

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

MAC ACQUISITION LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 17-12224 (MFW)

(Jointly Administered)

Re: Docket No. 112, 194, 230, 269, 270, 301, & 302

ORDER (I) APPROVING THE DISCLOSURE STATEMENT; (II) ESTABLISHING PROCEDURES FOR SOLICITATION AND TABULATION OF VOTES TO ACCEPT OR REJECT THE PLAN, INCLUDING (A) APPROVING FORM AND MANNER OF SOLICITATION PROCEDURES, (B) APPROVING FORM AND NOTICE OF THE CONFIRMATION HEARING, (C) ESTABLISHING VOTING RECORD DATE AND APPROVING PROCEDURES FOR DISTRIBUTION OF SOLICITATION PACKAGES, (D) APPROVING FORMS OF BALLOT, (E) ESTABLISHING DEADLINE FOR RECEIPT OF BALLOTS, AND (F) APPROVING PROCEDURES FOR VOTE TABULATIONS; (III) ESTABLISHING DEADLINE AND PROCEDURES FOR FILING OBJECTIONS TO (A) CONFIRMATION OF THE PLAN AND (B) THE DEBTORS' PROPOSED CURE AMOUNTS FOR UNEXPIRED LEASES AND EXECUTORY CONTRACTS ASSUMED PURSUANT TO THE PLAN; AND (IV) GRANTING RELATED RELIEF

Upon the Debtors' Motion for an Order (I) Approving the Disclosure Statement;

(II) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject the Plan, Including (A) Approving Form and Manner of Solicitation Procedures, (B) Approving Form and Notice of the Confirmation Hearing, (C) Establishing Voting Record Date and Approving Procedures for Distribution of Solicitation Packages, (D) Approving Forms of Ballot, (E) Establishing Deadline for Receipt of Ballots, and (F) Approving Procedures for Vote Tabulations; (III) Establishing Deadline and Procedures for Filing Objections to (A) Confirmation

¹ The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Mac Acquisition LLC (6362); Mac Parent LLC (6715); Mac Holding LLC (6682); Mac Acquisition of New Jersey LLC (1121); Mac Acquisition of Kansas LLC (3910); Mac Acquisition of Anne Arundel County LLC (6571); Mac Acquisition of Frederick County LLC (6881); Mac Acquisition of Baltimore County LLC (6865); and Macaroni Grill Services LLC (5963). The headquarters for the above-captioned Debtors is located at 1855 Blake St., Ste. 200, Denver, CO 80202.

of the Plan, and (B) the Debtors' Proposed Cure Amounts for Unexpired Leases and Executory Contracts Assumed Pursuant to the Plan; and (IV) Granting Related Relief (the "Motion")² filed by the above-captioned debtors and debtors in possession (collectively, the "Debtors") for the entry of an order, pursuant to sections 1125 and 1126 of the Bankruptcy Code, Bankruptcy Rules 2002, 3016, 3017, 3018, and 3020, and Local Rule 3017-1: (i) approving the Proposed Disclosure Statement; (ii) establishing procedures for solicitation and tabulation of votes to accept or reject the Plan, including (a) approving the form and manner of the Confirmation Hearing Notice, (b) approving the form and manner of the Solicitation Packages, (c) establishing the Voting Record Date and approving procedures for distributing the Solicitation Packages, (d) approving the Ballots, (e) establishing the Voting Deadline, and (f) approving procedures for tabulating acceptances and rejections of the Plan; (iii) establishing procedures with respect to, and the deadline for filing objections to, (a) confirmation of the Plan and (b) the executory contracts and unexpired leases that may be assumed pursuant to the Plan and the amount of the related cure amounts; and (iv) granting related relief; and this Court having found that it has jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and this Court having found that venue of these cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having determined that it may enter a final order consistent with Article III of the United States Constitution; and it appearing that notice of the Motion has been given as set forth in the Motion and that such notice is adequate and no other or further notice need be given; and a hearing having been held to

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion, the Plan or the Disclosure Statement, as applicable.

consider the relief requested in the Motion; and upon the record of the hearing on the Motion and all of the proceedings had before this Court; and this Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, their creditors and all other parties in interest; and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY FOUND THAT:

A. The Proposed Disclosure Statement [Docket No. 301] contains “adequate information” within the meaning of section 1125 of the Bankruptcy Code.

