. Prepayments will ease the burden of Plan payments going forward making the successful implementation of the Plan even more probable. A dividend prepayment offer will let NBT recover its money earlier than provided for in the Plan and let General Unsecured Creditors choose early and certain payments in exchange for a discount or reject the offer. Any offer to make a dividend prepayment will be extended in the following order:

**a.** First, to NBT Bank, which must accept each prepayment offer pursuant to the provisions of the Section captioned “NBT Secured Claims Class.”

**b.** Second, to General Unsecured Creditors, which may accept or reject a dividend prepayment offer.

**c.** Each dividend prepayment offer will be made in writing to each creditor holding an Allowed Claim in the Class receiving the offer. The offer will specify **(1)** the amount to be prepaid to the Class, **(2)** the discount set by this Plan or proposed discount, **(3)** assuming that all creditors holding Allowed Claims in the Class accept the offer, the amount to be paid to each creditor, the reduction by percentage of the periodic dividend to be paid to each creditor in the Class following the prepayment and **(4)** in the case of General Unsecured Creditors, an example based on a creditor listed in Exhibit A. Any creditor that fails to accept a prepayment offer in a writing within 10 days of the date on which the Debtor mailed or sent the offer to the creditor by facsimile or email shall be deemed to have rejected the offer.

**2.** On each occasion that the Debtor makes a dividend prepayment to a

creditor that has accepted a prepayment offer, the total dividends then due the creditor shall be reduced by the discount accepted by the creditor. For example, if a creditor agreed to a discount ratio of \$1.50 for each \$1.00 prepaid and received a \$1,000 payment, the remaining dividends would be reduced by \$1,500. The periodic dividend payments thereafter becoming due shall be reduced to reflect the prepayment of principal, but shall not excuse the Debtor from making the next payment due or extend the repayment term provided for in the Plan.

**C. Recapitalization; New Equity Interests.**

1. The entry of the Confirmation Order shall authorize the creation, issuance and sale of the New Equity Interests in the reorganized Debtor to the New Equity Holder or its nominee simultaneously with its receipt of the consideration to be paid and given therefor pursuant to Paragraph 2 hereof.

2. In exchange for the New Equity Interests, Mendenhall will (a) consent to the subordination of his unsecured claims against the Debtor in the approximate amount of \$200,000 to all of the allowed secured and unsecured claims held by other creditors and their dividend and other rights arising therefrom as provided for herein, (b) enter into an employment agreement with the Debtor in substantially the same form as that included in the Appendix as Exhibit E which, among other things, obligates him to serve as the sole Director and President of the Debtor for the five (5) year term of this Plan, limits his compensation to the amounts permitted by this Plan and includes a covenant not to compete that prevents him from engaging the vending machine business and the sale of coffee and coffee related products within 20 miles of the Debtor's Business Premises for a period of one (1) year from the date of the expiration or earlier termination of the employment agreement.

3. The acceptance of the New Equity Interests shall constitute an acknowledgment and representation by each New Equity Holder that: (a) the New Equity Interests will be issued pursuant to Code Sections 1129 and 1145 and without the approval of any federal or state regulatory agency, (b) the New Equity Holder is a knowledgeable and sophisticated person who understand the transaction and accept the risks inherent in the transaction, (c) the New Equity Holder has not accepted the New Equity Interests with a view to a sale or any other re-distribution thereof, (d) the New Equity Holder understands and

acknowledges that the New Equity Interests have not been, and will not be registered with any federal or state agency and cannot be sold, except in accordance with the provisions of federal and state law and that (e) the approval of the Disclosure statement does not constitute an express or implied representation by the Court or the Debtor that the Plan will be implemented successfully by the Debtor.

