

and timely notice of the hearing on the Motion (the "Hearing") had been given; and it appearing that such notice was adequate and sufficient; and all appearances at the Hearing having been duly noted on the record of the Hearing, and, upon the Motion, the Disclosure Statement, and the record of the Hearing and all of the proceedings before the Court and after due deliberation and sufficient cause appearing therefor; and it appearing that no party-in-interest will be prejudiced hereby, it is

ORDERED, FOUND AND DETERMINED THAT:

1. Pursuant to Section 1125(b) of the Bankruptcy Code and Rule 3017(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), (a) the Disclosure Statement is approved as containing adequate information within the meaning of Section 1125 of the Bankruptcy Code and (b) to the extent not withdrawn, settled or resolved, all objections to the Disclosure Statement are overruled.

2. The Disclosure Statement and the Motion are hereby approved.

3. For voting purposes and mailing of notices and Solicitation Packages (as defined below) pursuant to this Order, **May 28, 2020, at 5:00 p.m.** Eastern Time, shall be the "Record Holder Date" for the holders of Claims.¹

4. Holders of Claims in Classes 2, 3, and 4 which have not been disallowed by order of the Court are entitled to vote to accept or reject the Plan (the "Voting Claims"). Where the holder of such a Claim is a transferee or assignee of the Claim rather than its original holder, such transferee or assignee shall be permitted to vote such Claim subject to: (a) evidence of the transfer and assignment of the Claim having been filed in accordance with Federal Rule of Bankruptcy Procedure 3001 as of the close of business on the Record Holder Date, and (b) if an

¹ Capitalized terms not otherwise defined in this order shall have the meanings ascribed to them in the Motion.

objection to the transfer of a Voting Claim in accordance with Rule 3001 of the Federal Rules of Bankruptcy Procedure is pending on the close of business on the date of the Voting Deadline, the Court having entered an order temporarily allowing of such Claim for the purpose of voting pursuant to Section 502(c) of the Bankruptcy Code and Bankruptcy Rule 3018(a).

5. The Participant Notice, the Participant Ballot, and the Vendor Ballot, attached as Exhibits B, C, and D, respectively, to the Motion are hereby approved, as amended (ECF No. 3338), with the Participant Notice to be further amended on page 3 to contain language corresponding to paragraph 13 of this order.

6. On or before June 2, 2020, the Trustee shall cause to be served:

(a) upon the holders of Voting Claims in Classes 2 and 3, the Participant Notice in the form approved by the Court by electronic mail transmission; and

(b) upon the holders of Voting Claims in Class 4, the Vendor Solicitation Package containing: a copy of the Plan (with exhibits), a copy of the Disclosure Statement (with exhibits), a Vendor Ballot in the form approved by the Court, and a copy of this Order by first-class mail (collectively, the "Solicitation Packages").

7. Holders of asserted Claims that have been disallowed by order of the Court will not receive Solicitation Packages or further notice with respect to the Plan or Disclosure Statement.

8. All holders of Voting Claims must deliver completed Ballots so as to be received no later than **5:00 p.m., Eastern Time, on June 30, 2020** (the "Voting Deadline"). Holders of Voting Claims in Classes 2 and 3 must deliver by the Voting Deadline Participant Ballots electronically to BMC Group, Inc. as directed in the ballot. Holders of Voting Claims in Class 4

must deliver by the Voting Deadline Vendor Ballots by first-class mail, electronic mail, hand-delivery, overnight courier or facsimile to Trustee's counsel at:

Murphy & King, Professional Corporation
Attn: Andrew G. Lizotte, Esq.
One Beacon Street
Boston, MA 02108
Facsimile: (617) 423-0498
Email: alizotte@murphyking.com

9. Any Ballot received after the Voting Deadline shall not be counted other than as provided for in this Order.

10. HOLDERS OF VOTING CLAIMS IN CLASSES 2 AND 3 MUST COMPLETE AND SUBMIT THE BALLOT, INCLUDING INSTRUCTIONS FOR ELECTRONIC PAYMENT (AND, IF NOT A RESIDENT OF THE UNITED STATES, INFORMATION TO ENSURE COMPLIANCE WITH THE OFFICE OF FOREIGN ASSET CONTROL) IN ORDER TO RECEIVE PAYMENT. IF SUCH HOLDER DOES NOT SUBMIT THE BALLOT, SUCH HOLDER WILL NOT RECEIVE A DISTRIBUTION.