B. The Confirmation Hearing Notice, substantially in the form annexed hereto as Exhibit A, and the procedures set forth below for providing the Confirmation Hearing Notice to all creditors and equity security holders of the time, date, and place of the Confirmation Hearing and the contents of the Solicitation Packages comply with Bankruptcy Rules 2002 and 3017, and service of such materials as set forth herein constitutes sufficient notice to all interested parties.

C. The Ballots annexed hereto as Exhibits B-1, B-2, and B-3 are sufficiently consistent with Official Form No. 14 and adequately address the particular needs of the Chapter 11 Cases and are appropriate for Class 3 (BOC Claims), Class 4 (Riesen Funding Claims) and Class 5 (General Unsecured Claims), respectively, which classes are entitled to vote to accept or reject the Plan.

D. The notice attached hereto as Exhibit E regarding non-voting status for certain classes of Claims or Interests under the Plan (the “Non-Voting Holder Notice”) adequately addresses the particular needs of the Chapter 11 Cases and provides adequate notice of the right of receiving parties to opt out of the third-party releases provided under the Plan, and are appropriate for Class 1 (Other Priority Claims), Class 2 (Other Secured Claims), Class 6 (Intercompany

Claims), Class 7 (Subordinated Claims), Class 8 (Existing Equity Interests), and Class 9 (Intercompany Interests).

E. The content and proposed distribution of the Solicitation Packages complies with Bankruptcy Rule 3017(d).

F. Ballots need not be provided to the Unimpaired Creditors, holders of claims in (i) Class 1 (Other Priority Claims), (ii) Class 2 (Other Secured Claims), (iii) Class 6 (Intercompany Claims), and Class 9 (Intercompany Interests) because such holders are deemed to accept the Plan.

G. Ballots need not be provided to the Rejecting Creditors, holders of claims and interests in (i) Class 7 (Subordinated Claims) and (ii) Class 8 (Existing Equity Interests), because such holders are deemed to reject the Plan.

H. The period, set forth below, during which the Debtors may solicit acceptances to the Plan is a reasonable and adequate period of time under the circumstances for creditors to make an informed decision to accept or reject the Plan.

I. The procedures for the solicitation and tabulation of votes to accept or reject the Plan (as more fully set forth below) provide for a fair and equitable voting process and are consistent with section 1126 of the Bankruptcy Code.

J. All objections, responses, statements, and comments, if any, in opposition to the Proposed Disclosure Statement, other than those withdrawn with prejudice in their entirety prior to, or on the record at, the Disclosure Statement Hearing, shall be, and hereby are, **overruled in their entirety** for the reasons stated on the record and, notwithstanding the foregoing, no objection shall be considered an objection to confirmation of the Plan unless such objection is interposed in accordance with the procedures for objecting to confirmation of the Plan set forth herein.

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.

Approval of Disclosure Statement

2. The Proposed Disclosure Statement [Docket No. 301] is APPROVED (as so approved, the "Disclosure Statement").

Approval of Confirmation Hearing, Objection Deadline and Notice Thereof

3. The Confirmation Hearing will be held at **11:30 a.m (prevailing Eastern Time) on February 7, 2018**; provided, however, that the Confirmation Hearing may be continued from time to time by this Court or the Debtors without further notice to creditors or other parties interest, other than an announcement at or before the Confirmation Hearing or any adjourned Confirmation Hearing or the filing of a notice or a hearing agenda providing for the adjournment on the docket of the Chapter 11 Cases.

4. Any objection, opposition, or response to confirmation of the Plan (including any supporting memoranda) must be in writing, served on the parties identified below, and filed with this Court, together with proof of service, such that the foregoing are received by such parties and this Court on or before the Confirmation Objection Deadline of **4:00 p.m. (prevailing Eastern Time) on January 31, 2018**, which deadline may be extended by the Debtors. This Court shall consider only timely filed written objections. Objections to confirmation of the Plan shall be served on the following (collectively, the "Notice Parties"):

- (a) counsel for the Debtors;
- (b) the U.S. Trustee;
- (c) counsel for the DIP Agent;
- (d) counsel to Bank of Colorado;
- (e) counsel for Riesen Funding LLC; and

- (f) counsel for the Official Committee of Unsecured Creditors (the "Creditors' Committee").

Objections to confirmation of the Plan, if any, must (a) state with particularity the legal and factual grounds therefor, and, unless impracticable, propose modifications to the Plan that would resolve such objection; and (b) conform to the Bankruptcy Rules and Local Rules.

