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10 **UNITED STATES BANKRUPTCY COURT**
 11 **DISTRICT OF NEVADA**

12 In re:

Case No.: 17-15530-ABL
 Chapter 11

13 CM EBAR, LLC,

14 Debtor.

Hearing Date: OST Pending
 Hearing Time: OST Pending

16 **MOTION OF THE DEBTOR FOR THE ENTRY OF AN ORDER:**
 17 **(i) CONDITIONALLY APPROVING THE DISCLOSURE STATEMENT**
 18 **AND TERMINATING DEBTOR’S EXCLUSIVITY TO FILE A CHAPTER 11**
 19 **PLAN; (ii) APPROVING THE FORM OF BALLOTS AND PROPOSED**
 20 **SOLICITATION AND TABULATION PROCEDURES; (iii) FIXING THE VOTING**
 21 **DEADLINE WITH RESPECT TO THE DEBTOR’S CHAPTER 11 PLAN; (iv)**
 22 **PRESCRIBING THE FORM AND MANNER OF NOTICE THEREOF; (v) FIXING THE**
 23 **LAST DATE FOR FILING OBJECTIONS TO THE CHAPTER 11 PLAN; (vi)**
 24 **SCHEDULING A HEARING TO CONSIDER CONFIRMATION OF THE CHAPTER**
 25 **11 PLAN; (vii) APPOINTING LARSON ZIRZOW & KAPLAN AS SOLICITATION**
 26 **AND TABULATION AGENT; AND (vii) APPROVING BID PROCEDURES WITH**
 27 **RESPECT TO THE SALE OF THE DEBTOR’S RESTAURANT ASSETS**

24 CM Ebar, LLC, the above captioned debtor and debtor-in-possession (the “Debtor”),
 25 files this motion (the “Motion”) for the entry of an order: (i) conditionally approving the
 26 disclosure statement (as such may be amended from time to time, the “Disclosure Statement”);
 27 (ii) approving the form of ballots and proposed solicitation and tabulation procedures for the Plan
 28 of Reorganization of the Debtor (as such plan may be amended from time to time, the “Plan”);

1 (iii) fixing the voting deadline with respect to the Plan; (iv) prescribing the form and manner of
2 notice thereof; (v) fixing the last day for filing objections to the Plan; (vi) scheduling a hearing to
3 consider the confirmation of the Plan; (vii) approving Larson, Zirzow and Kaplan, LLC
4 (“**LZK**”) as the Debtor’s solicitation and tabulation agent (the “**Solicitation and Tabulation**
5 **Agent**”), and in support of the Motion respectfully represents:

6 **JURISDICTION**

7 1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334.
8 This is a core proceeding pursuant to 28 U.S.C. § 157(a). Venue is proper before this Court
9 pursuant to 28 U.S.C. §§ 1408 and 1409.

10 **BACKGROUND**

11 2. On October 17, 2017, (the “**Petition Date**”), the Debtor filed its voluntary
12 petition for relief under Chapter 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (as
13 amended, the “**Bankruptcy Code**”). Pursuant to sections 1107(a) and 1108 of the Bankruptcy
14 Code, the Debtor continues to operate its business as a debtor-in-possession.

15 3. On November 7, 2017, the Office of the United States Trustee appointed an
16 Official Committee of Unsecured Creditors (“**UCC**”). The law firm of Clark Hill is currently the
17 proposed counsel for the committee pending court approval.

18 4. The Debtor is the owner of 7 operating restaurants that go by the trade name of
19 Elephant Bar Restaurant, operating in Nevada, New Mexico, and California.

20 5. SBR, LLC, as successor the Debtor’s original lenders, holds a secured claim in
21 the amount of at least \$18,671,190.00 (“**SBR Loan**”), exclusive of interest, attorneys’ fees, other
22 fees, costs, and expenses, as of the Petition Date. The SBR Loan is secured by a continuing
23 security interest in, all of the Debtor’s personal property and fixtures.

24 6. Sysco Sacramento, Inc. (“**Sysco Sacramento**”) has asserted a pre-petition claim
25 in excess of \$292,000.00 for which Sysco Sacramento alleges it holds a perfected security
26 interest in most or all of the Debtor’s assets. Specifically, Sysco Sacramento has alleged that that
27 it filed a UCC-1 Financing Statement and perfected its security interest in the Debtor’s assets
28 before the SBR did so. The particulars are still being investigated and, in particular the

1 underlying security agreements are being examined to determine the nature, extent, and priority
2 of Sysco Sacramento's secured claim.

3 7. As an ordinary business expense, Debtor necessarily requires fresh or frozen fruit
4 and vegetable items ("**Produce**"). Debtor acknowledges that the trust provisions of the federal
5 Perishable Agricultural Commodities Act ("**PACA**"), 7 U.S.C. § 499e(c), may apply to the
6 Produce. As of the filing of this document, various entities have come forth asserting claims
7 pursuant to PACA. To date, the submitted PACA claims, for Produce provided pre-petition
8 only, are asserted as follows: Sysco Sacramento has asserted a principal PACA claim in the
9 amount of \$28,488.47; FreshPoint Southern California, Inc. has asserted a principal PACA claim
10 in the amount of \$10,743.17; Sysco New Mexico, a division of Sysco USA I, Inc. has asserted a
11 principal PACA claim in the amount of \$7,051.46; and Liberty Fruit Company, Inc. as asserted a
12 principal PACA claim in the amount of \$10,940.68.

13 **THE FILING OF THE PLAN AND DISCLOSURE STATEMENT**

14 8. On November 20, 2017, the Debtor filed its proposed Disclosure Statement (the
15 "**Disclosure Statement**") and Plan of Reorganization (the "**Plan**") on behalf of the Debtor.

16 **RELIEF REQUESTED**

17 9. By this Motion and pursuant to sections 105, 502, 1125, 1126 and 1128 of the
18 Bankruptcy Code and Bankruptcy Rules 2002, 3003, 3017, 3018 and 3020, Debtor seeks the
19 entry of an order:

- 20 a. conditionally approving the form and content of the Disclosure Statement;
21 b. terminating the Debtor's exclusivity in filing a Chapter 11 plan of
22 reorganization;
23 c. approving the proposed voting procedures, including (i) establishing, for
24 voting purposes only, a record holder date for the holders of claims, (ii) approving the
25 forms of ballots and balloting instructions, (iii) establishing procedures for the solicitation
26 of votes on the Plan, (iv) establishing a voting deadline, and (v) establishing procedures
27 for tabulating votes on the Plan;
28 d. scheduling the hearing to consider final approval of the Disclosure

1 Statement and confirmation of the Plan and fixing the last date for filing objections to
2 confirmation of the Plan;

3 e. appointing LZK as the Solicitation and Tabulation Agent; and

4 f. approving the bid procedures for the sale of the Debtor's restaurant assets.

5 **A. Scheduling of a Hearing to Consider Confirmation of the Plan.**

6 10. While the Debtor will seek final approval of its proposed Disclosure Statement at
7 the same time as the confirmation hearing, the Debtor respectfully requests that the Court enter
8 an order conditionally approving the Disclosure Statement as containing adequate information
9 sufficient to satisfy section 1125(a) of the Bankruptcy Code for voting purposes only, subject to
10 final approval at the confirmation hearing, and authorizing LZK, as the solicitation and
11 tabulation agent, to commence solicitation of votes to accept or reject the Plan as soon as
12 practicable after approval of this Motion. Conditional approval of the Disclosure Statement at
13 this time will enable the Solicitation and Tabulation Agent to timely commence solicitation,
14 eliminate the need for the scheduling of a separate disclosure statement hearing, shorten the
15 length of this case, facilitate the confirmation of the Plan, and significantly reduce administrative
16 expenses of the Debtor's estate.

17 11. Pursuant to section 1125 of the Bankruptcy Code, a plan proponent must provide
18 holders of impaired claims with "adequate information" regarding a proposed plan of
19 reorganization. Section 1125(a)(1) provides:

20 [A]dequate information" means information of a kind, and in sufficient
21 detail, as far as is reasonably practicable in light of the nature and
22 history of the debtor and the condition of the debtor's books and records,
23 including a discussion of the potential material Federal tax consequences
24 of the plan to the debtor, any successor to the debtor, and a hypothetical
25 investor typical of the holders of claims or interest in the case, that
would enable such a hypothetical investor of the relevant class to make
an informed judgment about the plan....

26 11 U.S.C. § 1125(a)(1).