11. For purposes of voting, the amount of a Claim used to tabulate acceptance or rejection of the Plan shall be one of the following:

- a. the amount set forth as a Claim in the Debtors' Schedules that is not listed as contingent, unliquidated or disputed (*excluding* scheduled Claims that have been superseded by filed Claims);
- b. the amount set forth on a timely-filed proof of claim that has not been disallowed or reduced by the Court on or before the Voting Deadline; or
- c. the amount estimated and temporarily allowed with respect to a Claim pursuant to an order of this Court for voting purposes prior to computation of the vote on the Plan.

12. With respect to Ballots submitted by a holder of a Claim:

- a. any Ballot that is substantially completed, executed and timely returned that does not indicate an acceptance or rejection of the Plan, shall be deemed to be a vote to accept the Plan;
- b. any Ballot that is returned indicating acceptance or rejection of the Plan but that is unsigned shall not be counted, provided, however, that any Ballot returned by electronic mail or similar electronic means that includes

- an electronic signature, as that term is defined by applicable state law, shall be counted;
- c. whenever a holder of a Claim casts more than one Ballot voting the same Claim prior to the Voting Deadline, only the last timely Ballot received shall be counted;
 - d. if a holder of a Claim casts simultaneous duplicative ballots that are voted inconsistently, such Ballots shall count as one vote accepting the Plan;
 - e. each holder of more than one Claim in a particular Class shall be entitled to cast only one Ballot regardless of the number of timely-filed proofs of claim in such Class by such holder;
 - f. each holder of a Claim shall be deemed to have voted the full amount of its Claim or Claims in each particular Class;
 - g. each holder who holds a Claim or Claims in more than one Class shall be entitled to cast one Ballot per Class, *provided, however*, that holders of Claims in Class 2 (Convenience Participant Claim) may only elect treatment as either a holder of a Class 2 Claim (Convenience Participant Claim), or as a holder of a Class 3 Claim (General Participant Claim);
 - h. any Ballots that partially reject and partially accept the Plan shall be deemed a vote to accept the Plan in the full amount of such Claim;
 - i. a Ballot cast by a holder of a Claim that is subject to a pending objection on the Voting Deadline shall not be counted; and
 - j. any Ballot indicating a vote for acceptance or rejection of the Plan and is signed, but fails to provide a complete mailing address, shall be counted if the balloting agent can reasonably determine the identity of the holder of the Claim by reference to the Creditor Matrix, Schedules, return envelope, facsimile, or electronic mail by which said Ballot is delivered, or otherwise.

13. The hearing to consider confirmation of the Plan is scheduled for **July 8, 2020, at 2:00 p.m.**, Eastern Time. Because of concerns of public health and safety, the Court has not yet determined whether the hearing will be held in-person, by telephonic, or other means. Interested parties will be provided additional information at a later date as to the manner in which the hearing will be conducted and opportunities to participate.

14. Any objection to the confirmation of the Plan (“Confirmation Objection”) must be filed with the Clerk of the Bankruptcy Court, United States Bankruptcy Court, before the Honorable Judge Melvin S. Hoffman, Courtroom 2, J.W. McCormack Post Office & Court House, 5 Post Office Square, 12th Floor, Boston, MA 02109–3945, together with proof of service, no later than **4:30 p.m., Eastern Time, on or before June 30, 2020**, and must be served upon: (i) counsel to the Trustee, Murphy & King, Professional Corporation, One Beacon Street, Boston, Massachusetts 02108 (Attn: Andrew G. Lizotte, Esquire); and (ii) the Office of the United States Trustee for the District of Massachusetts, 446 Main Street, 14th Floor, Worcester, Massachusetts 01608 (Attn: Lisa D. Tingue, Esq.) (collectively the “Service Parties”).

15. Any Confirmation Objection must (a) be in writing, (b) state the name and address of the objecting party, (c) comply with the Federal Rules of Bankruptcy Procedure and the Massachusetts Local Bankruptcy Rules, and (d) state the amount of the objector’s claim or the nature of its interest, and the nature of the objection and the legal basis therefore.

16. CONFIRMATION OBJECTIONS NOT FILED AND SERVED AS SET FORTH IN THIS ORDER MAY BE DEEMED WAIVED AND MAY NOT BE CONSIDERED BY THE COURT.



Melvin S. Hoffman
United States Bankruptcy Judge

Dated: May 28, 2020