5. The deadline for the Debtors and any other party supporting the Plan to file any pleading in support of, or in response to any objection to, confirmation of the Plan is 10:00 a.m. (prevailing Eastern Time) two (2) business days before the commencement of the Confirmation Hearing.

6. The Confirmation Hearing Notice, substantially in the form attached hereto as Exhibit A, is hereby approved.

7. The Debtors shall serve the Confirmation Hearing Notice on all parties who are known or potential creditors or interest holders, including counterparties to executory contracts or unexpired leases, as of the Voting Record Date no later than the Solicitation Commencement Date, which notice may be satisfied by service of the Solicitation Package including the Confirmation Hearing Notice.

8. The Debtors shall also publish the notice of the Confirmation Hearing, substantially in the form annexed hereto as Exhibit D (the "Publication Notice"), once, at least twenty-eight (28) days before the Confirmation Objection Deadline, in *The Wall Street Journal* or *The New York Times*, as determined by the Debtors, in their sole discretion.

Temporary Allowance of, Objections to, and Estimations of Claims for Voting Purposes

9. The Voting Record Date is established as **December 27, 2017 at 5:00 p.m.** **(prevailing Eastern Time)** for purposes of this Order and determining which creditors are entitled to vote on the Plan, the temporary allowance of claims for purposes of voting on the Plan, and

which creditors and interest holders receive the notices and materials contemplated by this Order, including, without limitation, the Confirmation Hearing Notice and Solicitation Packages.

10. Solely for purposes of voting on the Plan, and not for any other purposes, the amount of a claim held by a creditor shall be temporarily allowed and determined pursuant to the following Tabulation Rules:

- (a) Except as otherwise set forth below, the amount of the claim listed in the Schedules to the extent such claim is not listed as any of contingent, unliquidated or disputed; provided that a party whose claim has been indefeasibly paid, in full or in part, shall only be permitted to vote the unpaid amount of such claim, if any, to accept or reject the Plan.
- (b) If a claim is allowed under the Plan, the deemed allowed amount set forth in the Plan.
- (c) If a claim is temporarily allowed or estimated by this Court for voting purposes pursuant to Bankruptcy Rule 3018(a), the amount so determined in accordance with the notice procedures set forth herein, the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.
- (d) The noncontingent and liquidated amount specified in a proof of claim (as may be reasonably determined by the Debtors or the Balloting Agent) timely filed on or before the General Bar Date in the Chapter 11 Cases (or are deemed timely filed on or before the General Bar Date by this Court) to the extent the proof of claim (i) has not been expunged, disallowed, disqualified, withdrawn, filed in the amount of \$0.00, or superseded prior to the General Bar Date; and (ii) is not the subject of an objection filed no later than the Voting Objection Deadline, **January 4, 2018, at 4:00 p.m. (prevailing Eastern Time)**.
- (e) With respect to Ballots cast by alleged creditors who have timely filed on or before the General Bar Date proofs of claim in the Chapter 11 Cases (or who are deemed to have timely filed proofs of claim on or before the General Bar Date by this Court) in wholly contingent or unliquidated amounts (as may be reasonably determined by the Debtors or the Balloting Agent) that has not been expunged, disallowed, disqualified, withdrawn and is not the subject of an objection filed before the Voting Objection Deadline, such Ballots shall be counted in determining whether the numerosity requirement of section 1126(c) of the Bankruptcy Code has been met, and shall be counted at \$1.00 in determining whether the aggregate claim amount requirement has been met.

- (f) If a proof of claim timely filed in the Chapter 11 Cases has been amended by a later proof of claim filed on or before the General Bar Date (as may be reasonably determined by the Debtors or the Balloting Agent), the later filed amending claim shall be entitled to vote in a manner consistent with these Tabulation Rules, and the earlier filed claim shall not be considered for voting purposes and the holder shall not receive a Ballot on account of such claim, regardless of whether the Debtors have objected to such amended claim.
- (g) The assignee of a claim shall only be permitted to vote such claim only if the transfer or assignment has been fully effectuated pursuant to the procedures set forth in Bankruptcy Rule 3001(e) and such transfer is reflected on the claims register maintained by Donlin Recano on or before the Voting Record Date; provided, that for the avoidance of doubt, the assignor will not receive a Solicitation Package with respect to such claim.