**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.

**E. Distribution Agreement with Adams Coffee LLC.** In order to preserve the Debtor's revenue base and fund the Plan, Adam Coffee will enter into a Distribution Agreement with the Debtor on or before the Effective Date. The Distribution Agreement will grant the Debtor the exclusive right to market, sell and distribute for Adam Coffee Flavia coffee and Flavia branded goods for Adam Coffee for a period of time, which is not less than the Plan Term. The Distribution Agreement will not require the Debtor to pay any fees during the 1st year of the Plan Term in consideration of the releases to be given to Adam Mendenhall and Adam Coffee. The Debtor will pay Adams Coffee fees based on the gross revenues derived from the sale of Flavia coffee and Flavia branded goods as follows during the 2nd through 5th years of the Distribution Agreement: (1) Year 2, 1%, (2) Year 3, 1.05%, (3) Year 4, 1.1% and (4) Year 5, 1.2%. The Debtor will be responsible for paying all of the marketing, sales and other costs and expenses incurred in marketing, selling and delivering the Flavia goods to customers. The Financial Projections include the projected sales of Flavia coffee and Flavia branded goods and the costs and expenses expected to be incurred in connection therewith. Except for the provisions required hereby, the Distribution Agreement will be in the form presented to the Bankruptcy Court at the Confirmation Hearing.

**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 Plan permits the Debtor to assume, assume and assign or reject contracts at any time before the Effective Date by giving the non-debtor party thereto notice of the Debtor’s election to do so at which time it shall become an assumed or rejected contract or assumed or rejected lease, as appropriate. Under the Plan, the entry of the Confirmation Order automatically approves and authorizes the Debtor to implement its decisions regarding the assumption, assumption and assignment and/or rejection of executory contracts and unexpired leases as permitted by the Plan.

The Debtor will assume the Business Premises Lease entered into with Watson-Tamposi-Nash dated March 28, 2012, as modified on or about December 15, 2015. No defaults exist under the Business Premises Lease. The Business Premises Lease obligates the Debtor to pay the Landlord the following sums: \$4,233.33 per month through November 30, 2016, \$5,291.66 beginning on December 1, 2016 and \$6,350.00 per month beginning on December 1, 2017 through April 30, 2018. The Financial Projections show the payment of the rent and other sums due under the Lease. By its terms, the Business Premises Lease will not expire until April 30, 2018, but the Landlord has agreed to permit the Debtor to move into a smaller space that will reduce the rent to approximately, \$2,166.67 per month, which is the amount shown in the Financial Projections, as soon as mutually acceptable space can be found without any further liability on account assumed Business Premises Lease. The monthly payment to be made Watson-Tamposi-Nash is shown on Line 45 of Exhibit B, Financial Projections.

The Debtor will assume the copier lease entered into with Xerox. No defaults exist under the Xerox lease, which obligates the Debtor to pay Xerox the sum of \$184.44 per month. The monthly payment to be made Xerox is shown on Line 46 of Exhibit B, Financial Projections.

Except for unexpired leases and executory contracts specifically assumed pursuant to the Plan, the Debtor will reject the motor vehicle lease held by Hyundai Lease Titling Trust [POC 14], which expires in December 2016, and any and all other executory contracts and unexpired leases of real estate on the Effective Date, whether known or unknown to the Debtor. 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. The non-debtor or counterparty to the rejected executory contract or unexpired Business Premises Lease has 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 the 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 Adams Coffee pursuant to Bankruptcy Rule 9019. 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 Debtor will retain and may prosecute to judgment, compromise, settle or release any one or more of the following Causes of Action:

- 1.** Causes of Action against Diane Mendenhall to be assigned to the Debtor

by Mendenhall as part of his New Equity Contribution.

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. Other applications and contested matters.

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. Except for retained proceedings or causes of action involving less than \$2,500, 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. Adam's Coffee, LLC is owned by Adam Mendenhall, who is the son of Mendenhall. Adam's Coffee engaged in the business of selling and leasing so-called "Flavia" coffee systems and coffee. Adam's Coffee used about 400 square feet of space in the Debtor's Business Premises to store inventory and equipment. The Firestone Financial claim against the Debtor results from its having purchased and financed certain Flavia products. In order to fund the New Equity Contribution to be made by Daniel Mendenhall, Adam Mendenhall will execute and deliver of bill of sale to the assets of Adam's Coffee to the Debtor for the benefit of Mendenhall.

The insiders of the Debtor are Daniel Mendenhall, Karen Mendenhall, his spouse, Adam Mendenhall, his son and Diane Mendenhall, his mother. Daniel Mendenhall will subordinate his claims against the Debtor and the estate pursuant to the Plan. Karen Mendenhall received no money or property from the Debtor during the year preceding the bankruptcy. Unless Diane Mendenhall withdraws her claim against the Debtor with prejudice, the Debtor will file an adversary proceeding against her based on a tort claim barred by the statute of limitations, but viable as an offset.