27 12. Thus, a disclosure statement must, as a whole, provide information that is
28 "reasonably practicable" to permit an "informed judgment" by impaired creditors or

1 shareholders entitled to vote on the plan. *See In re Dakota Rail, Inc.*, 104 B.R. 138, 142 (Bankr.
2 D. Minn. 1989); *In re Copy Crafters Quickprint Inc.*, 92 B.R. 973, 979 (Bankr. N.D.N.Y. 1988)
3 (adequacy of disclosure statement “is to be determined on a case-specific basis under a flexible
4 standard that can promote the policy of chapter 11 towards fair settlement through a negotiation
5 process between informed interested parties”).

6 13. In examining the adequacy of the information contained in a disclosure
7 statement, the Bankruptcy Court has broad discretion. *In re Texas Extrusion Corp.*, 844 F.2d
8 1142, 1157 (5th Cir. 1988) (“the determination of what constitutes adequate information is
9 subjective and made on a case-by-case basis,” and “[t]his determination is largely within the
10 discretion of the bankruptcy court”); *In re River Village Associates*, 181 B.R. 795, 804 (E.D. Pa.
11 1995) (the Bankruptcy Court is given substantial discretion in considering the adequacy of a
12 disclosure statement”); *In re Dakota Rail, Inc.*, 104 B.R. at 143 (the definition of “adequate
13 information” in 11 U.S.C. § 1125(a)(1) “leaves the bankruptcy court with wide discretion to
14 determine on a case by case basis, whether disclosure statement contains adequate information,
15 without burdensome, unnecessary, and cumbersome detail”).

16 14. The Debtor believes the Disclosure Statement contains adequate information for
17 holders of claims and interests eligible to vote to make an informed decision regarding the Plan,
18 including a discussion of, among other things: (i) detailed information concerning the
19 classification and treatment of claims and interests under the Plan; (ii) detailed information with
20 respect to the voting and confirmation processes associated with the Plan; (iii) the organization
21 and activities of the Debtor; (iv) a summary of the Plan; (v) the means for implementation of the
22 Plan; (vi) procedures for disputed claims; (vii) procedures for assumption or rejection of
23 executory contracts; (viii) conditions precedent to confirmation and the effective date of the Plan
24 and the Effective Date; (ix) the effect of confirmation of the Plan; (x) the feasibility of the Plan;
25 (xi) certain tax consequences of the Plan; and (xii) alternatives to the Plan, including an analysis
26 of the liquidation of the Debtors under chapter 7 of the Bankruptcy Code. The Disclosure
27 Statement therefore, contains adequate information, as required by section 1125(a) of the
28

1 Bankruptcy Code, to enable each holder of a claim in the Voting Classes (as defined below) to
2 make an informed on whether to accept or reject the Plan.

3 15. Based upon the foregoing, the Debtor believes that conditional approval of the
4 Disclosure Statement is consistent with section 1125 of the Bankruptcy Code, and such
5 conditional approval, subject to final approval at the confirmation hearing, is in the best interest
6 of the Debtor, its estate and its creditors. Accordingly, the Debtor respectfully urges the Court
7 to conditionally approve the Disclosure Statement as containing adequate information to permit
8 holders of claims entitled to vote on the Plan to cast an informed vote to accept or reject the Plan
9 and concurrently terminate Debtor's exclusivity in filing a Chapter 11 plan of reorganization to
10 allow the Court to consider competing plans.

11 **B. Scheduling of a Hearing to Consider Final Approval of the Disclosure Statement**
12 **and Confirmation of the Plan.**

13 16. The Bankruptcy Code permits the Court to adapt the schedule for final disclosure
14 statement approval and plan confirmation to the circumstances of particular cases (*see* 11 U.S.C.
15 §105(d)), and a number of courts have approved consolidated hearings on adequacy of disclosure
16 and plan confirmation. *See e.g., In re Rubicon US REIT, Inc.*, 2010 Bankr. LEXIS 3321 (Bankr. D.
17 Del. 2010); *In re Cypresswood Land Partners, I*, 409 B.R. 396, 425 (Bankr. S.D. Tex. 2009)
18 (“Pursuant to 11 U.S.C. § 105(d)(2)(B)(vi), this Court scheduled a simultaneous hearing on the
19 Amended Disclosure Statement and the Amended Plan for reasons of judicial efficiency and
20 economy. Therefore, the Court’s approval of the Amended Disclosure Statement at the
21 confirmation hearing instead of at a prior separate hearing does not preclude confirmation under §
22 1129(a)(2).”); *In re Elite Agents Mortgage Servs., Inc.*, No. 03-41805 (Bankr. D.N.J. July 9,
23 2004) (Approving a consolidated hearing regarding the adequacy of the disclosure statement and
24 confirmation of the plan); *In re Luminent Mortgage Capital Inc.*, No. 08-21389 (Bankr. D. Md.
25 May 15, 2009) (entering an order scheduling concurrent hearings on approval of the disclosure
26 statement and confirmation of the second amended joint plan of reorganization).
27
28

1 hearing will benefit all parties in interest by promoting judicial economy, the expedient
2 reorganization of the Debtor, hastening creditor recoveries and ensuring that the Debtor's
3 business will continue to be managed without interruption.

4 19. Accordingly, the Debtor respectfully requests that the Court schedule a combined
5 hearing for final approval of the Disclosure Statement and confirmation of the Plan (the
6 “**Combined Hearing**”) in accordance with sections 105(d) and 1128(a) of the Bankruptcy Code,
7 Bankruptcy Rule 3017(c), and Local Rule 3017, and subject to the Court's availability, on a date
8 approximately forty (45) days after the Court signs the proposed order approving this Motion and
9 conditionally approving the Disclosure Statement.

10 20. Although the standard notice period for approval of a disclosure statement and
11 confirmation of a plan under Rule 2002(b) as noted above is 28 days, a court may reduce this
12 time period upon a showing of cause. *See* Fed. R. Bankr. P. 2002, 3017 and 9006.

13 Any such showing should not only demonstrate the need for greater haste
14 but also that no prejudice to parties in interest will result. . . . [I]f there are
15 few impaired creditors or if the impaired creditors are sophisticated and
16 well informed concerning the case, the reduction of the notice period
would be more acceptable.

17 9 COLLIER ON BANKRUPTCY ¶ 3017.01[2] (16th ed.). Absent objection and depending on the
18 circumstances, “an actual hearing [on adequacy of disclosure] need not occur or may be much
19 abbreviated.” *Id.* at ¶ 3017.01[4]; see, 11 U.S.C. 102(1). “The court may also select the time for
20 the confirmation hearing before it approves the disclosure statement.” 9 COLLIER ON
21 BANKRUPTCY ¶ 3017.01[4] (16th ed.), *citing* Fed. R. Bankr. P. 3017(b).

22 21. The Debtor, therefore, requests that the Court enter an order conditionally
23 approving the Disclosure Statement, and approving the following:

24 a. pursuant to Bankruptcy Rule 3017(c), setting fourteen (14) days prior to
25 the Combined Hearing as the date by which all votes to accept or reject the Plan must be
26 submitted and actually received by the Solicitation and tabulation Agent (the “**Voting**
27 **Deadline**”);

28 b. fixing fourteen (14) days prior to the Combined Hearing at 5:00 p.m.

1 Pacific Time as the date by which objections to the Disclosure Statement and Plan must
2 be actually filed and received by the parties identified in paragraph 21, *infra* (the
3 “**Confirmation Objection Deadline**”);

4 c. pursuant to section 1128(a) of the Bankruptcy Code and Bankruptcy Rule
5 3017(c), scheduling the Combined Hearing on or about forty (40) days from the date of
6 conditional approval of the Disclosure Statement;

7 d. approving the form of ballots for accepting or rejecting the Plan in
8 substantially the form attached hereto collectively as **Exhibit A**;

9 e. pursuant to Bankruptcy Rule 3018(a), approving the Voting Procedures
10 (as hereinafter defined);

11 f. approving the notice of the Combined Hearing in substantially the forms
12 attached hereto as **Exhibit B** and **Exhibit C**; and

13 g. approving the form or order conditionally approving the Disclosure
14 Statement and setting confirmation hearing in substantially the form attached hereto as
15 **Exhibit E**.

