

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

In re:	)	Bankruptcy Case Number 3:18-00065
	)	
APM, LLC,	)	Chapter 11
	)	
<i>Debtor.</i>	)	Judge Marian S. Harrison

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**DISCLOSURE STATEMENT IN SUPPORT OF THE  
DEBTOR'S PLAN OF REORGANIZATION**

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**IMPORTANT DATES**

Date by which objections to Confirmation of the Plan must be filed and served: **August 27, 2018**

Hearing on Confirmation of the Plan: **September 4, 2018**, in Courtroom 3 of the U.S. Bankruptcy Court located at 701 Broadway, Nashville, Tennessee 37203.

THIS DISCLOSURE STATEMENT IN SUPPORT OF THE DEBTOR'S PLAN OF REORGANIZATION ("the DISCLOSURE STATEMENT") SUMMARIZES CERTAIN PROVISIONS OF THE DEBTOR'S PLAN OF REORGANIZATION ("the PLAN"), WHICH IS ATTACHED AS EXHIBIT A. CAPITALIZED TERMS USED HEREIN BUT NOT DEFINED HEREIN SHALL HAVE THE MEANINGS SET FORTH IN THE PLAN.

THE DEBTOR'S SOLE MEMBER HAS REVIEWED THE INFORMATION PROVIDED IN THIS DISCLOSURE STATEMENT AND HAS USED HIS BEST EFFORTS TO ENSURE THE ACCURACY THEREOF. HOWEVER, THE INFORMATION CONTAINED IN, OR INCORPORATED BY REFERENCE INTO, THIS DISCLOSURE STATEMENT HAS NOT BEEN AUDITED.

NO PARTY IS AUTHORIZED TO PROVIDE TO ANY OTHER PARTY ANY INFORMATION CONCERNING THE PLAN OTHER THAN THE CONTENTS OF THIS DISCLOSURE STATEMENT. THE DEBTOR HAS NOT AUTHORIZED ANY REPRESENTATIONS CONCERNING THE DEBTOR, THE ESTATE, OR ANY ASSET OF THE ESTATE OTHER THAN THOSE SET FORTH IN THIS DISCLOSURE STATEMENT. HOLDERS OF CLAIMS SHOULD NOT RELY ON ANY INFORMATION, REPRESENTATIONS OR INDUCEMENTS MADE TO OBTAIN YOUR ACCEPTANCE OF THE PLAN THAT ARE OTHER THAN, OR INCONSISTENT WITH, THE INFORMATION CONTAINED HEREIN AND IN THE PLAN.

## SUMMARY

### I. BACKGROUND

APM, LLC ("the Debtor"), is a Tennessee limited liability company formed on November 5, 2007, by its sole member, Abdi A. Musse, for the purpose of acquiring and operating a car wash on real property located at 3820 Anderson Road, Nashville, Tennessee<sup>1</sup> ("the Nashville Carwash").

**The Nashville Carwash.** On December 6, 2007, a month and a day after the Debtor's formation, the Debtor acquired the Nashville Carwash for a price of \$417,250. The Nashville Carwash structure consists of a block building comprising six car wash bays: five self-serve bays and one automatic car wash bay.

Within five years of acquiring the Nashville Carwash, the Debtor had incurred mortgage indebtedness secured by the Nashville Carwash property as follows:

- (a) Ameris Bank (as assignee of One Georgia Bank): first priority mortgage indebtedness incurred 6/26/09 in the original principal amount of \$307,000. Mr. Musse executed a personal guaranty of this indebtedness at its inception. Thereafter, Ameris Bank sued Mr. Musse on this guaranty in Georgia state court and on January 28, 2013, obtained a judgment against Mr. Musse in the total amount of \$369,022.75. No collection efforts have been initiated against Mr. Musse, personally, however, and, on June 25, 2014, Mr. Musse, on behalf of the Debtor, entered into a renewal agreement with Ameris Bank with respect to this indebtedness that established its current principal balance at \$295,469.90, a new interest rate of 5% per annum, a new maturity date of July 30, 2017, and monthly payments due until maturity in the amount of \$2,133.40.
- (b) United States Small Business Administration: second priority mortgage indebtedness incurred May 4, 2011, in the original principal amount of \$109,000. Mr. Musse executed the loan instruments both individually and on behalf of the Debtor, thereby rendering himself personally liable for this indebtedness. No proceedings have been instituted against Mr. Musse personally on this indebtedness.

**The Lebanon Carwash.** On June 30, 2009, the Debtor acquired a non-operating car wash on real property located at 734 Cumberland Street, Lebanon, Tennessee ("the Lebanon Carwash") for a price of \$105,000. This purchase was financed with a purchase-money first mortgage indebtedness to Wilson Bank & Trust in the original principal amount of \$90,556.76. Mr. Musse signed a personal guaranty of this indebtedness at its inception. No proceedings have been instituted against Mr. Musse personally on this indebtedness.

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<sup>1</sup> Some public and other records show a street address for the Nashville Carwash as 2838 Old Smith Springs Road, Nashville, Tennessee 37217. The property is located on a corner lot, and this is the numeric address associated with the Old Smith Springs Road frontage of the property. The Davidson County Property Assessor uses the Anderson Road address.

The Lebanon Carwash structure consists of a block building comprising six self-service car wash bays. This property is in a state of substantial disrepair, and, to function as a car wash, will require structural repairs to the roof and facade as well as a complete refitting of the car-washing mechanisms. At the time of that it acquired the Lebanon Carwash, the Debtor hoped to rehabilitate and restore it to a functioning car wash. The Debtor never had sufficient cash capital to accomplish this.

Pending litigation exists regarding the Lebanon Carwash. On April 27, 2017, the City of Lebanon Board of Adjustments and Appeals conducted a quasi-judicial hearing to consider the Debtor's challenge to a "NOTICE OF UNSAFE BUILDING" issued by the City's building department that purported to designate the structure on the Lebanon Carwash property as an "unsafe building" under the provisions of the 2012 International Building Code. At the conclusion of the hearing, the Board issued a final order upholding the "unsafe building" designation and requiring the Debtor to demolish the structure. The Debtor filed a petition for writ of certiorari before the Wilson County Chancery Court seeking review of this order, alleging that the Board acted arbitrarily, capriciously, and without material evidence to support the order. In June and July 2017, respectively, the Chancery Court issued a fiat directed to the City of Lebanon to produce its record of the hearing and a supersedeas staying enforcement of the city's order. To date, the City of Lebanon has not produced the record, and the supersedeas remains in effect. The undersigned does not anticipate that the City will be able to defend its demolition order, because it is unable to produce a record. It is likely that any potential buyer of the Lebanon Carwash will either demolish the structure so that a custom structure of some sort might be erected, or it will rehabilitate the structure for use as a car wash, either of which will likely pass muster with the City of Lebanon.

**The 2012 Bankruptcy.** The Debtor operated the Nashville Carwash successfully for several years until the May 2010 floods that struck the Nashville area. The floods disrupted business and caused a significant decrease in operating income. The Debtor consequently was unable to meet its mortgage debt service, such that on May 9, 2012, the Debtor filed a Chapter 11 bankruptcy petition in this court, Case Number 3:12-bk-04392.

The primary financial pressures on the Debtor that led to the 2012 bankruptcy were debt-service obligations to Ameris Bank. During the bankruptcy proceedings, the primary stumbling blocks to confirmation of a plan were the objections of Ameris Bank. After the Debtor and Ameris Bank were unable to resolve the objections of Ameris Bank, this court dismissed the bankruptcy case on January 31, 2013.

Thereafter, on June 25, 2015, the Debtor and Ameris Bank entered into a refinancing agreement (entitled "Renewal Agreement to a Promissory Note") calling for a new maturity date of the Ameris Bank indebtedness of June 30, 2017.