11. The Debtors may object to any claim (as defined in section 101(5) of the Bankruptcy Code) solely for Plan voting purposes by filing a Determination Motion no later than the Voting Objection Deadline. Further, if a creditor that is permitted to vote on the Plan casts a Ballot, but the creditor's claim is the subject of an objection filed no later than the Voting Objection Deadline, the creditor's Ballot shall not be counted, unless such claim is temporarily allowed by this Court for voting purposes, pursuant to Bankruptcy Rule 3018(a). Notwithstanding the foregoing, unless otherwise ordered by this Court, if an objection to a claim requests that such claim be reclassified and/or reduced, such claimant's Ballot shall be counted in such reduced amount and/or as the reclassified category.

12. If a creditor seeks to have its claim temporarily allowed for purposes of voting to accept or reject the Plan pursuant to Bankruptcy Rule 3018(a), such creditor shall file a Claims Estimation Motion for such temporary allowance by the later of (a) the Voting Objection Deadline, or (b) if such claim is the subject of an objection or a Determination Motion, ten (10) days after the filing of the applicable objection or Determination Motion.

13. In the event that a Determination Motion or Claims Estimation Motion is filed, any response to such motion shall be filed by the non-moving party within ten (10) days of the filing of

the applicable motion. Subject to this Court's availability and unless otherwise agreed by the parties, a hearing on any Determination Motion or Claims Estimation Motion shall be scheduled to be held prior to the Confirmation Hearing. The ruling by this Court on any Determination Motion or Claims Estimation Motion shall be considered a ruling with respect to the allowance of the claim(s) under Bankruptcy Rule 3018 and such claim(s) will be counted, for voting purposes only, in the amount determined by this Court.

14. In the event that a claimant reaches an agreement with the Debtors as to the treatment of its claim for voting purposes, a stipulation setting forth that agreement shall be presented to this Court for approval by notice of proposed stipulation and order, with presentment upon three (3) business days' notice to the Notice Parties.

Approval of Solicitation Procedures

15. The Ballots, which shall be in substantially the forms annexed hereto as Exhibits B-1, B-2, and B-3, are approved.

16. The Debtors are authorized and empowered to commence distribution or to cause the distribution of the Solicitation Packages, through the Balloting Agent (as defined herein), to holders of claims in the Voting Classes as of the Voting Record Date no later than the Solicitation Commencement Date, which shall be **January 3, 2018**.

17. Only a copy of the Confirmation Hearing Notice shall be distributed to holders, as of the Voting Record Date, of Administrative Claims, Professional Fee Claims, Priority Tax Claims, and DIP Facility Claims which are claims unclassified under the Plan.

18. Only a copy of the Confirmation Hearing Notice and the Non-Voting Holder Notice shall be distributed to holders, as of the Voting Record Date, of:

- (a) unimpaired claims in (i) Class 1 (Other Priority Claims), (ii) Class 2 (Other Secured Claims), (iii) Class 6 (Intercompany Claims), and (iv) Class 9 (Intercompany Interests) that are deemed to accept the Plan; and
- (b) impaired claims or interests, as applicable, in (i) Class 7 (Subordinated Claims) and (ii) Class 8 (Existing Equity Interests) that are deemed to reject the Plan.

19. All Ballots must be properly executed, completed, and delivered by first class mail, overnight mail, or hand delivery to the Balloting Agent in accordance with the instructions set forth on the Ballot so as to be **actually received by no later than 5:00 p.m. (prevailing Eastern Time) on January 31, 2018** (the “Voting Deadline”). Ballots cast by facsimile or email will not be counted.

20. The following voting procedures and standard assumptions shall be used in tabulating the Ballots:

- (a) For purposes of the numerosity requirement of section 1126(c) of the Bankruptcy Code, separate claims held by a single creditor in a particular class will be aggregated as if such creditor held one claim against the applicable Debtor in such class, and the votes related to such claims will be treated as a single vote to accept or reject the Plan.
- (b) Any creditor who holds duplicate claims timely filed on or before the General Bar Date in the Chapter 11 Cases (or otherwise deemed timely on or before the General Bar Date filed by this Court under applicable law) within the same class shall be provided with only one Solicitation Package and one Ballot for voting a single claim in such class, regardless of whether the Debtors have objected to such duplicate claims.
- (c) Creditors must vote all of their claims within a particular class either to accept or reject the Plan and may not split their vote. Accordingly, a Ballot (or multiple Ballots with respect to multiple claims within a single class) that partially rejects and partially accepts the Plan will not be counted.
- (d) The Plan proposes a limited consolidation of the Debtors for prepetition purposes, including for purposes of voting on the Plan, and if a creditor holds the same claim against multiple Debtors (as reasonably determined by the Debtors and the Balloting Agent) such claim will only be counted once for voting purposes as a claim against the consolidated Debtors.