16 22. The proposed schedule above will facilitate consummation of the transactions
17 contemplated by the Plan and the proposed Disclosure Statement. Specifically, the Plan
18 contemplates sale of Restaurant Assets to Coast to Coast (or the highest bidder) pursuant to an
19 Asset Purchase Agreement that contemplates a closing date of February 23, 2018. The
20 conditional approval process is necessary to effectuate the sale to the benefit of the estate and the
21 proposed schedule should allow for adhering to the contemplated deadlines. Setting a schedule
22 as proposed will maximize recoveries for the benefit of all creditors by, among other things,
23 reducing the administrative expenses of these the Debtor’s Chapter 11 case. Additionally, the
24 proposed schedule affords parties in interest ample notice of the proceedings relating to
25 confirmation of the Plan.

26 23. The Debtor also requests that the Court require that any objections to the
27 Disclosure Statement and confirmation of the Plan be in writing and (a) state the name and
28 address of the objecting party and the nature of the claim or interest of such party, (b) state with

1 particularity the basis and nature of any objection or proposed modification, and (c) be filed,
2 together with proof of service, with the Court and served so as to be actually received no later
3 than the Confirmation Objection Deadline on the following:

4 ZACHARIAH LARSON, ESQ.
5 LARSON, ZIRZOW & KAPLAN, LLC
6 850 E. Bonneville Ave.
7 Las Vegas, Nevada 89101
8 Proposed Attorneys for the Debtor

8 24. The proposed timing of service of objections to the Plan will afford parties
9 sufficient time to file and serve a reply to such objections, if any, and to prepare adequately for
10 the Confirmation Hearing.

11 **C. Proposed Solicitation and Voting Procedures**

12 **1. Record Date For The Holders Of Claims And Equity Interests**

13 25. Bankruptcy Rule 3017(d) provides that, for the purposes of transmission of a
14 disclosure statement and a plan of reorganization, “creditors and equity security holders shall
15 include holders of stock, bonds, debentures, notes and other securities of record at the date the
16 order approving the disclosure statement is entered.” Sufficient time exists here for LZK to mail
17 the Solicitation Package (as defined below) to creditors and parties of interest. The use of the
18 record date set forth in Bankruptcy Rule 3017(d) is for transmission purposes only and shall have
19 no preclusive effect with regard to who is entitled to receive distributions under the Plan.

20 **2. The Proposed Form of Ballots**

21 Bankruptcy Rule 3018(c) provides, in relevant part, as follows:

22 *Form of Acceptance or Rejection.* An acceptance or rejection shall be
23 in writing, identify the plan or plans accepted or rejected, be signed
24 by the creditor or equity security holder or authorized agent, and
25 conform to the appropriate official form.

26 26. Bankruptcy Rule 3017(a) provides that ballots for accepting or rejecting the Plan
27 should conform substantially to Official Form No. 14. The Debtor proposes to use the form of
28 ballots for accepting or rejecting the Plan in substantially the forms attached hereto collectively

1 as **Exhibit A** (the “**Ballots**”). The Ballots are based upon Official Form No. 14, but have been
2 modified in order to provide clear instructions to the Debtor’s creditors as to voting procedures,
3 the vote tabulation process and the effects of casting a particular Ballot. Highlighting this
4 important information by placing it on the Ballots will facilitate the voting process for the
5 Debtor’s creditors, especially the Debtor’s deeds of trust holders. Debtor submits that these
6 slight modifications are required in order to ensure the accuracy, completeness and timeliness of
7 voting on the Plan.

8 **3. The Proposed Voting Procedures**

9 27. The Debtor requests that the Court enter an order (i) approving, *inter alia*, its
10 proposed ballot solicitation and tabulation procedures (the “**Voting Procedures**”) and (ii) fixing
11 the Record Date as the date of approval of the Disclosure Statement. The Voting Procedures will
12 enable Debtor to conduct an effective solicitation of acceptances or rejections of the Plan that is
13 consistent with the requirements of the Bankruptcy Code, the Bankruptcy Rules and due process.

14 28. Bankruptcy Rule 3017(d) sets forth the materials that must be provided to holders
15 of claims and equity interests for purposes of soliciting their votes and providing adequate notice
16 of the hearing on confirmation of a plan of reorganization. Specifically, Bankruptcy Rule
17 3017(d) provides that, upon approval of a disclosure statement, a debtor:

18 [s]hall mail to all creditors and equity security holders and, in a
19 chapter 11 reorganization case, shall transmit to the United States
20 Trustee:

- 21 (1) the plan, or a court approved summary of the plan;
22 (2) the disclosure statement approved by the court;
23 (3) notice of the time within which acceptances and rejections of such
24 plan may be filed; and
25 (4) such other information as the court may direct, including any
26 opinion of the court approving the disclosure statement or a court
27 approved summary of the opinion.

28 In addition, notice of the time fixed for filing objections and the
hearing on confirmation shall be mailed to all creditors and equity
security holders pursuant to Rule 2002(b), and a form of ballot

1 conforming to the appropriate Official Form shall be mailed to
2 creditors' and equity security holders entitled to vote on the plan.

3 29. The Debtor proposes that, upon approval of the proposed Disclosure Statement,
4 the following solicitation materials (collectively, a "**Solicitation Package**") be distributed to (a)
5 each holder of a Claim (as such term is defined in the Bankruptcy Code) in an impaired class that
6 is (i) listed in the Debtor's schedules (the "**Schedules**") as of the date of the hearing on this
7 Motion as liquidated, undisputed and not contingent; (ii) represented by a timely filed proof of
8 claim against the Debtor and that is not the subject of an objection (which must be filed and
9 served by the Debtor at least ten (10) days prior to the Voting Deadline); or (iii) listed in the
10 Schedules or represented by a timely filed proof of claim as unliquidated, disputed and
11 contingent and that is not the subject of an objection (which must be filed and served by the
12 Debtor at least ten (10) days prior to the Voting Deadline); and (b) each party to the Debtor's
13 executory contracts and unexpired leases, as listed on Schedule G of the Schedules:

- 14 a. the Plan;
- 15 b. the Disclosure Statement;
- 16 c. the Disclosure Statement Order;
- 17 d. notice of conditional approval of the Disclosure Statement and the dates
18 fixed by the Court as the Voting Deadline, the Confirmation Objection Deadline, the
19 Record Date, and the scheduling of the Confirmation Hearing, in substantially the form
20 of the Confirmation Hearing Notice attached hereto as **Exhibit B** (the "**Confirmation
21 Notice**");
- 22 e. appropriate Ballots and voting instructions; and
- 23 f. a pre-addressed return envelope for each Ballot.

24 30. Pursuant to section 1126(f) of the Bankruptcy Code, entities that are unimpaired
25 under the Plan are deemed to have accepted the Plan and are not entitled to vote on the Plan.
26 Instead of sending a complete Solicitation Package to each of such entities, Debtor proposes to
27 transmit to such entities a notice, in the form attached hereto as **Exhibit C** (the "**Unimpaired
28 Class Notice**"). Debtor submits that the Unimpaired Class Notice complies with the
requirements of Bankruptcy Rule 3017(d) and should be approved.

1 31. In addition, Debtor proposes the following additional procedures with respect to
2 the solicitation of votes on the Plan:

3 • Return of Ballots:

4 Each claimant that has a Claim for which a Claim amount may be determined and
5 which Claim is not treated as unimpaired under the Plan as of the Voting Deadline
6 is entitled to vote to accept or reject the Plan. All Ballots must be *actually*
7 *received* by LZK by the Voting Deadline; and

8 • Parties in interest who have timely filed objections to the Plan, or in resolution of
9 any motions for relief from stay or motions to value collateral, may also vote
10 through the date of confirmation.

11 • Tabulation Agent and Solicitation Agent:

12 Debtor will be using LZK for purposes of distributing Solicitation Packages and
13 tabulating votes on the Plan. LZK is the entity that will be responsible for the
14 distribution of Solicitation Packages to, and tabulation of Ballots received from,
15 all entities. In addition, LZK will field all inquiries on the Plan, the Disclosure
16 Statement, and the Voting Procedures.