## II. THE 2018 BANKRUPTCY

**The Decision to File.** The earnings of the Nashville Carwash never fully recovered from the time of the 2010 floods, largely because the Debtor needed to repair, upgrade, and

modernize its equipment so that it could withstand competitive pressure from other car washes available to the Debtor's customer base. For example, the Nashville Carwash's automatic wash bay has been inoperable for quite some time, and its money-handling equipment has suffered persistent breakdowns and failures.

The debt service required for both the Nashville Carwash and the Lebanon Carwash came to exceed revenues, such that the Debtor was unable to satisfy the Ameris Bank indebtedness when it came due in June 2017. Although the Debtor had been able to keep the mortgage indebtedness current for the Lebanon Carwash, it was unable to pay the accelerated balance of the Ameris Bank indebtedness, nor could it secure the agreement of Ameris Bank to refinance this debt. Consequently, the Debtor became in default under the Ameris Bank note, and Ameris Bank began to threaten foreclosure of its lien on the Nashville Carwash.

At the time of the maturity of the Ameris Bank indebtedness in June 2017, the claimed total due (including accrued interest, late charges, and attorney's fees<sup>2</sup>) was \$310,762, and the balance of the Small Business Administration debt was approximately \$124,000. Given that this total secured debt of \$434,762 was only slightly more than the original purchase price (\$417,250) of the Nashville Carwash ten years earlier, and given the Debtor's estimate that the fair market value of the property was not less than \$576,264, the Debtor feared that:

- (a) a foreclosure sale would constitute the end of an enterprise that the Debtor had hoped would be turned around into a viable, self-sustaining business; and
- (b) price-repression and administrative costs associated with a forced sale<sup>3</sup> likely would result in the Nashville Carwash's being sold at a distinct loss relative to its fair market value.

Consequently, on January 4, 2018, on the eve of a scheduled foreclosure sale of the Nashville Carwash by Ameris Bank, the Debtor filed the instant Chapter 11 petition. This AMENDED DISCLOSURE STATEMENT is prepared in support of the Debtor's amended proposed plan of reorganization, which is attached as Exhibit A.

**Significant Events During This Bankruptcy.** This bankruptcy has been marked by a number of significant conditions and events:

- (a) Although Mr. Musse is the sole member/owner of the Debtor, he resides in Arizona, and consequently is not physically involved in the day-to-day, hands-on operation of the Nashville Carwash. Instead, certain of Mr. Musse's family members in the middle-Tennessee area, particularly his sister, Luul Musse, his niece, Farhia Muse, and his nephew, Abdi Dahir, provide local management and operations for the Debtor's business without pay, based primarily on culturally

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<sup>2</sup> The Debtor disputes the validity of the bulk of the claimed \$40,534 attorney's fee.

<sup>3</sup> Clearly, "[t]he price a property fetches at a foreclosure sale often is lower than the property's fair market value." *Dags II, LLC v. Huntington Nat'l Bank*, 865 F.3d 384, 388 (6th Cir., 2017) (citing *BFP v. Resolution Trust Corp.*, 511 U.S. 531, 537–38 (1994); *Restatement (Third) of Prop.*: Mortgages § 8.3 cmt.)

derived (Somali-American) family practices and understandings. Consequently, the Debtor has no true employees.

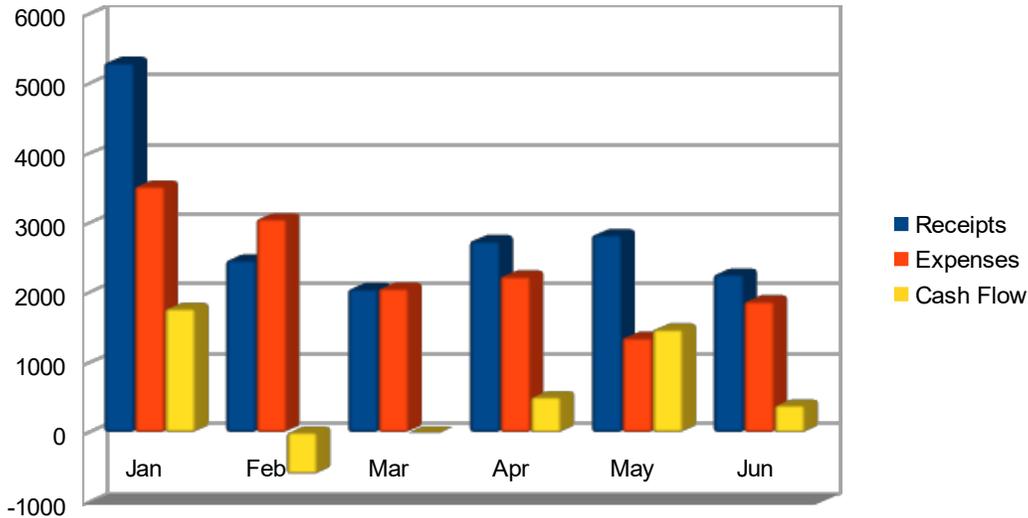
- (b) Day-to-day operation of the Nashville Carwash is provided by Mr. Musse's sister, Luul Musse (“Ms. Luul”), who is assisted from time to time by her daughter, Mr. Musse's niece, Farhia Muse (“Ms. Farhia”).
- (c) Prior to establishment of a Debtor-in-Possession bank account, Ms. Luul had operated the Nashville Carwash by collecting money from the car wash machines and paying many expenses in cash and other expenses by depositing cash into her personal bank account and then debiting this personal account — all because the Debtor's bank account was not set up to allow debit-card payments. This resulted in routine commingling of the Debtor's funds with Ms. Luul's personal funds and a lack of precision in accounting for the Debtor's discrete funds.
- (d) Early in the bankruptcy, and because Ms. Luul did not understand that the Lebanon Carwash was an estate asset and that the mortgage debt on the Lebanon Carwash was an estate debt, she improperly paid two monthly mortgage payments (\$1,160, each) out of estate funds to estate creditor Wilson Bank & Trust.
- (e) The Debtor struggled during the early stages of the bankruptcy to comply with the myriad documentation and reporting requirements of a Chapter 11 case, primarily because of the complete lack of modern computer skills by Ms. Luul, and the limited ability of Ms. Farhia to assist her with the documentation, all of which initially fell on their shoulders because of Mr. Musse's absence and his failure to recognize that the requirements of the Chapter 11 case were not being properly tended to. Mr. Musse was not present at the initial meeting with the U.S. Trustee or at the first scheduling of the 341 creditor's meeting. Although Mr. Musse traveled from Arizona to attend a continued session of the 341 meeting, the Debtor did not timely cure a variety of deficiencies, including:
  - (1) Prior to filing for bankruptcy, the Debtor had been administratively dissolved by the Tennessee Secretary of State on January 14, 2015.
  - (2) The Debtor's Schedule of Assets and Liabilities and Statement of Financial Affairs were grossly inadequate or incomplete, and the current balance sheet, income statement, cash flow statement, most recent tax return, a list of the 20 largest unsecured creditors, and a list of the equity security holders had not been filed.
  - (3) The Debtor had not timely filed an operating report for January 2018.
  - (4) The Debtor had not provided proof of insurance for its assets or its business.
- (f) Because of these deficiencies, on February 26, 2018, the United States Trustee filed a motion an order pursuant to 11 U.S.C. § 1112(b)(1) to convert this Chapter 11 case to a Chapter 7 case. In its order entered May 4, 2018, the court held that,

although cause existed for conversion of this case, the court would not grant the motion if the Debtor 1) complied with a number of conditions designed to determine the ability of Mr. Musse to personally finance improvements necessary to make the Nashville Carwas fully operational, and 2) timely paid all quarterly fees due to the United States Trustee. The Debtor is in compliance with this order.