- (e) Ballots that fail to indicate an acceptance or rejection of the Plan or that indicate both acceptance and rejection of the Plan, but which are otherwise properly executed and received prior to the Voting Deadline, will not be counted for purposes of voting on the Plan.
- (f) Only Ballots that are timely received with signatures will be counted. Unsigned Ballots will not be counted.
- (g) Ballots postmarked prior to the Voting Deadline, but received after the Voting Deadline, will not be counted.
- (h) Ballots which are illegible, or contain insufficient information to permit the identification of the creditor, will not be counted.
- (i) Whenever a creditor casts more than one Ballot within a Class prior to the Voting Deadline, the last valid Ballot received prior to the Voting Deadline shall be deemed to reflect the voter's intent and supersede any prior received Ballots.
- (j) If a creditor simultaneously casts inconsistent duplicate Ballots with respect to the same claim, such Ballots shall not be counted.
- (k) Each creditor shall be deemed to have voted the full amount of its claim. Unless otherwise ordered by this Court, questions as to the validity, form, eligibility (including time of receipt), acceptance, and revocation or withdrawal of Ballots shall be determined by the Balloting Agent and the Debtors, which determination shall be final and binding.
- (l) Any Ballot containing a vote that this Court determines, after notice and a hearing, was not solicited or procured in good faith or in accordance with the provisions of the Bankruptcy Code shall not be counted.
- (m) Any Ballot cast by a person or entity that does not hold a claim in a Class that is entitled to vote to accept or reject the Plan shall not be counted.
- (n) Notwithstanding anything contained herein to the contrary, the Balloting Agent, in its discretion, may contact parties that submitted Ballots to cure any defects in the Ballots.
- (o) Any class that does not have a holder of an allowed claim or a claim temporarily allowed by this Court as of the date of the Confirmation Hearing shall be deemed eliminated from the Plan for purposes of voting to accept or reject the Plan and for purposes of determining acceptance or rejection of the Plan by such class pursuant to section 1129(a)(8) of the Bankruptcy Code.

- (p) If a class contains claims eligible to vote and no holders of claims eligible to vote in such class vote to accept or reject the Plan, the Plan shall be deemed accepted by the holders of claims in such class.
- (q) Unless waived, any defects or irregularities in connection with deliveries of Ballots must be cured within such time as the Debtors or this Court determines. Neither the Debtors nor any other person or entity shall be under any duty to provide notification of defects or irregularities with respect to deliveries of Ballots, nor shall any of these incur any liabilities for failure to provide such notification. Unless otherwise directed by this Court, delivery of defective or irregular Ballots shall not be deemed to have been made until such defects or irregularities have been cured or waived. Ballots previously furnished (and as to which any defects or irregularities have not theretofore been cured or waived) shall not be counted.
- (r) The Debtors, in their discretion, and subject to contrary order of this Court, may waive any defect in any Ballot at any time, either before or after the close of voting and without notice. Except as provided below, unless the Ballot being furnished is timely submitted on or prior to the Voting Deadline, the Debtors may, in their discretion, reject such Ballot as invalid, and therefore, decline to utilize it in connection with confirmation of the Plan by this Court; provided, however, that such invalid Ballots shall be documented in the voting results filed with this Court.
- (s) To the extent the Restructuring Support Agreement is terminated as to any Supporting Party, the Ballot submitted by such Supporting Party prior to such termination shall be deemed automatically withdrawn and null and void, unless each Supporting Party consents otherwise in writing.
- (t) Subject to contrary order of this Court, the Debtors reserve the absolute right to reject any and all Ballots not proper in form, the acceptance of which would, in the opinion of the Debtors, not be in accordance with the provisions of the Bankruptcy Code; provided, however, that such invalid Ballots shall be documented in the voting results filed with this Court.