17 **D. The Proposed Procedures for Vote Tabulation**

18 32. For purposes of voting, the Debtor proposes that the amount of a Claim used to
19 tabulate the acceptance or rejection of the Plan will be as follows, in order of priority:

20 a. If, prior to the Voting Deadline, (i) the Court enters an order fully or
21 partially allowing a Claim, whether for all purposes or for voting purposes only, or (ii)
22 the Debtor and the holder of a Claim agree to fully or partially allow such Claim for
23 voting purposes only and no objection to such allowance is received by the Debtor within
24 seven (7) days after service by first class mail of notice of such agreement to the entities
25 having filed a notice of appearance in the Debtor's Chapter 11 Case, the amount allowed
26 thereunder;

27 b. The liquidated amount specified in a proof of claim filed by the Record
28 Date, so long as such proof of claim has not been expunged, disallowed, disqualified or
suspended by the Court;

c. The Claim amount listed in the Debtor's Schedules as liquidated,
undisputed, and not contingent;

d. With respect to the Debtor's lenders, such Claim amounts as set forth in

1 the Court's orders valuing such Claims in accordance with section 506(a) of the
2 Bankruptcy Code; and

3 e. If the Debtor served an objection to a Claim at least ten (10) days before
4 the Voting Deadline, such Claim shall be temporarily disallowed for voting purposes
5 only and not for purposes of disallowance of distribution, except to the extent and in the
6 manner as the Court may order pursuant to Bankruptcy Rule 3018(a).

7 33. The Debtor proposes that if any claimant seeks to challenge allowance or
8 disallowance of its Claim for voting purposes, that such entity is directed to serve on the Debtor,
9 and file with the Court, a motion for an order pursuant to Bankruptcy Rule 3018(a) temporarily
10 allowing such Claim only for purposes of voting to accept or reject the Plan, provided such
11 motion is filed on or before the tenth (10th) calendar day after the later of (i) service of the
12 Confirmation Hearing Notice and (ii) service of notice of an objection to such Claim, if any.
13 Such claimant's Ballot shall not be counted unless temporarily allowed by the Court for voting
14 purposes after notice and a hearing in accordance with Bankruptcy Rule 3018(a).

15 34. In addition, the Debtor requests that the Court enter an order establishing the
16 following procedures regarding the tabulation of votes cast with respect to the Plan:

17 a. A vote may be disregarded if the Court determines, after notice and a
18 hearing, that a vote was not solicited or procured in good faith or in accordance with the
19 provisions of the Bankruptcy Code;

20 b. A holder of Claims in more than one class must use separate Ballots for
21 each class of Claims;

22 c. If multiple Ballots are received for a holder of Claims, the last Ballot
23 received from such holder prior to the Voting Deadline will be the Ballot that is counted;

24 d. If multiple Ballots are received from different holders purporting to hold
25 the same Claim, in the absence of contrary information establishing which claimant held
26 such Claim as of the Voting Deadline, the latest-dated Ballot that is received prior to the
27 Voting Deadline will be the Ballot that is counted;

28 e. If multiple Ballots are received from a holder of a Claim and someone

1 purporting to be his, her or its attorney or agent, the Ballot received from the holder of
2 the Claim will be the Ballot that is counted, and the vote of the purported attorney or
3 agent will not be counted;

4 f. A Ballot must be signed in order for the vote to be counted;

5 ...

6 ...

7 g. A Ballot may be cast at the Confirmation Hearing in resolution of (A) an
8 objection to confirmation, (B) motion for relief from stay or (C) motion to value
9 collateral; and

10 h. For the purpose of voting on the Plan, LZK will be deemed to be in
11 constructive receipt of any Ballot timely delivered to any address that LZK designates for
12 the receipt of Ballots cast on the Plan.

13 35. The Debtor further requests that the order entered by the Court provide that any
14 entity entitled to vote to accept or reject the Plan may change its vote before the Voting Deadline
15 by casting a superseding Ballot so that the superseding Ballot is received by LZK on or before
16 the Voting Deadline. Entities desiring to change their votes after the Voting Deadline may do so
17 only with approval of the Court for “cause” pursuant to Bankruptcy Rule 3018(a) by filing a
18 motion with the Court on or before the Confirmation Objection Deadline so that it may be heard
19 and considered at the Confirmation Hearing.

20 36. The proposed Voting Procedures are solely for purposes of voting to accept or
21 reject the Plan and not for the purpose of the allowance of or distribution on account of a Claim,
22 and the Voting Procedures are without prejudice to the rights of the Debtor or any other party in
23 interest in any other context to dispute any unresolved Claim. Debtor believes that the proposed
24 Voting Procedures provide for a fair and equitable voting process.

25 37. Debtor believes that the foregoing proposed procedures embody an orderly and
26 logical method for soliciting and tabulating the Ballots of those parties entitled to vote as is
27 contemplated by the Bankruptcy Code and Bankruptcy Rules.

28 **E. Approval of Bid Procedures for the Debtor’s Restaurant Assets.**

1 38. The Debtor proposes to follow, and once approved by this Court, be bound by that
2 certain Notice of Auction and Sale and Bid Procedures (the “**Bid Procedures**”), attached hereto
3 as **Exhibit D**. The Debtor believes that the adoption of the Bid Procedures will provide
4 interested parties with the opportunity to formulate bids for the Debtor’s restaurant assets (the
5 “**Restaurant Assets**”) and will facilitate the solicitation, submission and evaluation of significant
6 bids for the Restaurant Assets in a manner that will maximize the value of the Restaurant Assets
7 for the Debtor’s estate.

8 39. The Bid Procedures constitute a reasonable and effective method of maximizing a
9 return on the Restaurant Assets through a competitive sale process in an orderly but expedited
10 manner. The Bid Procedures fully describe, among other things, the Restaurant Assets to be
11 auctioned, the manner in which prospective bidders may obtain information regarding the
12 Debtor’s business and Restaurant Assets, the manner in which bidders and bids become qualified
13 bidders and qualified bids, respectively, the receipt and negotiation of bids received, the ultimate
14 selection of the highest and best bid, and the Bankruptcy Court’s approval thereof, among other
15 aspects of the auction process.

16 40. The Debtor believes the Bid Procedures discussed herein and attached hereto are
17 appropriate under the circumstances of this Chapter 11 case, provide adequate notice to third
18 parties and will maximize the recovery for the Debtor and its estate. The Bid Procedures provide
19 the appropriate framework for selling the Assets in an orderly and expedited fashion, and will
20 enable the Debtor to review, analyze and compare all bids to determine which bid is in the best
21 interests of the Debtor and its bankruptcy estate. The Debtor intends for the Bid Procedures to
22 control the auction process, subject to the interpretation or application of the Bid Procedures by
23 the Bankruptcy Court in the event of a dispute.

24 41. Under the Bid Procedures, only qualified bidders (the “**Qualified Bidders**”) may
25 submit bids for the Restaurant Assets or otherwise participate in the auction and sale. Qualified
26 Bidders are those entities who: (i) deliver to the Debtor the potential bidder’s financial
27 disclosures, acceptable to, and requested by, the Debtor, which information shall demonstrate the
28 financial capability of the potential bidder to purchase the Assets; (ii) provide evidence that the

1 bidder has the necessary internal authorizations and approvals necessary to engage in the
2 transaction without the consent of any entity that has not already been obtained; and (iii) deliver
3 a cashier's check made payable to LZK, or cash in the amount of \$100,000, all of which is more
4 aptly described in the Bid Procedures attached as **Exhibit D**.

5 42. Within two (2) business days of each potential bidder's delivery of all of the
6 material required in the immediately preceding paragraph, LZK will notify such potential bidder
7 in writing as to whether such potential bidder shall be considered a Qualified Bidder. Any
8 Qualified Bidder who desires to make a competing offer for Assets must submit a written copy
9 of its bid to the undersigned counsel for the Debtor upon the timeframes set forth in the Bid
10 Procedures.

11 The Sale Hearing.

12 43. The Debtor requests that the Court establish the deadline by which all Qualified
13 Bidders must submit bids so as to be actually received by the parties specified in the Bid
14 Procedures at least fourteen (14) days prior to the sale hearing (the "**Bid Deadline**").

15 44. The Debtor also requests that the Sale Hearing take place before this Court the
16 same time as the Confirmation Hearing. At the Sale Hearing, the Debtor will auction off its
17 Restaurant Assets and request entry of the Sale Order authorizing and approving the sale of the
18 Restaurant Assets to the Winning Bidder.