- (g) In addition to the Debtor's compliance with the specific requirements of the court's May 4, 2018, order, the Debtor has improved its financial position by securing its reinstatement by the Tennessee Secretary of State as an active limited liability company in good standing, brought and kept all utility bills current and paid other costs of operation in a timely manner, an maintained broken equipment except for the repairs still necessary for the automatic car wash bay. Additionally, Mr. Musse has personally assumed the costs of attorney's fees for the Debtor's attorney herein.
- (h) The Debtor has improved its reporting position by specifically enlisting the services of Mr. Musse's nephew Abdi Dahir — an information technology specialist — to ensure that Mr. Musse has the electronic equipment and basic skills necessary to communicate effectively with the Debtor's attorney, and to ensure that the Debtor's other local family members who are actually running the Nashville Carwash are able to accurately and timely report on the financial status and operations of the business from time to time.

**Financial History During the Case.** The following chart summarizes the Debtor's financial history during the case.

	Receipts	Expenses	Cash Flow
Jan	\$5,305.00	\$3,530.24	\$1,774.76
Feb	\$2,471.50	\$3,065.20	-\$593.70
Mar	\$2,059.60	\$2,067.59	-\$7.99
Apr	\$2,745.88	\$2,239.15	\$506.73
May	\$2,834.50	\$1,357.01	\$1,477.49
Jun	\$2,268.50	\$1,881.35	\$387.15



(Note: January receipts include cash accumulated in and retrieved from car wash machines over previous 2 months, as well as funds gifted to the Debtor. January and February expenses each include an improper \$1,160 payment to secured creditor Wilson Bank & Trust.)

### III. ESTATE ASSETS

The Debtor's chief asset is its real property located at 3820 Anderson Road, Nashville, Tennessee, which is being operated as a car wash ("the Nashville Carwash"). The Debtor's other asset is its real property located at 734 Cumberland Street, Lebanon, Tennessee ("the Lebanon Carwash"). The Nashville Carwash is operating and generates some income, but it is in need of significant repairs to its equipment to generate the kind of income that it should. The Lebanon Carwash has been closed and inoperable for the entire time that the Debtor has owned it. Cash flow shortfalls have prevented the Debtor from attempting to rehabilitate and re-open the Lebanon Carwash. The Debtor values the Nashville Carwash at \$576,264 and the Lebanon Carwash at \$224,300, for a total of \$800,564.

The Debtor has finalized estimates for the repair of the Nashville Carwash that will cost \$31,000. Mr. Musse has acquired these funds personally and is prepared to commit them to the rehabilitation of the car wash immediately upon confirmation of the plan.

#### IV. ESTATE LIABILITIES

October 5, 2018, has been established as the bar date for filing proofs of claim. All four of the creditors identified in the Debtor's schedules have filed proofs of claim, all of them secured:

<b>Date Filed</b>	<b>Creditor (Nature of Debt)</b>	<b>Amount</b>
01/26/18	Metropolitan Government of Nashville & Davidson County, Tennessee (real property tax on the Nashville Carwash)	\$4,589.89
07/17/18	Wilson Bank & Trust (mortgage loan on the Lebanon Carwash)	\$73,631.06
07/23/18	United States Small Business Administration (mortgage loan on the Nashville Carwash)	\$124,994.32
08/02/18	Ameris Bank (mortgage loan on the Nashville Carwash)	\$319,943.76
	<b>Total</b>	<b>\$523,159.03</b>

The Debtor does not anticipate the filing of any other proofs of claim. The Debtor does not intend to object to any of these claims except to that of Ameris Bank to the extent that it seeks to collect an attorney's fee in the amount of \$41,249.19 as part of this claim. The Debtor believes that this fee is grossly excessive.

Mr. Musse is paying from his personal funds the Debtor's attorney's fees and any administration expenses that the Debtor is unable to satisfy from current earnings. The Debtor doesn't otherwise anticipate any new Estate debt other than routine operating costs for the Nashville Carwash, which are being more than covered by regular operating earnings.

#### V. FRAUDULENT TRANSFERS AND PREFERENCES.

No fraudulent transfers have been identified or alleged. Two clearly preferential transfers were made in the two improper \$1,160 post-petition payments to Wilson Bank & Trust prior to the Debtor's local agent, Ms. Luul, understanding that these debt payments needed to be suspended during the bankruptcy proceedings.

Despite the preferential nature of these payments, they were applied in reduction of the secured debt of Wilson Bank & Trust and the plan provides for no recoupment of these payments inasmuch as it proposes to sell the collateral securing this debt and retiring the indebtedness in its entirety. This proposal would have been the same in the absence of the preferential payments, and, in view of the other provisions of the plan calling for payment in full of all approved claims, the improper nature of these two payments is *de minimis*.

## VI. PLAN OVERVIEW

(a) Purpose of Plan. The purpose of this Plan is to provide for the reorganization of the Debtor's affairs. As further explained in this Disclosure Statement, the Plan will provide creditors with a complete payment of their respective claims, which is equal to the distribution that they would receive through liquidation under chapter 7 of the Bankruptcy Code.

(b) Summary of Plan Treatment

<b>Claim Type</b>	<b>Treatment</b>
Administrative Claims	Subject to the provisions of 11 U.S.C. §§ 330 and 331, each holder of an Administrative Claim that has been allowed by the Court prior to the confirmation of the Plan will be paid the allowed amount of its claim in full on the Effective Date of the Plan or as otherwise agreed to by the parties. Any Administrative Claims allowed after the confirmation of the Plan shall be paid in full upon the later of: (i) the Effective Date of the Plan, (ii) 30 days after allowance by the Court, or (iii) as otherwise agreed to by the parties. Any Administrative Claim, other than claims allowed under 11 U.S.C. § 330 or 28 U.S.C. § 1930, for which a motion to approve such claim is not filed by the Administrative Claims Bar Date, shall be disallowed. In no event shall the Debtor be required to pay an Administrative Claim not allowed by the Bankruptcy Court.
Priority Tax Claims	The sole priority tax claims consists of pre-petition Davidson County, Tennessee, real property tax on the Nashville Carwash in the base amount of \$4,589.89 with monthly interest at the rate of 1.5% accruing on the first of each month beginning March 1, 2018.  The plan provides for full payment of this Priority Tax Claim.
Class 1 claim	This is the allowed claim of Ameris Bank to the extent secured by a valid, enforceable, perfected, unavoidable lien on the Nashville Carwash. The claim is for an estimated \$310,762.  The plan provides for full payment of the Class 1 claim, less \$35,534 in claimed pre-petition attorney's fees, which are disallowed under the Plan.

Class 2 claim	This is the allowed claim of the United States Small Business Administration (“SBA”) to the extent secured by a valid, enforceable, perfected, unavoidable lien on the Nashville Carwash. The claim is for an estimated \$167,000.  The plan provides for full payment of the Class 2 Claim.
Class 3 claim	This is the allowed claim of the Wilson Bank & Trust (“WB&T”) to the extent secured by a valid, enforceable, perfected, unavoidable lien on the Lebanon Carwash. The claim is for an estimated \$88,000.  The plan provides for full payment of the Class 3 Claim

D) Post-Confirmation and Post-Closing Plan Consummation Activities. Upon confirmation of the Plan, the Debtor shall make the first payments due under the Plan and shall move to close the case pursuant to 11 U.S.C. § 350.