Cure Procedures

21. The following procedures are approved for determining cure amounts and a deadline for objections relating to assumption of executory contracts and unexpired leases pursuant to the Plan:

- (a) Except to the extent that different treatment has been agreed to by the non-Debtor party or parties to any executory contract or unexpired lease to be assumed pursuant to Article VIII of the Plan, the Debtors shall, pursuant to the provisions of sections 1123(a)(5)(G) and 1123(b)(2) of the Bankruptcy

Code and consistent with the requirements of section 365 of the Bankruptcy Code, not later than fifteen (15) business days before the Confirmation Hearing, file and serve one or more pleadings with this Court, in a form substantially similar to the form attached hereto as Exhibit C (the “Cure Notice”), listing, on a schedule thereto or on an individual basis (which amounts shall, collectively, constitute the “Cure Schedule”), the cure amount, if any, for each executory contract and unexpired lease that may be assumed under the Plan. The counterparties to such executory contracts and unexpired leases shall have ten (10) business days to object to the assumption of such executory contracts and unexpired leases and to the cure amount listed by the Debtors seeking assumption. Each Cure Notice shall specify the date of the applicable objection deadline, and any such objection shall be filed with this Court and served on the Notice Parties on or before such objection deadline. If there are any objections filed, this Court may hold a hearing, which may be the Confirmation Hearing, to determine such cure amounts or other issues pertaining to the assumption of such executory contract or unexpired lease. The Debtors may also file a Cure Notice to amend or supplement the Cure Schedule, provided that the Debtors provide parties with at least five (5) business days to object to any amended or supplemented Cure Notice and serve such notice by overnight or electronic mail. Until the later of the Confirmation Hearing and such later date as the Court may order in connection with the Plan (but subject to subparagraph (c) below), the Debtors, subject to the consent of Supporting Parties and the DIP Agent, retain the right to reject any of the executory contracts or unexpired leases, including such contracts or leases that are subject to a dispute concerning amounts necessary to cure any defaults. In the event the Debtors amend the Schedule of Assumed Contracts and Leases to add any unexpired lease of non-residential real property, then, notwithstanding anything in this paragraph (c), the counterparty to such lease shall have until the earlier of (x) five (5) business days from the date of filing of such amendment and (y) the Confirmation Hearing, to object to the proposed cure amount for such lease listed in the applicable Cure Notice and to object to the treatment of such assumed lease under the Plan.

- (b) Any party that fails to object to the applicable cure amount or the assumption of any executory contract or unexpired lease to be assumed under the Plan shall be forever barred, estopped and enjoined from disputing the cure amount and/or from asserting any claim against the applicable Debtor arising under section 365(b)(1) of the Bankruptcy Code except as set forth on the Cure Schedule and shall be deemed to have consented to such assumption.
- (c) In the event of a dispute (each, a “Contract Dispute”) regarding (i) the cure amount, (ii) the ability of the applicable Reorganized Debtor to provide “adequate assurance of future performance” (within the meaning of section 365 of the Bankruptcy Code) under the executory contract or unexpired lease to be assumed under the Plan, or (iii) any other matter pertaining to the

proposed assumption, the cure payments required by section 365(b)(1) of the Bankruptcy Code shall, subject to the terms of the Plan and this subparagraph (c), be made following the entry of a Final Order resolving such Contract Dispute and approving the assumption. To the extent that a Contract Dispute relates solely to the cure amount, the applicable Debtor may assume the applicable executory contract or unexpired lease prior to the resolution of the Contract Dispute provided that such Debtor reserves Cash in an amount sufficient to pay the full amount asserted as the required cure payment by the non-Debtor party to such executory contract or unexpired lease (or such smaller amount as may be fixed or estimated by this Court or otherwise agreed to by such non-Debtor party and the Reorganized Debtors). Subject to the provisions in this subparagraph (c) in the event of a Contract Dispute with respect to the cure amount, payment of the cure amounts fixed in accordance with the Plan and this Order shall be paid by the Debtors or Reorganized Debtors, as the case may be, as a condition to assumption of the underlying contracts and unexpired leases pursuant to the terms of the Plan. Such amount shall be paid on, or as soon as reasonably practicable after the Effective Date, but in no event later than seven (7) calendar days after the Effective Date, except that any cure amount that is disputed as of the Effective Date shall be paid as soon as reasonably practicable after the resolution of such dispute. This Order does not determine whether the Debtors may or must assume or reject any unexpired lease of non-residential real property as of any particular date.