19 **The Court Has Authority to Approve the Bid Procedures.**

20 45. Section 363(b) of the Bankruptcy Code provides that a debtor in possession,
21 "after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business,
22 property of the estate." 11 U.S.C. § 363(b). A proposed use or sale of property pursuant to
23 section 363(b) is appropriate if "some articulated business justification" exists for the
24 transaction. *Walter v. Sunwest Bank (In re Walter)*, 83 B.R. 14, 19-20 (B.A.P. 9th Cir. 1988),
25 quoting *Institutional Creditors of Continental Air Lines, Inc. v. Continental Air Lines, Inc. (In re*
26 *Continental Air Lines, Inc.)*, 780 F.2d 1223, 1226 (6th Cir. 1986). The Debtors seek approval of
27 the Bid Procedures as a means to maximize the value of the Assets for its bankruptcy estate.
28

1 46. The paramount goal in any proposed sale of property of the estate is to maximize
2 the proceeds received by the estate. See *Four B. Corp. v. Food Barn Stores, Inc.* (In re Food
3 Barn Stores, Inc.), 107 F.3d 558, 564-65 (8th Cir. 1997) (“a primary objective of the Code [is] to
4 enhance the value of the estate at hand.”). Applying Bankruptcy Code section 363, bankruptcy
5 courts frequently consider and approve auction and bidding procedures in advance of a proposed
6 sale of property of the estate. *Doehring v. Crown Corp.* (In re Crown Corp.), 679 F.2e 774, 775
7 (9th Cir. 1982) (noting that the district court had required specified minimum overbid amounts,
8 deposits, and the form of purchase agreement to be used by bidders); *In re Crowthers McCall*
9 *Pattern, Inc.*, 114 B.R. 877, 879 (Bankr. S.D.N.Y. 1990) (noting that the bankruptcy court had
10 entered an order requiring that overbids be made in specified minimum increments with
11 deposits).

12 47. To that end, courts recognize that establishing Bid Procedures in advance of a sale
13 hearing itself often facilitates the process and the debtor’s ability to increase the value ultimately
14 realized by the estate through: (i) creating a well-defined and orderly forum in which potential
15 bidders are provided a fair opportunity to submit competing offers; (ii) ensuring fair
16 comparability among the competing bids received; and (iii) encouraging the originally proposed
17 purchaser to proceed with its proposed transaction by granting certain protections against the risk
18 that party would otherwise bear in its entirety by having its offer exposed to overbids. *In re Fin.*
19 *News Network, Inc.*, 126 B.R. 152, 156 (S.D.N.Y. 1991).

20 48. Additionally, courts make clear that the debtor’s business judgment is entitled to
21 great deference with respect to procedures to be used in selling assets of the estate. *Official*
22 *Comm. Of Subordinated Bondholders v. Integrated Res., Inc.* (In re *Integrated Res., Inc.*), 147
23 B.R. 650, 656-57 (S.D.N.Y. 1992) (noting that overbid procedures negotiated by the debtor in
24 possession are to be reviewed according to the deferential “business judgment” standard, under
25 which such procedures and arrangements are “presumptively valid”). A debtor should be
26 authorized to sell assets out of the ordinary course of business pursuant to Bankruptcy Code
27 section 363 if it demonstrates a sound business purpose for doing so. See *In re Fed. Mogul*
28 *Global, Inc.*, 293 B.R. 124, 126 (D. Del. 2003) (finding that “a court should approve a debtor’s

1 use of assets outside the ordinary course of business if the debtor can demonstrate a sound
2 business justification for the proposed transaction”).

3 49. Here, the Debtor’s main motivation is to receive the greatest potential value for its
4 Restaurant Assets, and the Bid Procedures are designed specifically to achieve that goal. Indeed,
5 the Debtor believes that the Bid Procedures proposed with this Motion balance the Debtor’s need
6 to have a swift sale process while also promoting a diligence and bidding environment that will
7 yield the highest and best offer that the market can provide for the Debtor’s Restaurant Assets.

8 **F. Notice**

9 50. As outlined above, the Debtor provided notice, pursuant to Bankruptcy Rule
10 3017(a), of the hearing to consider approval of the proposed Disclosure Statement by first class
11 mail to: (a) the Office of the United States Trustee; (b) the Internal Revenue Service; (c) all
12 creditors that either (i) timely filed a proof of claim, or (ii) were scheduled by the Debtor as
13 undisputed, liquidated and not contingent; and (d) all persons or entities that have filed a notice
14 of appearance in this Chapter 11 Case pursuant to Bankruptcy Rule 2002(b).

15 51. It is anticipated that some of the Disclosure Statement Notices may be returned by
16 the United States Postal Service as undeliverable. It would be costly and wasteful to mail
17 Solicitation Packages to the same addresses as to which Disclosure Statement Notices were
18 returned as undeliverable. Therefore, authority is requested to dispense with the mailing of
19 Solicitation Packages to the entities listed at such addresses, unless the Debtor or LZK are
20 provided with a more accurate address prior to the hearing to consider approval of the proposed
21 Disclosure Statement.

22 52. The relief sought herein is necessary to the efficient prosecution of the Debtor’s
23 Chapter 11 Case and the Chapter 11 Plan process, while providing adequate notice to, and
24 otherwise protecting the rights of, the Debtor’s creditors and other parties in interest in the
25 Debtor’s Chapter 11 Case.
26
27
28

1 WHEREFORE, the Debtor respectfully requests the Court enter an order granting the
2 relief requested herein and granting to Debtor such other and further relief as is just or proper.

3 Dated this 20th day of November, 2017.

4 By: /s/ Shara L. Larson
5 LARSON ZIRZOW & KAPLAN, LLC
6 ZACHARIAH LARSON, ESQ.
7 MATTHEW C. ZIRZOW, ESQ.
8 SHARA L. LARSON, ESQ.
9 850 E. Bonneville Ave.
10 Las Vegas, Nevada 89101
11 Tel: (702) 382-1170
12 Fax: (702) 382-1169
13 Proposed Attorneys for the Debtor
14
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EXHIBIT A

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

CM EBAR, LLC,

Debtor.

Case No.: 17-15530-ABL

Chapter 11

**BALLOT FOR ACCEPTING OR REJECTING PLAN OF REORGANIZATION
FOR CM EBAR, LLC DATED NOVEMBER __, 2017**

CLASS __ : CLAIMS OF _____

PLEASE READ BOTH SIDES OF THIS BALLOT BEFORE COMPLETING. PLEASE COMPLETE, DATE AND SIGN, AND RETURN THIS BALLOT TO LARSON, ZIRZOW & KAPLAN ON OR BEFORE _____, 2017, AT 5:00 P.M. PACIFIC TIME

Item 1: Voting Classification and Amount. The undersigned is a holder of Class __ – _____ Claims (as defined in the Plan) against the Debtor as set forth below:

\$_____. Amount of Unsecured Claim in Class __ for voting purposes.

Item 2: Vote. The undersigned votes all of its Class __ claims as set forth in Item 1 above to (Check one box):

Accept the Plan or **Reject the Plan**

Name of Creditor: _____
(Print or Type)

By: _____
(Signature of Creditor or Authorized Agent)

Print Name of Signatory: _____

Title: _____
(If Appropriate)

Street Address: _____

(City, State and Zip Code)

Telephone Number: (____) _____

(Social Security or Federal Tax I.D. No.)

Date Completed: _____

PLEASE READ THE FOLLOWING BEFORE COMPLETING YOUR BALLOT

This Ballot is submitted to you to solicit your vote to accept the Plan of Reorganization (the “**Plan**”) proposed by SBR, LLC on behalf of CM EBAR, LLC (the “**Debtor**”) which is described in the Disclosure Statement in support of the Plan dated **November __, 2017** (the “**Disclosure Statement**”). A copy of the Plan is attached as Exhibit “A” to the Disclosure Statement. The United States Bankruptcy Court for the District of Nevada (the “**Bankruptcy Court**”), on _____, 2017, conditionally approved the Disclosure Statement. The Disclosure Statement provides information to assist you in deciding whether to accept or reject the Plan. A copy of the Disclosure Statement is enclosed with this Ballot. If you do not have a copy of the Disclosure Statement, you may obtain a copy from the Solicitation and Tabulation Agent, Larson, Zirzow & Kaplan, LLC, at 850 E. Bonneville Ave., Las Vegas, Nevada 89101, Attn: Zachariah Larson, Esq., Telephone No. (702) 382-1170. Facsimile: (702) 382-1169.

Please complete, sign and date this Ballot. Return this Ballot to Larson, Zirzow & Kaplan, LLC, at 850 E. Bonneville Ave., Las Vegas, Nevada 89101, Attn: CM EBAR, LLC Balloting Agent, Telephone No. (702) 382-1170. Facsimile: (702) 382-1169. **If your Ballot is not ACTUALLY RECEIVED by 5:00 p.m., Pacific Time, on _____, 2017 it will not be counted.**

By signing this Ballot, you make the following certifications:

- “I have been provided with a copy of the Disclosure Statement and the exhibits thereto.”
- “I have the full power and authority to vote to accept or reject the Plan on behalf of the claimant listed on the reverse side.”