#### V) LIQUIDATION ANALYSIS

To obtain confirmation of the Plan, the Debtor must show that each holder of an impaired claim or interest has accepted the Plan, or that each holder will receive or retain under the Plan on account of the holder’s claim or interest, property of a value, as of the Effective Date, that is not less than the amount such holder would receive or retain if the Debtors’ assets were liquidated under Chapter 7 of the Bankruptcy Code on said date.

The Debtor believes that the Plan is a significantly better alternative than liquidation under Chapter 7. Any liquidation procedure would also include the attendant costs of liquidation such as Trustee fees, as well as those of counsel and other professionals that would be retained by the Trustee. Moreover, as noted earlier and as affirmed by Sixth Circuit case law, the estate should expect to receive less from a liquidation sale than from the controlled sales called for by the Plan. All of the foregoing may be expected to result in proceeds that may well be inadequate even to pay the secured claims of the creditors.

The Debtor believes that the distribution proposed in the Plan, given that they provide for complete payment of all claims, provide for substantially greater likelihood that all creditors will be fully paid than would be the case in a liquidation under Chapter 7, while simultaneously fulfilling the goal of Chapter 11 to effect the financial rehabilitation of the Debtor. Acceptance of the Plan is, therefore, in the best interest of creditors.

#### VI) CONFIRMATION OF THE PLAN

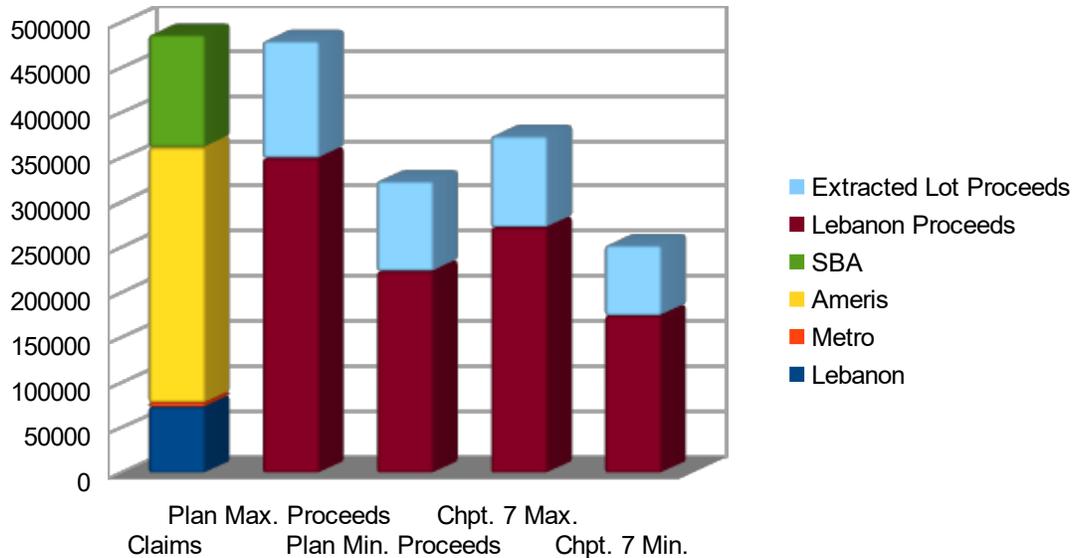
A) Requirements for Confirmation. **Class 1, Class 2, and Class 3** claims are impaired. In order to achieve confirmation of the Plan, at least one impaired class of creditors must accept the Plan. In order for a class of claims to accept the Plan, of the ballots

received for a particular class, at least two-thirds in amount and more than one-half in number must accept the Plan. If less than all the classes but at least one class accepts the Plan, the Plan may be confirmed under the provisions of 11 U.S.C. § 1129(b), despite rejection of the Plan by one or more classes.

The Debtor believes that the Plan satisfies the requisites of 11 U.S.C. § 1129(b) and that the Plan is confirmable even if all classes do not vote to accept the Plan.

- B) The Confirmation Hearing. The Bankruptcy Court has scheduled a hearing to consider confirmation of the Plan to be held on **September 4, 2018, at 9:00 a.m.**, in Courtroom 3 of the U.S. Bankruptcy Court located at 701 Broadway, Nashville, Tennessee 37203. The Confirmation Hearing may be adjourned from time to time, with notice of such adjournment provided to those attending the originally scheduled hearing date.
- C) Objections to Confirmation. Any responses or objections to confirmation of the Plan must be in writing, filed with the Clerk of the Bankruptcy Court, and served on the Debtor and the United States Trustee so as to be received no later than **August 27, 2018.**

D) Feasibility of the Plan and the Best Interests Test. In addition to reviewing the voting results, at the hearing on confirmation of the Plan, the Bankruptcy Court will determine whether the Plan satisfies the requirements of 11 U.S.C. § 1129. If the requirements of 11 U.S.C. § 1129, the Bankruptcy Court will enter an order confirming the Plan. The Debtor believes that the Plan satisfies all of the requirements of 11 U.S.C. § 1129.



The above chart reflects the likely funds available after sale of the Lebanon Carwash and the extracted lot, with plan sale values reflecting the likely (Max.) and minimum sales proceeds values suggested in the plan compared with “distress sale”<sup>4</sup> adjusted corresponding values resulting from a Chapter 7 liquidation.

Two of the more significant requirements for Plan confirmation are that the Plan must be feasible and that the Plan must satisfy the “Best Interests of Creditors” test. To be feasible, the proponent of the Plan must demonstrate that confirmation of the Plan is not likely to be followed by the need for further restructuring under chapter 11. The simple manner of implementation of the plan suggests that the Debtor should be able to make all of the payments required under the Plan. Under controlled sale situations, the Debtor's equity in the Estate assets should be more than adequate to satisfy the Plan's requirements.

The Best Interests of Creditors test is also satisfied because the Plan provides for the payment to all creditors of amounts that likely may be greater than what such creditors would receive if the estate were liquidated under Chapter 7 of the

4 Thomas W. Mitchell, Stephen Malpezzi & Richard K. Green, Forced Sale Risk: Class, Race, and the "Double Discount", 37 Fla. St. U. L. Rev. (2010), at p. 645 suggests that typical foreclosure sold apartment buildings sold for an average of 22.2% less than non-foreclosure sold apartment buildings.

Bankruptcy Code, primarily because of the uncertainties associated with liquidation sales of assets.

In the event that all requirements of 11 U.S.C. § 1129(a) are met except the requirements that all classes of claims vote in favor of the Plan, the Plan can still be confirmed under the “cram down” provisions of 11 U.S.C. § 1129(b). The Debtor believes that the Plan meets the requirements of 11 U.S.C. § 1129(b) and can be confirmed even if all classes do not vote in favor of the Plan.

- E) Risks Associated With the Plan. Because complete repayment of all but the Class 2 claim is a near certainty upon sale of the real property assets, and the amortization of the remaining Class 2 debt likely will be of a balance less than half of that existing pre-petition, the risks associated with the plan are quite low. Adverse events are not, however, impossible to foresee. If, for example, a marked down-swing in the car wash industry or unexpected competition in the area occurs, cash flow might not be available to meet the amortization requirements for the Class 2 claim. Even in such an unlikely event, the Class 2 claim creditor will continue to be tremendously over-secured by his remaining lien on the Nashville Carwash. Moreover, the Debtor believes that, even if an adverse event occurs, the Debtor will be receive infusions of funds from Mr. Musse so that this sole amortized debt can be properly serviced. Consequently, the Debtor believes that the possibility of an adverse event does not outweigh the expected benefits to all creditors under the Plan, especially since the secured creditors would still be able to proceed against their collateral.

## VII) EFFECTS OF CONFIRMATION

The confirmation of the Plan will bind the Debtor, all creditors, and other parties in interest to the provisions of the Plan, regardless of whether such creditors are impaired under the Plan or whether such creditors have voted against confirmation of the Plan.