## **PART SIX**

### **SIGNIFICANT PROPERTY, PLAN USE, VALUE AND HYPOTHETICAL LIQUIDATION**

This Part has no counterpart in the Plan. It describes and values the property of the estate having significant value. In addition, this Part describes a hypothetical liquidation of the property of the estate and projects the amount that each Class would recover in a hypothetical liquidation of the property of the estate.

## **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. The Debtor did not include individual assets or groups of assets, such as accounts, equipment and inventory, having a value of less than \$5,000, except in those instances in which the failure to identify cash and other types of property seemed likely to raise questions. 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. Valuation Methodology.**

In order to determine the reorganization and liquidation value of the property of the estate, the Debtor considered the appraisal of the Debtor's equipment and inventory done for NBT Bank by James R. St. Jean Auctioneers dated November 16, 2015. The Debtor used "Blue Book" values for the motor vehicles. The Debtor also relied on the opinion and expertise of Daniel Mendenhall with respect to other property and adjusting the St. Jean Appraisal and Blue Book values. In addition, the Debtor discussed the values with NBT, which agrees to the valuation.

**C. Property to be Retained by Estate; Projected Values.** In order to implement the Plan, the Debtor will retain the assets or categories of property described and valued on a reorganization and liquidation value basis in this Section and Exhibit C, Hypothetical Liquidation and Distribution Summary.

### **D. 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.** Liquidation 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.** Santander, Vistar, Firestone and NBT would liquidate their Collateral or leased property in a series of foreclosure sales pursuant to the UCC on short notice and with relatively little advertising. From the proceeds of the liquidation of their Collateral, Vistar and Firestone would be paid in full. Santander and NBT would have deficiency claims of nearly \$10,460.17 and \$791,935.79, respectively, in a best case liquidation scenario.

**d.** The estimated Santander and NBT deficiency claims would be non-priority, unsecured claims in a liquidation.

**e.** Hyundai Lease Titling Trust and Xerox would sell the property leased to the Debtor. Neither creditor would have a deficiency claim.

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

**2.** In a liquidation, the Classes of claims will be different than in the Plan. The administrative claim held by the Trustee will be senior to the allowed Non-Professional and Professional Administrative Expense Claims. The General Unsecured Claims Class and Subordinate Claims Class will be combined and treated as Non-Priority Unsecured Claims. The \$10,460.17 and \$791,935.79 in deficiency claims projected to be held by Santander and NBT, respectively, following the liquidation of their Collateral will be added to the Non-Priority Unsecured Claims. Santander, Vistar and Firestone have no unsecured claim in the Plan. NBT will waive its right to a deficiency claim if the Plan is confirmed. Even if a liquidation produce the same amount of money as the Plan, the dividends paid to General Unsecured Creditors would be much smaller.

**3.** Exhibit C, Hypothetical Liquidation Summary summarizes the expected results of the hypothetical liquidation. Vistar and Firestone would be paid in full in a liquidation.

Santander and NBT would lose money despite having Collateral for their claims. The proceeds of the unencumbered property would probably be sufficient to pay the Trustee's fees and expenses and the allowed Non-Professional and Professional Administrative Expense Claims. All other creditors would lose all of their money in a 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.**

Although no plan of reorganization is risk free, the Debtor believes the Plan to be relatively risk free. The Debtor has operated successfully during this Bankruptcy Case, primarily due to significant reductions in cost and expense. The Financial Projections are based on the history of the Debtor's operating results since the Petition Date. The Plan assumes that the Debtor and the Landlord, which owns many rental properties, will find less expensive space for the Debtor as it has promised to do. A relocation is in the best interests of both parties. As a result, the Debtor believes that the Plan imposes little risk on creditors.

**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:

2. Vistar and Firestone, which are secured creditors, will be paid in full under

the Plan or through a liquidation.

3. Santander, a secured creditor, will be paid in full under the Plan, but will suffer projected losses of \$10,460.17 in a liquidation.

4. NBT expects to recover approximately \$65,000 more under the Plan than in a liquidation. For that reason, NBT has agreed to support the Confirmation of the Plan.

5. A liquidation is an unmitigated disaster for Non-Priority Unsecured Creditors, who will lose all of their money in a liquidation. Under the Plan, the Debtor expects to pay them a dividend of 35 %.

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 has filed all of the federal and state tax returns due on or before the Disclosure 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.