The Plan can be confirmed by the Bankruptcy Court and thereby made binding on you if it is accepted by the holders of two-thirds in amount and more than one-half in number of claims in each class voting on the Plan. In the event the requisite acceptances are not obtained, the Bankruptcy Court may nevertheless confirm the Plan if the Bankruptcy Court finds that the Plan accords fair and equitable treatment to the class or classes rejecting it and otherwise satisfies the requirements of section 1129 of the Bankruptcy Code. **To have your vote count you must complete and return this Ballot by 5:00 p.m., Pacific Time, on _____ 2017. Unsigned Ballots will not be counted.**

This Ballot is for voting purposes only and does not constitute and shall not be deemed a proof of claim or interest or an admission by the Debtor of the validity of a claim or interest.

PLEASE CALL LARSON, ZIRZOW & KAPLAN AT (702) 382-1170 IF YOU HAVE RECEIVED A DAMAGED BALLOT OR LOST YOUR BALLOT OR PLEASE CALL ZACHARIAH LARSON, ESQ., AT (702) 382-1170 IF YOU HAVE ANY QUESTIONS ABOUT EXECUTING THIS BALLOT, THE VOTING PROCEDURES OR THE PLAN.

EXHIBIT B

EXHIBIT B

1 LARSON ZIRZOW & KAPLAN, LLC
 2 ZACHARIAH LARSON, ESQ.
 Nevada Bar No. 7787
 E-mail: zlarson@lzklegal.com
 3 MATTHEW C. ZIRZOW, ESQ.
 Nevada Bar No. 7222
 E-mail: mzirzow@lzklegal.com
 5 SHARA L. LARSON, ESQ.
 Nevada Bar No. 7786
 E-mail: slarson@lzklegal.com
 7 850 E. Bonneville Ave.
 Las Vegas, Nevada 89101
 8 Tel: (702) 382-1170
 Fax: (702) 382-1169
 9 Proposed Attorneys for the Debtor

10 **UNITED STATES BANKRUPTCY COURT**
 11 **DISTRICT OF NEVADA**

12 In re: 13 CM EBAR, LLC, 14 Debtor.	Case No.: 17-15530-ABL Chapter 11 Hearing Date: Hearing Time:
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17 **NOTICE OF (A) SOLICITATION OF VOTES TO ACCEPT**
 18 **OR REJECT THE CHAPTER 11 PLAN OF REORGANIZATION**
 19 **OF CM EBAR, LLC, (B) THE HEARING TO CONSIDER FINAL**
 20 **APPROVAL OF THE DISCLOSURE STATEMENT AND CONFIRMATION**
 21 **OF THE CHAPTER 11 PLAN OF REORGANIZATION, AND (C) DEADLINE**
 22 **FOR FILING OBJECTIONS TO THE CHAPTER 11 PLAN OF REORGANIZATION**

23 TO ALL CREDITORS, EQUITY SECURITY HOLDERS AND PARTIES IN INTEREST:

24 NOTICE IS HEREBY GIVEN that on _____, 2017, the United States Bankruptcy
 25 Court for the District of Nevada (the “**Court**”) conditionally approved (the “**Order**”) the
 26 Disclosure Statement (the “**Disclosure Statement**”) with respect to the Chapter 11 Plan of
 27 Reorganization, dated _____, 2017 (the “**Plan**”), for CM EBAR, LLC (the “**Debtor**”).
 Pursuant to the Order, copies of the Plan and Disclosure Statement have been mailed to all
 known holders of impaired claims against the Debtor. If you are a creditor of the Debtor and
 have not received a copy of the Plan, the Disclosure Statement, or, if applicable, a ballot, you
 may obtain a copy of the same by request to the Debtor’s solicitation and tabulation agent,
 Larson Zirzow & Kaplan at (702) 382-1170.

1 NOTICE IS FURTHER GIVEN that the Court has fixed _____, 2017, at 1:30
2 p.m. (Pacific Time) as the date and time for the hearing to consider final approval of the
3 Disclosure Statement and confirmation of the Plan and related matters (the “**Confirmation**
4 **Hearing**”). The Confirmation Hearing will be held before the Honorable August B. Landis,
5 United States Bankruptcy Judge, in the United States Bankruptcy Court, Foley Federal Building,
300 Las Vegas Boulevard South, Las Vegas, Nevada 89101. The Confirmation Hearing may be
adjourned from time to time without further notice other than announcement made at the
Confirmation Hearing or any adjourned hearing.

6 NOTICE IS FURTHER GIVEN that pursuant to Local Rule 3019, at the hearing on
7 confirmation of a chapter 11 plan, the court may consider modifications to the plan, which may
8 be incorporated in the order confirming the plan. Any notice of confirmation hearing under Fed.
R. Bankr. P. 2002(b)(2) must include notice that modifications may be considered.

9 NOTICE IS FURTHER GIVEN that objections, if any, to final approval of the
10 Disclosure Statement or confirmation of the Plan must be in writing, and must (a) state the name
11 and address of the objecting party and the nature and amount of the claim or interest of such
12 party, (b) state with particularity the basis and nature of each objection to confirmation of the
13 Plan, and (c) be filed, together with proof of service, with the Court and served so that they are
14 received no later than _____, by the following parties: (i) Larson, Zirzow &
Kaplan, Attorneys for the Debtor and Debtor in Possession, 850 E. Bonneville Ave., Las Vegas,
Nevada 89101, Attention: Zachariah Larson, Esq. and (ii) The Office of the United States
Trustee, 300 Las Vegas Boulevard South, Las Vegas, Nevada 89101.

15 Dated this _____ day of _____, 2017.

16 By: /s/
17 LARSON ZIRZOW & KAPLAN, LLC
18 ZACHARIAH LARSON, ESQ.
19 MATTHEW C. ZIRZOW, ESQ.
20 SHARA L. LARSON, ESQ.
21 850 E. Bonneville Ave.
22 Las Vegas, Nevada 89101
23 Tel: (702) 382-1170
24 Fax: (702) 382-1169
25 Proposed Attorneys for the Debtor
26
27
28

EXHIBIT C

EXHIBIT C

1 LARSON ZIRZOW & KAPLAN, LLC
 2 ZACHARIAH LARSON, ESQ.
 Nevada Bar No. 7787
 E-mail: zlarson@lzklegal.com
 3 MATTHEW C. ZIRZOW, ESQ.
 Nevada Bar No. 7222
 E-mail: mzirzow@lzklegal.com
 5 SHARA L. LARSON, ESQ.
 Nevada Bar No. 7786
 E-mail: slarson@lzklegal.com
 7 850 E. Bonneville Ave.
 Las Vegas, Nevada 89101
 8 Tel: (702) 382-1170
 Fax: (702) 382-1169
 9 Proposed Attorneys for the Debtor

10 **UNITED STATES BANKRUPTCY COURT**
 11 **DISTRICT OF NEVADA**

12 In re: 13 CM EBAR, LLC, 14 15 Debtor.	Case No.: 17-15530-ABL Chapter 11 Hearing Date: Hearing Time:
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16
 17 **NOTICE OF (A) SOLICITATION OF VOTES TO ACCEPT OR REJECT THE**
 18 **CHAPTER 11 PLAN OF REORGANIZATION OF CM EBAR, LLC, (B) THE HEARING**
 19 **TO CONSIDER FINAL APPROVAL OF THE DISCLOSURE STATEMENT**
 20 **AND CONFIRMATION OF THE CHAPTER 11 PLAN OF REORGANIZATION,**
 21 **AND (C) TREATMENT OF UNIMPAIRED CLASSES OF CLAIMS**

22 TO ALL CREDITORS HOLDING CLAIMS THAT ARE UNIMPAIRED UNDER THE PLAN:

23 NOTICE IS HEREBY GIVEN that on _____, 2017, the United States
 24 Bankruptcy Court for the District of Nevada (the “**Court**”) conditionally approving the
 25 Disclosure Statement (the “**Disclosure Statement**”) with respect to the Plan of Reorganization,
 dated _____, 2017 (the “**Plan**”), for CM EBAR, LLC (the “**Debtor**”). Copies of the Plan
 and the Disclosure Statement are available upon request to the Debtor’s solicitation and
 tabulation agent, Larson, Zirzow & Kaplan, 850 E. Bonneville Ave., Las Vegas, Nevada 89101,
 Attn: CM EBAR, LLC Balloting Agent, Telephone No. (702) 382-1170.