Except as otherwise provided in the Plan, and after confirmation of the Plan, all property of the Estate will vest in the Debtor on the Effective Date.

Except with respect to the payments and payment schedules provided under the Plan, all Holders of Claims will be permanently enjoined after the Effective Date from: (i) commencing or continuing any action or other proceeding of any kind with respect to such Claims against the Debtor, (ii) the enforcement, attachment, collection, or recovery by any manner or means of any judgment, award, decree, or order against the Debtor, and (iii) creating, perfecting, or enforcing any encumbrance of any kind against the Debtor’s property. The injunction shall remain in effect unless or until there has been an order of the Bankruptcy Court determining that there has been a default under the Plan and that the injunction provided hereunder should be lifted.

## VIII) MISCELLANEOUS PROVISIONS

- A) Sources of Information and Disclaimer. Except as otherwise expressly indicated, the information contained in this Disclosure Statement has been provided by the Debtor and the Debtor's attorney, based *inter alia* upon the Debtor's schedules and Statement of Affairs, books and records of the Debtor, and certain pleadings, reports, papers and other documents filed in this Case. This Disclosure Statement may not be relied upon for any purpose other than determining how to vote with respect to the Plan. The Bankruptcy Court has approved no representations concerning the Estate or the Plan other than those representations set forth in this Disclosure Statement. Any representations or inducements made to secure a creditor's acceptance or rejection of the Plan, which are not contained in the Disclosure Statement, should not be relied upon in voting to accept or reject the Plan.
- B) Retention of Causes of Action and Jurisdiction. All, property, rights, and causes of action held by the Debtor prior to confirmation shall vest in the Debtor post-confirmation, as successor in interest, regardless of whether such rights or causes of action came into being pre-petition or post-petition. The Bankruptcy Court will also retain jurisdiction over matters related to the Plan to the full extent available by law. The failure to list any specific cause of action as being preserved in the Plan shall not be deemed to bar the future prosecution of such claims on the basis of judicial estoppel, collateral estoppel, res judicata, waiver, or similar legal theory.

Dated July 3, 2018

Respectfully submitted,

s/ Robert D. MacPherson  
Robert D. MacPherson, BPR #022516  
MacPherson & Youmans  
119 Public Square  
Lebanon, Tennessee 37087  
Telephone: 615.444.2300  
email: [rdmacpherson@macyolaw.com](mailto:rdmacpherson@macyolaw.com)  
Attorney for the Debtor

### **CERTIFICATE OF SERVICE**

I hereby certify that, on the 2<sup>nd</sup> day of August, 2018, service of a copy hereof was made upon Filing Users through the Electronic Filing System. Additionally, on the 2<sup>nd</sup> day of August, 2018, service of a copy hereof will be made by United States first-class mail upon the following creditors:

AMERIS BANK  
C/O SIMPSON UCHITEL & WILSON  
3490 PIEDMONT RD NE  
STE 1100  
ATLANTA GA 30305

METROPOLITAN TRUSTEE  
REAL PROPERTY TAX DEPT  
PO BOX 305012  
NASHVILLE TN 37230

UNITED STATES SMALL BUSINESS  
ADMIN  
14925 KINGSPOUR RD  
FORT WORTH TX 76155

WILSON BANK & TRUST  
623 WEST MAIN STREET  
LEBANON, TENNESSEE 37087

s/ Robert D. MacPherson

# Exhibit A

**THIS IS NOT A SOLICITATION OF ACCEPTANCE OR REJECTION OF THE PLAN OF REORGANIZATION. ACCEPTANCES OR REJECTIONS MAY NOT BE SOLICITED UNTIL THE BANKRUPTCY COURT HAS APPROVED A DISCLOSURE STATEMENT, WHICH HAS NOT YET OCCURRED.**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

In re:	)	Bankruptcy Case Number 3:18-00065
	)	
APM, LLC,	)	Chapter 11
	)	
Debtor.	)	Judge Marian S. Harrison

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**DEBTOR'S AMENDED PLAN OF REORGANIZATION**

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APM, LLC, Debtor-in-Possession in the above-captioned case, proposes the following Plan of Reorganization (the "Plan") pursuant to 11 U.S.C. §§ 1121 and 1123.

A disclosure statement providing more detailed information regarding this Plan and the rights of creditors has been circulated with this Plan. **Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one. (If you do not have an attorney, you may wish to consult one).**

I. **DEFINITIONS.** Unless the context requires otherwise, the following terms shall have the following meanings when used in capitalized form herein and the definitions and rules of construction set forth in 11 U.S.C. §§ 101 and 102 shall apply when terms defined or construed in the Code are used in this Plan:

- A) "Administrative Claim" means a claim entitled to priority under 11 U.S.C. § 507(a) (1), including a claim allowed under 11 U.S.C. § 503(b).
- B) "Administrative Claims Bar Date" means the date set forth in the Confirmation Order by which each holder of an Administrative Claim, other than the United States Trustee or any professional employed by the Debtor pursuant to order of the Bankruptcy Court, must file an application for allowance of such claim.
- C) "Ameris Bank" refers to the secured creditor Ameris Bank.
- D) "Bankruptcy Code" means title 11 of the United States Code (11 U.S.C. §§ 101-1532), and any amendments thereto, in effect or retroactively effective on the Petition Date.
- E) "Bankruptcy Court" means the United States Bankruptcy Court for the Middle District

of Tennessee, Nashville Division.

- F) “Case” means Case No. 3:18-00065 styled as *In re APM, LLC, Debtor*, filed in the Bankruptcy Court.
- G) “Confirmation Order” means the order of the Bankruptcy Court confirming the Plan pursuant to 11 U.S.C. § 1129.
- H) “Confirmation Hearing” means the final hearing on confirmation of the Plan.
- I) “the Debtor” means APM, LLC, a Tennessee limited liability company
- J) “Disclosure Statement” means the Disclosure Statement in Support of Debtor’s Plan of Reorganization dated July 3, 2018, as amended, supplemented, or modified from time to time, describing the Plan, which was prepared and distributed in accordance with the Bankruptcy Code.
- K) “Disputed Claim” means any claim to which the Debtor has filed an objection on or before 30 days after the Effective Date: (i) for which a proof of claim has been filed or (ii) which was listed as disputed, unliquidated, or contingent in the Debtor’s schedules of creditors.
- L) “Disputed Claims Reserve” means the reserve held by the Debtor with respect to Disputed Claims.
- M) “Effective Date” means the 14<sup>th</sup> day following entry by the Bankruptcy Court of the Confirmation Order, unless such order is stayed pending appeal prior to the 14<sup>th</sup> day. If the Confirmation Order is stayed pending appeal, the Effective Date of the Plan shall be the 14<sup>th</sup> day after any such stay is either dissolved, vacated, or otherwise expires.
- N) “the Extracted Lot” means an approximate 0.25-acre lot on the northern third of the property that the Debtor intends to sever from the Nashville Carwash property and sell as unimproved commercial real estate.
- O) “Estate” means the bankruptcy estate of the Debtor and all assets and liabilities of such estate.
- P) “Holder” means a Person who has timely filed a proof of claim in the Case or a Person who has not filed a timely proof of claim but was listed in the Debtor’s schedules as holding a claim that is liquidated, non-contingent, and undisputed.
- Q) “Lebanon Carwash” means the real property located at 734 North Cumberland Street, Lebanon, Tennessee, 37087
- R) “Mr. Musse” means Mr. Abdi A. Musse, the sole member of the Debtor.