22. The inclusion of an executory contract or unexpired lease in a Cure Notice or on the Cure Schedule is without prejudice to the Debtors' right to modify their election to assume or to reject such executory contract or unexpired lease, or to modify the related cure amount, in accordance with the terms of this Order (including, without limitation, Paragraph 21(c) hereof) or the Plan, and inclusion of an executory contract or unexpired lease in a Cure Notice or on the Cure Schedule is not a final determination that such executory contract or unexpired lease will, in fact, be assumed. The inclusion of an executory contract or unexpired lease in a Cure Notice or on the Cure Schedule shall not constitute or be deemed to be a determination or admission by the Debtors and their estates that such agreement is, in fact, an executory contract or unexpired lease within the meaning of section 365 of the Bankruptcy Code, and all rights of the Debtors and their estates with respect thereto are expressly reserved.

23. In the event the Debtors seek to assume and assign any executory contract or unexpired lease pursuant to section 365(c) of the Bankruptcy Code, such assumption and assignment shall be subject to a separate order of this Court, with notice and an opportunity to be heard as required under the Bankruptcy Rules.

Other Miscellaneous Provisions

24. By the Solicitation Commencement Date, the Debtors shall commence or cause the commencement of service of a copy of the Confirmation Hearing Notice and the Disclosure Statement (together with the Plan and other exhibits annexed thereto) to, among other parties (to the extent such parties did not otherwise receive Solicitation Packages):

- (a) the U.S. Trustee;
- (b) counsel for the DIP Agent;
- (c) counsel for Bank of Colorado;
- (d) counsel for Riesen Funding LLC;
- (e) the Securities and Exchange Commission;
- (f) the United States Attorney's Office for the District of Delaware;
- (g) the Department of Justice;
- (h) the Internal Revenue Service;
- (a) counsel for the Creditors' Committee; and
- (i) all parties who have requested notice in the Chapter 11 Cases pursuant to Local Rule 2002-1.

25. To the extent the Debtors are required to distribute copies of the Plan and/or Disclosure Statement, the Debtors may distribute either paper copies or electronic copies in "pdf" format on CD-ROM or flash drive, at their sole discretion; provided, that the Debtors shall make paper copies available upon written request by a party in interest.

26. Except as provided herein, the Debtors shall not be required to serve the Disclosure Statement, the Plan or this Order on any creditor or interest holder, but they shall make the Disclosure Statement available electronically at the Debtors' case website (<https://www.donlinrecano.com/mg>) as well as upon request from parties in interest.

27. With respect to addresses from which one or more prior notices served in the Chapter 11 Cases were returned as undeliverable or from which mailings made pursuant to this Order are returned as undeliverable, the Debtors are excused from distributing Confirmation Hearing Notices and Solicitation Packages, as applicable, to those entities listed at such addresses if the Debtors are not provided with an accurate address or forwarding address for such entities before the Solicitation Commencement Date, provided that the Debtors will promptly remit Confirmation Hearing Notice and Solicitation Packages (as applicable) if they are provided with a current address for the affected creditors following the Solicitation Commencement Date. Failure to attempt to re-deliver Confirmation Hearing Notices and Solicitation Packages, as applicable, to such entities will not constitute inadequate notice of the Confirmation Hearing or the Voting Deadline or a violation of Bankruptcy Rule 3017(d).

28. The Debtors are authorized to take or refrain from taking any action necessary or appropriate to implement the terms of and the relief granted in this Order without seeking further order of this Court, including, but not limited to, the making of any payments reasonably necessary to perform the actions and distributions contemplated herein.

29. The Debtors are authorized to make non-material changes to the Disclosure Statement, the Plan, the Ballots, the Confirmation Hearing Notice, the Publication Notice, the Cure Notice, and related documents and any other materials in the Solicitation Package without further order of this Court, including, without limitation, changes to correct typographical and

grammatical errors and to make conforming changes among the Disclosure Statement, the Plan, the Ballots, the Confirmation Hearing Notice, the Publication Notice, the Cure Notice, and related documents and any other materials in the Solicitation Package prior to their distribution and publication, as applicable.

30. This Court shall retain jurisdiction with respect to all matters related to this Order.

Dated: December 15, 2017
Wilmington, Delaware



MARY F. WARRATH
UNITED STATES BANKRUPTCY JUDGE