26 NOTICE IS FURTHER GIVEN that under the terms of the Plan, your claim against the
 27 Debtor is not impaired pursuant to section 1124 of the Bankruptcy Code and, therefore, pursuant
 28

1 to section 1126(f) of the Bankruptcy Code, you are (i) deemed to have accepted the Plan, and (ii)
2 not entitled to vote on the Plan. If you have any questions regarding the status of your claim, you
3 should contact the Debtor's solicitation and tabulation agent, Larson, Zirzow & Kaplan, , 850 E.
4 Bonneville Ave., Las Vegas, Nevada 89101, Attn: CM EBAR, LLC Balloting Agent, Telephone
5 No. (702) 382-1170.

6 NOTICE IS FURTHER GIVEN that the Court has fixed _____, **2018**, at **1:30**
7 **p.m.** (Pacific Time) as the date and time for the hearing to consider final approval of the
8 Disclosure Statement and confirmation of the Plan and related matters (the "**Confirmation**
9 **Hearing**"). The Confirmation Hearing will be held before the Honorable August B. Landis,
10 United States Bankruptcy Judge, in the United States Bankruptcy Court, Foley Federal Building,
11 300 Las Vegas Boulevard South, Las Vegas, Nevada 89101. The Confirmation Hearing may be
12 adjourned from time to time without further notice other than announcement made at the
13 Confirmation Hearing or any adjourned hearing.

14 NOTICE IS FURTHER GIVEN that pursuant to Local Rule 3019, at the hearing on
15 confirmation of a chapter 11 plan, the court may consider modifications to the plan, which may
16 be incorporated in the order confirming the plan. Any notice of confirmation hearing under Fed.
17 R. Bankr. P. 2002(b)(2) must include notice that modifications may be considered.

18 Dated this _____ day of _____, 2017.

19 By: /s/
20 LARSON ZIRZOW & KAPLAN, LLC
21 ZACHARIAH LARSON, ESQ.
22 MATTHEW C. ZIRZOW, ESQ.
23 SHARA L. LARSON, ESQ.
24 850 E. Bonneville Ave.
25 Las Vegas, Nevada 89101
26 Tel: (702) 382-1170
27 Fax: (702) 382-1169
28 Proposed Attorneys for the Debtor

EXHIBIT D

EXHIBIT D

1 LARSON ZIRZOW & KAPLAN, LLC
 2 ZACHARIAH LARSON, ESQ.
 Nevada Bar No. 7787
 E-mail: zlarson@lzklegal.com
 3 MATTHEW C. ZIRZOW, ESQ.
 Nevada Bar No. 7222
 E-mail: mzirzow@lzklegal.com
 5 SHARA L. LARSON, ESQ.
 Nevada Bar No. 7786
 6 E-mail: slarson@lzklegal.com
 850 E. Bonneville Ave.
 7 Las Vegas, Nevada 89101
 8 Tel: (702) 382-1170
 Fax: (702) 382-1169
 9 Proposed Attorneys for the Debtor

10 **UNITED STATES BANKRUPTCY COURT**
 11 **DISTRICT OF NEVADA**

12 In re: 13 14 CM EBAR, LLC, 15 16 Debtor.	Case No.: 17-15530-ABL Chapter 11 Hearing Date: Hearing Time:
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17 **NOTICE OF AUCTION AND BID PROCEDURES**

18 **TO: ALL INTERESTED PARTIES, CREDITORS AND TRUSTEES**

19 The Court, the Debtor, the United States Trustee, and all creditors and parties in interest
 20 are hereby given notice of the Auction and Bid Procedures, attached hereto as **Exhibit A**, and
 21 pursuant to the Debtor’s Plan and Disclosure Statement.¹

22
 23 Notice is further given that the Confirmation Hearing will also serve as an auction. The
 24 Confirmation Hearing and Auction will be held before the Honorable United State Bankruptcy
 25

26 _____
 27 ¹ Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to
 28 them in the Debtor’s Plan of Reorganization.

1 Judge August B. Landis, Foley Federal Building, 300 Las Vegas Boulevard South, Las Vegas,
2 Nevada 89101, Courtroom 1, on _____, at _____ **Pacific Time.**

3 Dated this _____ day of _____, 2017.

4
5 By: /s/
6 LARSON ZIRZOW & KAPLAN, LLC
7 ZACHARIAH LARSON, ESQ.
8 MATTHEW C. ZIRZOW, ESQ.
9 SHARA L. LARSON, ESQ.
10 850 E. Bonneville Ave.
11 Las Vegas, Nevada 89101
12 Tel: (702) 382-1170
13 Fax: (702) 382-1169
14 Proposed Attorneys for the Debtor
15
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EXHIBIT A

BIDDING PROCEDURES¹

The following procedures (the “**Bidding Procedures**”) shall govern the submission and proposals to acquire the assets and related restaurant operations (the “**Restaurant Assets**”)² owned by CM Ebar, LLC (the “**Debtor**”), pursuant to the Debtor’s Chapter 11 Plan of Reorganization (the “**Plan**”) to sell its Restaurant Assets, filed by the Debtor on November ____, 2017, in its Chapter 11 bankruptcy case, Case No. 17-15530-ABL, pending before the United States Bankruptcy Court for the District of Nevada (the “**Bankruptcy Court**”). The Restaurant Assets to be sold do not include litigation claims, including the Debtor’s estate causes of action, or releases of any parties.

1. The Transaction. Pursuant to the Motion, the Debtor seeks to sell its Restaurant Assets at the sale hearing (the “**Sale Hearing**”) on _____, 2018, at _____ prevailing Pacific Time. Notwithstanding the foregoing, any proposed transaction respecting the sale of the Debtor’s Restaurant Assets are subject to the prior approval of the Bankruptcy Court and the Bankruptcy Court’s approval of the distribution of proceeds set forth in the Plan. Persons interested in acquiring some or all of the Restaurant Assets of the Debtor must submit a Qualifying Bid (as defined herein) to the Debtor’s counsel by 5:00 p.m., Prevailing Pacific Time, at least fourteen (14) days prior to the Sale Hearing (the “**Initial Bid Deadline**”), unless such date is extended in the sole discretion of the Debtor, which extension shall be afforded to all bidders and potential bidders. The transactions to be implemented pursuant to the Plan are subject to a determination of the Debtor of which Entity or Entities, if any, has submitted the highest and best bid for the Restaurant Assets.

2. Expression of Interest. Any person interested in reviewing information pertaining to the business operations and/or the Restaurant Assets of the Debtor should contact the Debtor’s bankruptcy counsel, Zachariah Larson, Esq. of Larson Zirzow & Kaplan (“**LZK**”), 850 E. Bonneville Ave., Las Vegas, Nevada 89101, telephone (702) 382-1170, facsimile: (702) 382-1169. LZK will forward to such interested parties, within one (1) business day of such request, preliminary information relating to the Debtor’s proposed sale of the Restaurant Assets in order to assist the interested party in ascertaining whether to proceed with making a bid.

3. Bidder Eligibility; Form and Contents of Bids.

¹ Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the Debtor’s Motion.

² The Restaurant Assets do not include any causes of action (including any avoidance actions under Chapter 5 of the Bankruptcy Code or similar state or federal avoidance or fraudulent transfer or avoidance actions against all third parties, all causes of action against insiders, or other related parties), arising in law, equity or otherwise, occurring prior to the Petition Date or during the pendency of the Debtor’s Chapter 11 case.

(a) Any person who desires to bid on the Debtor's Restaurant Assets shall deliver a Qualifying Bid to the Debtor's counsel, LZK. A bid received by the Debtor for the Restaurant Assets of the Debtor shall constitute a "**Qualifying Bid**" if such bid includes the following, in form and substance reasonably satisfactory to the Debtor:

i. a fully executed definitive purchase agreement for the Restaurant Assets which sets forth all material terms and conditions of the proposed acquisition including, without limitation, the Restaurant Assets to be acquired and proposed consideration to be paid by the bidder, and such other terms as the bidder deems appropriate (the "**Definitive Agreement**");

ii. evidence that the bidder has the necessary authorizations and approvals necessary to engage in the transaction without the consent of any entity that has not already been obtained;

iii. a cashier's check made payable to the Debtor's counsel, LZK, or Cash in an amount equal to \$100,000.00 (the "**Deposit**"); and

iv. such other information as the bidder believes will be helpful in demonstrating its financial capability to consummate the proposed transactions.