- S) “Nashville Carwash” means the real property located at 3620 Anderson Road, Nashville, Tennessee 37217
- T) “Petition Date” means January 4, 2018.
- U) “the Plan” means the Debtor’s Amended Plan of Reorganization dated August 2, 2018, in its present form, or as it subsequently may be amended, modified or supplemented.
- V) “Priority Tax Claim” means an allowed claim of a governmental unit of the kind specified in 11 U.S.C. § 507(a)(8).
- W) “the SBA” means the United States Small Business Administration.
- X) “Secured Claim” means a creditor’s claim secured by a valid, enforceable, perfected, unavoidable security interest in the Debtor’s property.
- Y) “WB&T” means the secured creditor Wilson Bank & Trust.

## II. UNCLASSIFIED CLAIMS.

A) **Administrative Claims.** Subject to the provisions of 11 U.S.C. §§ 330 and 331, each holder of an Administrative Claim that has been allowed by the Court prior to the confirmation of the Plan will be paid the allowed amount of its claim in full on the Effective Date of the Plan or as otherwise agreed to by the parties. Any Administrative Claims allowed after the confirmation of the Plan shall be paid in full upon the later of: (i) the Effective Date of the Plan, (ii) 30 days after allowance by the Court, or (iii) as otherwise agreed to by the parties. Any Administrative Claim, other than claims allowed under 11 U.S.C. § 330 or 28 U.S.C. § 1930, for which a motion to approve such claim is not filed by the Administrative Claims Bar Date, shall be disallowed. In no event shall the Debtor be required to pay an Administrative Claim not allowed by the Bankruptcy Court.

B) **Priority Tax Claims.** The sole priority tax claims consists of pre-petition Davidson County, Tennessee, real property tax on the Nashville Carwash in the base amount of \$4,589.89 with monthly interest at the rate of 1.5% accruing on the first of each month beginning March 1, 2018. This Priority Tax Claim will be paid in at the time of closing of the sale of the Extracted Lot. The estimated total amount of this Priority Tax Claim to be paid under the Plan is \$5,416.07 (assuming one full year of interest accrual).

It is the intent of the Plan to fully satisfy this Priority Tax Claim. Until the sale of real property assets as provided for below, the Debtor shall on the last day of each month after the Effective Date calculate the extent to which funds in its Debtor-in-Possession account are greater than \$1,000, and, prior to the tenth day of the ensuing month, shall pay these funds toward satisfaction of this Priority Tax Claim. If, prior

to such satisfaction, the Debtor shall have closed the sale of the Lebanon Carwash as provided below, the net proceeds from such sale shall first be applied to the full satisfaction of this Priority Tax Claim.

### III. CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS

Summary			
Class	Description	Status	Voting
Class 1	Secured claim (note and deed of trust) of Ameris Bank (approximate claim amount \$283,694.57 <sup>1</sup> )	impaired	entitled to vote
Class 2	Secured claim (note and deed of trust) of the SBA (approximate claim amount \$124,994.32)	impaired	entitled to vote
Class 3	Secured claim (note and deed of trust) of WB&T (approximate claim amount \$73,631.06)	impaired	entitled to vote

#### A) Class 1 claim: Secured Claim of Ameris Bank (less excessive pre-petition attorney's fees)

- 1) Classification: Class 1 consists of the allowed claim of Ameris Bank to the extent secured by a valid, enforceable, perfected, unavoidable lien on the Nashville Carwash.
- 2) Treatment: It is the intent of the Plan to fully satisfy the Class 1 claim. The holder of the Class 1 claim shall retain its lien on that portion of the Nashville Carwash property that remains after the extraction of the Extracted Lot. The Extracted Lot will be sold free of the lien of Ameris Bank. The Class 1 Claim shall be allowed as a secured claim in the principal amount of \$283,694.57, which represents the claimed balance of the debt including pre-petition interest and late charges, as well as \$5,000 of pre-petition attorneys fees (which are unliquidated and disputed). The remaining \$36,249.19 in claimed pre-petition attorney's fees are disallowed.

The net proceeds from the sale of the Lebanon Carwash shall be applied first to any unsatisfied portion of the Priority Tax Claim, and the remainder shall be applied to the Class 1 claim. This should reduce the balance of the Class 1 claim to less than \$45,000, for which the lien on the southern two-thirds of the Nashville Carwash will provide more-than-adequate security pending full satisfaction of this claim.

After full satisfaction of the Priority Tax Claim, the Debtor shall on the last day of

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<sup>1</sup> This "approximate claim amount" is calculated by subtracting the attorney's fee portion of the Ameris Bank proof of claim and replacing it with an attorney's fee of \$5,000, which the Debtor asserts is a more than reasonable attorney's fee, as opposed to the \$41,249.19 attorney fee claimed by Ameris Bank as part of this debt.

each month thereafter calculate the extent to which funds in its Debtor-in-Possession account are greater than \$1,000, and, prior to the tenth day of the ensuing month, shall pay these funds toward satisfaction of the Class 1 claim.

The net proceeds from the sale of the Extracted Lot will be applied to the extent necessary to fully satisfy the Class 1 claim.

- 3) Voting: Class 1 is impaired, and the holder of the Class 1 claim is entitled to vote to accept or reject the Plan.

**B) Class 2 claim: Secured Claim of the SBA**

- 1) Classification: Class 2 consists of the allowed claim of the SBA to the extent secured by a valid, enforceable, perfected, unavoidable lien on the Nashville Carwash.
- 2) Treatment: It is the intent of the Plan to fully satisfy the Class 2 claim. The holder of the Class 2 claim shall retain its lien on that portion of the Nashville Carwash property that remains after the separation of the Extracted Lot. The Extracted Lot will be sold free of the lien of the SBA. The Class 2 Claim shall be allowed as a secured claim in the claimed amount of \$124,994.32.

The net proceeds from the sale of the Lebanon Carwash shall be applied first to any unsatisfied portion of the Priority Tax Claim, and the remainder shall be applied to the Class 1 claim. Any remaining net proceeds from the sale of the Lebanon Carwash shall be applied to the Class 2 claim.

After the net proceeds from the sale of the Extracted Lot are applied to the extent necessary to fully satisfy the Class 1 claim, the remaining net proceeds from the sale of the Extracted Lot shall be applied to the Class 2 claim. This should leave not more than \$82,000 remaining owing on the Class 2 claim.

The balance remaining on the Class 2 claim shall be re-amortized by the issuance of a new debt instrument and lien document granting the SBA a first-position lien on the remaining Nashville Carwash property providing for monthly amortization of the remainder of the Class 2 claim for a term not less than the term that would be remaining on this claim had the Debtor not filed the petition, and at the same rate of interest.

- 3) Voting: Class 2 is impaired, and the holder of the Class 2 claim is entitled to vote to accept or reject the Plan.

**C) Class 3 claim: Secured Claim of WB&T**

- 1) Classification: Class 3 consists of the allowed claim of WB&T to the extent secured by a valid, enforceable, perfected, unavoidable lien on the Lebanon Carwash.

- 2) Treatment: It is the intent of the Plan to fully satisfy the Class 3 claim. The holder of the Class 3 claim shall retain its lien on the Lebanon Carwash until full payment of the Class 3 claim. The Class 3 Claim shall be allowed as a secured claim in the claimed amount of \$73,631.06.

The Lebanon Carwash shall be sold, and the proceeds therefrom shall be applied to fully satisfy this Class 3 claim.

- 3) Voting: Class 2 is impaired, and the holder of the Class 2 claim is entitled to vote to accept or reject the Plan.

#### IV. MEANS FOR FUNDING AND IMPLEMENTATION OF THE PLAN

**A) Funding of the Plan.** Funding for the plan will be generated by the following:

- 1) Sale of Certain Assets (to generate not less than \$365,000) while satisfying the entire WB&T indebtedness).
  - a) The Debtor proposes to sell the Lebanon Carwash. Although the most recent appraisal of the property suggests a value for property taxation purposes of \$224,300 for this property, the Debtor's expects to receive not less than \$350,000 in an arms-length transaction. After payment of the Class 2 claim of WB&T and costs of sale, it is expected that this sale will generate not less than \$235,000.

This sale will at first be attempted by use of a commercial real estate broker's typical marketing of the property seeking maximum value. The Debtor will negotiate for such value after consultation with the real estate broker for not more than twelve months. It is expected that the broker will charge a standard 5–6% commission from the sales proceeds. If a sales contract is not consummated within that period, the Debtor will contract with a local commercial real estate auction company to sell the property at maximum auction value within the ensuing six months. It is expected that the auction company will assess the buyer with a standard 10% buyer's premium.

- b) The Debtor proposes to sell approximately .25 acres of unneeded land on the northern portion of the Nashville Carwash free of the lien of Ameris Bank. The Debtor has already inquired about the permissibility of separating this northern lot of commercially zoned property from the Nashville Carwash and was informed by Metropolitan Nashville that this would be permissible. Given the scheduled value of \$576,264 of the Nashville Carwash, and given that the lot to be sold represents approximately one-third of the area of the Nashville Carwash property, the Debtor feels it reasonable to assume that the sale of this lot likely will generate not less than one-fourth of the scheduled value of the Nashville Carwash, or \$144,066. After costs of sale, it is

expected that this sale will generate not less than \$130,000.

The Debtor has communicated with a local land surveyor, who writes  
Mr. Musse,

Based on our conversation regarding the property located at 3620  
Anderson Road, Nashville, Tn, I have the following estimate:

I propose to complete a minor subdivision survey plat of the  
aforementioned property for a lump sum fee ranging from \$1750.00-  
\$2000.00. Said survey shall include the finding / replacing and marking of  
all property corners. A plat for submittal to the metro Davidson County  
planning commission shall be provided, as well as updated legal  
descriptions for the new lots. Field work can commence within  
approximately 5 weeks from authorization to proceed.

Please feel free to contact me with any questions, concerns, or suggestions  
you may have regarding this estimate. I appreciate the opportunity to assist  
in this project and look forward to working with you.

Regards,  
Nicholas Northcutt, RLS # 2835  
Northcutt & Associates Land Surveying, Inc.

After receipt of the approval from the planning commission, sale of the  
Extracted Lot will at first be attempted by use of a commercial real estate  
broker's typical marketing of the property seeking maximum value. The  
Debtor will negotiate for such value after consultation with the real estate  
broker for not more than twelve months. It is expected that the broker will  
charge a standard 5–6% commission from the sales proceeds. If a sales  
contract is not consummated within that period, the Debtor will contract with  
a local commercial real estate auction company to sell the property at  
maximum auction value within the ensuing six months. It is expected that the  
auction company will assess the buyer with a standard 10% buyer's premium.

2) Continued Operation of the Nashville Carwash.

Mr. Musse has obtained personal funds with which he will contract with a  
carwash equipment company to refurbish the Nashville Carwash to allow it to  
reach a reasonable level of earnings. In the first five months since the filing of the  
petition, the Debtor has an average cash flow of \$631. The refurbishing of the  
Nashville Carwash should be complete within 90 days, and it is expected that the  
Debtor will realize a concomitant increase in its monthly cashflow of not less than  
\$2,000.

**B) Implementation.** The specific application of the generated funds will be as set forth  
in the Section II discussion of the Priority Tax Claim and in the Section III

“treatment” section of each class description. As detailed above, the basic approach to implementation of the plan is to liquidate all of the Debtor's assets that are not essential to the operation of the car wash at the Nashville Carwash property. It is expected, but not necessary, that the Lebanon Carwash will be sold first, thereby satisfying the claim of WB&T, any remaining amount owed for the Priority Tax Claim, and a portion of the claims of the other secured creditors. The sale of the lot extracted from the Nashville Carwash property is expected to completely satisfy the balance owed to Ameris Bank, and partially (if not wholly) satisfy the claim of the SBA.

Also as detailed above, excess cash flow that results in a Debtor-in-Possession account balance of greater than \$1,000 each month will be paid in its entirety to satisfy claims in the following order: 1) Priority Tax Claim, 2) Class 1 claim, and 3) Class 2 claim. Inasmuch as the Class 3 claim (WB&T) is the smallest secured claim and is expected to be satisfied in its entirety immediately upon the sale of the Lebanon Carwash, none of this excess monthly cash flow will be directed to this Class 3 claim.

As has been its practice, the Debtor will not pay wages or otherwise incur operating costs other than the routine monthly costs of doing business typical of those reflected in its monthly operating reports. Mr. Musse will remain personally liable for the Debtor's attorney's fees and the costs of rehabilitation of the Nashville Carwash.

**C) Terms of Default.** If the Debtor is unable to meet the above-referenced deadlines for the sales of the Lebanon Carwash and the Extracted Lot, the Debtor will expect that liquidation sales will be ordered by the Bankruptcy Court.

**D) Post-Confirmation Management.** Mr. Musse resides in Arizona, but will remain in regular and frequent (not less than weekly, but daily if circumstances warrant) communication with his sister, Luul Musse, who will continue to provide the primary on-site management and operation of the Nashville Carwash, and will provide a local on-site presence as necessary in connection with the sale of the Lebanon Carwash. Ms. Musse will continue to be assisted as necessary by her adult daughter Farhia Muse and her adult son Abdi Dahir. None of these family members will receive a salary during the implementation of the plan, and will provide their services willingly and persistently.

This is an admittedly unusual situation, but it actually presents little risk that they will stop working for the Debtor because of the cultural and family dynamic at work here. This family is Somali-American, and they operate within a system of cultural mores that demand intense family loyalty and obedience to the perceived head of the family (in this case, Mr. Musse). All of these family members have jobs and/or incomes independent of the business of the Debtor, and do not need nor will they receive any earnings from the Debtor's activities during the implementation of the plan.

## **V. DISTRIBUTIONS.**

- A) Timing of Distributions. Distributions of funds generated as described above shall be made within ten calendar days of the Debtor's receiving the funds, or, in the case of payments derived from excess cash flow as described above, by the tenth day of each month, beginning in the first full month following the Effective Date.
- B) Method of Distribution. Distributions to Holders of allowed claims shall be made by U.S. Mail, postage pre-paid, sent to the address of the Holder of such claim as indicated on the proof of claim filed by the Holder or, if no proof of claim has been filed, then to the address listed in the matrix filed by the Debtor. If any distribution to a Holder of an allowed claim is an Undeliverable Distribution, all further distributions to such Holder shall be retained by the Debtor unless or until the Debtor is notified in writing of such Holder's then-current address.
- C) Undeliverable Distributions. Undeliverable Distributions held by the Debtor pursuant to this provision shall not be entitled to interest, dividends, or accruals of any kind. Any Holder of a claim whose distributions are held as an Undeliverable Distribution and who fails to provide a demand in writing to the Debtor for turnover of such held funds within 12 months of the date on which the first of such held funds was to be distributed to such creditor, shall be deemed to have waived any and all claims to such distributions so held and shall be permanently enjoined from seeking collection of such amounts or any future amounts on account of its allowed claim from the Debtor. The Debtor shall have no obligation to make any attempt to locate any Holder of an allowed claim.
- D) Disputed Claims. In the event that that the Debtor objects to a claim, any distributions that would be payable to the holder of such claim, if such claim were allowed, will be held in a Disputed Claims Reserve pending a determination by the Court as to the allowed amount of the Disputed Claim. In the event that a Disputed Claim is ultimately allowed in whole or in part, the Debtor will distribute to the Holder of such claim a payment equal to the sum of all payments that would have been made to such Holder as of the date the claim was allowed for such allowed claim with actual interest accrued, if any, on said amounts. Thereafter, the Holder will receive regular pro rata payments on each successive distribution date.