(b) Additionally, in order to constitute a "**Qualifying Bid**":

i. the transaction proposed by the Definitive Agreement may not be conditioned on the outcome of unperformed due diligence; and

ii. the Definitive Agreement must describe the bidder's intention with respect to Executory Contracts and/or Unexpired Leases of the Debtor in order for the assumption, assignment and/or rejection of such Executory Contracts and Unexpired Leases to be timely effectuated.

(c) Finally, in order to be deemed a "**Qualifying Bid**" the Definitive Agreement must be accompanied by a letter affirmatively:

i. setting forth a full disclosure of the identity of the bidder (and any other person(s) subject to any agreement, arrangement or understanding with such bidder in connection with the bid), the contact information for such bidder and full disclosure of any affiliates or insiders of the Debtor involved in such bid;

ii. stating that the bidder is prepared to purchase the Restaurant Assets upon the terms and conditions set forth its Definitive Agreement;

iii. summarizing the consideration proposed under the Definitive Agreement (i.e., cash and assumed liabilities);

iv. stating the aggregate value of the proposed consideration (which statement of value shall not be binding on the Debtor or the Bankruptcy Court); and

v. stating the form of Deposit (i.e., cashier's check or cash) made by the bidder.

(d) Any bid that purports to purchase any litigation claims (including causes of action and/or avoidance actions that arise under Chapter 5 of the Bankruptcy Code) from the Debtor shall not be deemed a Qualifying Bid under these bid procedures, and that no sale based on any such bid shall qualify for approval at the sale hearing pursuant to the order granting the Bid Procedures Motion.

(e) Any bid that purports to release the Debtor, its insiders and/or any bidder on, or purchaser of, the Debtor's Restaurant Assets shall not be deemed a Qualifying Bid under bid procedures approved by the Court, and that no sale based on any such bid shall qualify for approval at the sale hearing pursuant to the order granting the Bid Procedures Motion.

(f) Within two (2) business days of each bidder's timely delivery of all required materials as detailed in the preceding paragraph, the Debtor shall, in its sole discretion, notify each bidder, in writing, as to whether its bid has been deemed a Qualified Bid. Each bidder who submits a Qualified Bid shall be deemed a "Qualified Bidder".

4. Selection of Highest and Best Bid. At the conclusion of the bid selection process by the Debtor, which shall be no later than two (2) days prior to the Sale Hearing, the Debtor shall inform each Qualified Bidder which has submitted a Qualified Bid of the dollar amount of the highest and best Qualified Bid.

5. The Auction of the Restaurant Assets. The Sale Hearing shall also serve as an auction (the "**Auction**"), whereby Qualified Bidders may submit subsequent bids for the Restaurant Assets, provided: (i) that the initial bid at the Auction must exceed the highest and best Qualified Bid by at least \$50,000.00; (ii) each subsequent bid at the Auction must exceed the previous bid by at least \$25,000.00 (the "**Bidding Increment**"); and (iii) any Qualified Bidder which submits a subsequent bid at the Sale Hearing in excess of its Qualifying Bid must provide evidence that it has the financial capability to purchase the Restaurant Assets at the new, higher purchase price as set forth in its subsequent bid. At the conclusion of Auction, the Bankruptcy Court shall: (i) determine which bid constitutes the highest and best offer and which bidder constitutes the winning bidder (respectively, the "**Winning Bid**" and the "**Winning Bidder**"); and (ii) approve the Winning Bid at the Sale Hearing.

6. Bankruptcy Court Approval of the Winning Bidder; Return of Deposits. Promptly after the entry by the Bankruptcy Court of its order approving the sale of the Restaurant Assets of the Debtor, which may be the Confirmation Order, the Deposits submitted by all Qualified Bidders (other than the bid of the Winning Bidder(s)) shall be returned to the respective Qualified Bidders. The Deposit(s) of the Winning Bidder(s) shall be applied to the Cash portion of the purchase price set forth in the Winning Bidder's Definitive Agreement, as may be modified by the Winning Bid. If a Winning Bidder fails to consummate the purchase contemplated under its Definitive Agreement, as may be modified by the Winning Bid, and (i) such failure is the result of the Winning Bidder's breach of its Definitive Agreement and (ii) the

Debtor have met all closing conditions of the Winning Bidder's Definitive Agreement, the Deposit of such Winning Bidder shall be forfeited to the Debtor. Notwithstanding this forfeiture, the Debtor specifically reserves the right to seek all available damages from any defaulting Winning Bidder. Notwithstanding the foregoing, the Bankruptcy Court may hear any aspect of the proposed sale of the Restaurant Assets of the Debtor, including, controversies relating to any bidders' due diligence and to challenge any determination made in connection therewith. In the event the Winning Bidder does not close on the purchase of the Restaurant Assets as set forth in such Winning Bidder's Definitive Agreement, the Debtor shall next pursue a sale of the Restaurant Assets to the subsequent highest Qualified Bidder, until such time as the Restaurant Assets are sold.

EXHIBIT E

EXHIBIT E

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Proposed Attorneys for the Debtor

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:

CM EBAR, LLC,

Debtor.

Case No.: 17-15530-ABL

Chapter 11

CONFIRMATION HEARING

Hearing Date:

Hearing Time:

**ORDER GRANTING: (I) CONDITIONAL APPROVAL OF
DISCLOSURE STATEMENT; AND (II) SETTING COMBINED HEARINGS
ON FINAL APPROVAL OF THE DISCLOSURE STATEMENT AND
CONFIRMATION OF THE DEBTOR’S CHAPTER 11 PLAN**

Upon the application of counsel, with the Disclosure Statement dated November 20, 2017 (the “**Disclosure Statement**”), and the Chapter 11 Plan of Reorganization for CM Ebar, LLC, dated November 20, 2017 (the “**Plan**”) for the above-captioned debtor and debtor-in-

1 possession (the “**Debtor**”), and it appearing that the Court has jurisdiction over this matter; and
2 sufficient cause appearing therefore, it is hereby:

3 **ORDERED** that pursuant to section 1125 of the Bankruptcy Code and Rule 3017(b) of
4 the Federal Rules of Bankruptcy Procedure, the Court conditionally approves the Debtor’s
5 Disclosure Statement; and it is further

6 **ORDERED** that the Debtor’s exclusivity period to file a plan and seek acceptances
7 thereof is hereby terminated; and it is further

8 **ORDERED** that pursuant to section 1128(a) of the Bankruptcy Code and Bankruptcy
9 Rule 3017(c), the hearing to approve the Disclosure Statement on a final basis and to consider
10 confirmation of the Debtor’s Plan shall be held on _____, **2018**, at _____ (the
11 “**Confirmation Hearing**”); and it is further

12 **ORDERED** that pursuant to Bankruptcy Rule 3017(c), _____, **2018**, shall
13 be the last date to vote to accept or reject the Plan (the “**Voting Deadline**”); and it is further

14 **ORDERED** that pursuant to Bankruptcy Rules 3020(b) and 9006(c)(1), objections, if
15 any, to final approval of the Disclosure Statement and confirmation of the Plan shall be in
16 writing and shall (a) state the name and address of the objecting party and the nature and
17 amount of the claim or interest of such party, (b) state with particularity the basis and nature of
18 each objection or proposed modification to the Plan and (c) be filed, together with proofs of
19 service, with the Court (with a copy delivered to chambers) and served so that such objections
20 are actually received by the parties listed below, no later than _____, **2018** (the
21 “**Confirmation Objection Deadline**”):

22
23
24
25 Zachariah Larson, Esq.
26 Larson, Zirzow & Kaplan
27 850 E. Bonneville Ave.
28 Las Vegas, Nevada 89101
Facsimile: (702) 382-1169

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and it is further

ORDERED that replies to any objections to final approval of the Disclosure Statement or confirmation of the Plan shall be due on _____, **2018**; and it is further

ORDERED that the Confirmation Hearing may be adjourned from time to time without prior notice to holders of claims, holders of equity interests, or other parties in interest other than the announcement of the adjourned hearing date at the Confirmation Hearing; and it is further

ORDERED that this Court shall, and hereby does, retain jurisdiction with respect to all matters arising from or in relation to the implementation of this Order.

SUBMITTED BY:

By: /s/
LARSON ZIRZOW & KAPLAN, LLC
ZACHARIAH LARSON, ESQ.
MATTHEW C. ZIRZOW, ESQ.
SHARA L. LARSON, ESQ.
850 E. Bonneville Ave.
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