## **VI. RETENTION OF JURISDICTION AND PRESERVATION OF CAUSES OF ACTION**

- A) Retention of Jurisdiction. Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain such jurisdiction over the Case after the Effective Date as is legally permissible, including jurisdiction to:

allow, disallow, determine, liquidate, classify, estimate, or establish the priority or secured or unsecured status of any claim or equity interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and

all objections to the allowance or priority of claims, including subordination of claims;

adjudicate any claims by the Debtor against third-parties, and claims against insurance policies and for return of premiums;

grant or deny applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or the Plan;

enter such orders necessary to carry out the provisions of the Plan;

resolve any disputes as to the distributions to be made under the Plan;

determine and resolve any other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Confirmation Order, or any other document created in connection with the Plan, the Disclosure Statement, or the Confirmation Order, including the modification of the Plan; and

enter a final decree concluding the Case.

- B) Preservation of Causes of Action.** All rights and causes of action existing as of the Petition Date and held by the Debtor prior to the entry of the Confirmation Order shall be transferred to the reorganized Debtor, as successor in interest. All rights and causes of action that accrued after the Petition Date and held by the Debtor prior to confirmation of the Plan shall be transferred to the Reorganized Debtor, as successor in interest. The failure to list any specific cause of action as being preserved in the Plan shall not be deemed to bar the future prosecution of such claims on the basis of judicial estoppel, collateral estoppel, res judicata, waiver, or similar legal theory.

## **VII. MISCELLANEOUS PROVISIONS**

- A) Payment of U.S. Trustee Fees. Pursuant to 28 U.S.C. § 1930, the Debtor is responsible for the payment of quarterly fees to the United States Trustee as long as the Case remains pending. The amount due is based on the amount of disbursements made during a calendar quarter. Quarterly fees continue to accrue until the Case is closed by the entry of a Final Decree.
- B) Final Decree / Closing of Case. The Final Bankruptcy Accounting and Motion for Final Decree required by Local Rule 3022-1 shall be filed and noticed by the Debtor upon completion of the sale of the Lebanon Carwash and the Extracted Lot.
- C) Service of Documents. All notices required under the Plan shall be deemed provided on the date that written notice is mailed, postage pre-paid, to the entity entitled to such notice, regardless of the date such notice is received. Any pleading, notice or other document required by the Plan to be served or delivered to the Debtor, unless expressly required to be served or delivered by other means, shall be sent by first

class mail, postage prepaid to:

APM, LLC  
4027 George Buchanan Drive  
LaVergne, Tennessee 37086-3288

with a copy to:

Robert D. MacPherson  
MacPherson & Youmans  
119 Public Square  
Lebanon, Tennessee 37087

- D) Discharge. Upon confirmation of the Plan, all assets of the Estate shall vest in the Debtor in the same manner such assets were vested prior to the Petition Date. The Case shall be closed pursuant to 11 U.S.C. § 350(a) upon the Debtor's filing of evidence that it has satisfied the Priority Tax Claim, the Class 1 claim and the Class 3 claim, and has applied the remaining net proceeds from the sale of the Lebanon Carwash and the Extracted Lot, if any, to the Class 2 claim. Upon the filing of same, the Debtor shall receive a discharge under 11 U.S.C. § 1141 and shall reopen the Case for the entry of a discharge order pursuant to 11 U.S.C. § 1141(d)(5).
- E) Injunction. The confirmation of the Plan will bind the Debtor, all creditors, and other parties in interest to the provisions of the Plan, regardless of whether such creditors are impaired under the Plan or whether such creditors have voted against confirmation of the Plan.

Except with respect to the payments and payment schedules provided under the Plan, all Holders of claims will be enjoined from: (i) commencing or continuing any action or other proceeding of any kind with respect to such claims against the Debtor, (ii) the enforcement, attachment, collection or recovery by any manner or means of any judgment, award, decree, or order against the Debtor, and (iii) creating, perfecting or enforcing any encumbrance of any kind against the property of the Debtor. The injunction shall remain in effect unless or until there has been an order of the Bankruptcy Court determining that there has been a default under the Plan and that the injunction provided hereunder should be lifted.

- F) Default. In the event that any creditor entitled to receive payments from the Debtor under the Plan asserts that the Debtor has defaulted with respect to such payments, such creditor shall give written notice to the Debtor, by certified mail, identifying the alleged breach with specificity. In the event that the Debtor has not cured the alleged breach within 10 days of the Debtor's receipt of such written notice, the creditor shall file a motion with the Bankruptcy Court, with notice to the Debtor, to reopen the Case and seek a determination that a breach has occurred and that the injunction set forth in the above section of the Plan should be lifted.
- G) Liens. Any liens on property of the Estate held by creditors of the Debtor that are not

preserved by the Plan are extinguished upon the entry of the Confirmation Order pursuant to 11 U.S.C. § 1141(c). Upon the request of the Debtor, any holder of a lien extinguished pursuant to this Plan shall cooperate with the Debtor to evidence the extinguishment of such lien in any local, county, state, or national records or database.

- H) Vesting of Property. Except as otherwise specifically provided in the Plan, after confirmation of the Plan, all assets of the Estate will vest in the Debtor on the Effective Date free and clear of any claims, liens, and encumbrances.
- I) Appeals. Unless the Confirmation Order is stayed pending appeal, the Plan may be consummated notwithstanding the pendency of such an appeal, or the timely filing and service of a motion under Federal Rules of Bankruptcy Procedure 7052, 8002(b), 8002(c), 8003, 8013, 9023, or 9024.
- J) Amendment, Modification, or Withdrawal. The Debtor, subject to Court approval, reserves the right to amend, modify, or withdraw, in whole or in part, the Plan before or after the confirmation of the Plan, but before substantial consummation, consistent with 11 U.S.C. § 1127.
- K) Captions. Headings of Sections and paragraphs are inserted for convenience only and shall not affect the meaning of any Plan provisions.
- L) Severability. If any provision in this Plan is determined to be unenforceable, the determination will in no way limit or affect the enforceability and operative effect of any other provision of this Plan.
- M) Binding Effect. The rights and obligations of any entity named or referred to in this Plan will be binding upon, and will inure to the benefit of the successors or assigns of such entity.

Dated July 3, 2018

Respectfully submitted,

s/ Robert D. MacPherson  
Robert D. MacPherson, BPR #022516  
MacPherson & Youmans  
119 Public Square  
Lebanon, Tennessee 37087  
Telephone: 615.444.2300  
email: [rdmacpherson@macyolaw.com](mailto:rdmacpherson@macyolaw.com)  
Attorney for the Debtor

### **CERTIFICATE OF SERVICE**

I hereby certify that, on the 2<sup>nd</sup> day of August, 2018, service of a copy hereof was made upon Filing Users through the Electronic Filing System. Additionally, on the 2<sup>nd</sup> day of August, 2018, service of a copy hereof will be made by United States first-class mail upon the following

creditors:

AMERIS BANK  
C/O SIMPSON UCHITEL & WILSON  
3490 PIEDMONT RD NE  
STE 1100  
ATLANTA GA 30305

UNITED STATES SMALL BUSINESS  
ADMIN  
14925 KINGSPORT RD  
FORT WORTH TX 76155

METROPOLITAN TRUSTEE  
REAL PROPERTY TAX DEPT  
PO BOX 305012  
NASHVILLE TN 37230

WILSON BANK & TRUST  
623 WEST MAIN STREET  
LEBANON, TENNESSEE 37087

s/ Robert D. MacPherson