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Via ECF

The Hon. Martin Glenn
Chief Bankruptcy Judge
United States Bankruptcy Court
One Bowling Green
New York, NY 10004

Re: RM Bakery, LLC, *et al.*, Case No. 20-11422

Dear Chief Judge Glenn:

As counsel to the Reorganized Debtor in the above-captioned case (the "**Reorganized Debtor**"), we write to (i) update the Court on the developments since the status conference held on December 17, 2025 (the "**Status Conference**") and (ii) address whether the Reorganized Debtor will require court authorization in order to enter into the sale leaseback transaction it is currently negotiating and of which counsel informed this Court at the Status Conference.

As the Reorganized Debtor informed this Court, for the reasons set forth in the status letter of December 16, 2025 [Docket No. 501] (the "**Status Letter**"), and on the record at the Status Conference, the Reorganized Debtor was not able to meet its projections and, consequently, fell behind in making its plan payments. In order to bring more liquidity into the Debtor, and catch up on its plan payments, the Reorganized Debtor negotiated a sale leaseback transaction with a number of prospective counterparties, whereby it would sell certain baking equipment to a purchaser to obtain liquidity, and then lease the equipment back from that purchaser for a reasonable monthly payment (the "**Sale Leaseback Transaction**"). As some of the equipment which would be sold under the Sale Leaseback Transaction is encumbered by a security interest held by Pacific Western Bank ("**Pac West**"), a portion of the proceeds from the Sale Leaseback Transaction would be used to pay off Pac West's secured claim in order for them to consent to the transaction. Although Pac West would be paid in full earlier than required under the Plan, there is no prepayment penalty, and, in fact, Pac West has agreed to a substantial discount as part of the transaction, which makes the transaction even more attractive to the Reorganized Debtor. The Sale Leaseback Transaction is attractive to prospective purchasers for a number of reasons, including, that it has significant tax benefits under the recently passed, so called "One Big Beautiful Bill" (P.L. 119-21), so long as, it closes no later than December 31, 2025.

The Reorganized Debtor had a number of purchaser targets for this leaseback transaction. The Reorganized Debtor is now at the last stages of negotiations and due diligence with a certain

purchaser and while there is no commitment or executed contract at the time of this status letter, the contracts are being reviewed and negotiated, and the Reorganized Debtor is cautiously optimistic the sale leaseback transaction will close before the end of the year. At the Status Conference, the Court raised the question of whether the sale leaseback transaction required further court authorization, and whether the United States Trustee would object to the Sale Leaseback Transaction. After (i) additional legal research, (ii) further review of the *Order Confirming Third Amended Joint Plan of Reorganization of RM Bakery, LLC, and BKD Group LLC* [Docket No. 470] (the "**Confirmation Order**"), (iii) further review of the confirmed *Third Amended Joint Plan of Reorganization of RM Bakery, LLC, and BKD Group LLC* [Exhibit A to Docket No. 470] (the "**Plan**") and (iv) communications with Shara Cornell, Trial Attorney of the Office of the United States Trustee, the Reorganized Debtor does not believe that further court authorization is required in order to undertake the Sale Leaseback Transaction. Ms. Cornell has informed the undersigned that the U.S. Trustee would not object to the Reorganized Debtor selling the equipment and otherwise undertaking the Sale Leaseback Transaction without further court authorization.

While there is limited case law regarding the ability of a post confirmation debtor that has substantially consummated its plan to sell assets outside of the ordinary course of business without further court authorization, the Reorganized Debtor believes that there is no prohibition in the Bankruptcy Code, and moreover neither the Confirmation Order nor the Plan prohibit such a transaction.

At the outset, it is important to note, that the Reorganized Debtor is not seeking any relief in this instance, as it is not seeking to sell assets which are free and clear of liens, claims, and encumbrances pursuant to Court Order, but rather pursuant to agreement with Pac West which has voluntarily released its liens and return for a negotiated payoff. Pac West has tentatively approved the transaction, subject to documentation. This result is clearly in the best interest of creditors, as it results in a reduced payment to Pac West, which should lead to increased profits, of which General unsecured creditors receive a percentage.

Further, the prohibition against a debtor selling property outside the ordinary course of business is contained largely in section 363(b)(1) of the Bankruptcy Code. *See*, 3 Collier on Bankruptcy P 363.01 (16th 2025). Under the Bankruptcy Code, debtors in possession are permitted to operate the debtor's business. See 11 U.S.C § 1108. The operation of the business requires use of the debtor's assets, sale of the debtor's property, lease of the property, and other transactions. If the transaction is in the "ordinary course of business," the debtor may act without the burden of noticing, court intervention, and creditor objection. *See,* 11 U.S.C. § 363(c)(1), *cf*, 3 Collier on Bankruptcy P 363.03 (16th 2025). If, however, the transaction is not in the ordinary course, notices is required and a hearing may be required. See, 3 Collier on Bankruptcy P 363.01 (16th 2025).

However, as Judge Garrity noted in *In re: Ditech Holding Corporation, et al.,* 606 B.R. 544 (Bankr. S.D.N.Y. 2019):

> [T]he Bankruptcy Code provides two separate and distinct sets of provisions under which a Chapter 11 debtor or trustee may sell property free and clear of claims or interests. Sections 363(b) and 363(f) govern sales **prior to plan approval** and impose only the Bankruptcy Code's minimal requirements for notice and a hearing. Sections 1123(a)(5)(D) and 1141(c) govern sales made a part of a

> plan of reorganization confirmed after extensive disclosure and a multiple hearing. (citations omitted- emphasis added).

Id. at 588.

As the proposed sale under the Sale Leaseback transaction is occurring after plan confirmation (and after substantial consummation of the Plan), section 363(b) does not apply.

> While it is true that chapter 3 of the Bankruptcy Code applies in chapter 11 cases—see 11 U.S.C. § 103(a)—it does not follow that all such provisions are applicable in every chapter 11 case. Here, where a debtor proposes a sale pursuant to a plan, the sale is not under section 363 …

Id. at. 592.

Finally, as the Reorganized Debtor is not seeking any relief from this Court as it is not proposing that this Court order that the sale is free and clear of claims and encumbrances, nor that any liens or claims attached to the proceeds, and since the Sale Leaseback Transaction is not subject to the constraints of section 363 of the Bankruptcy Code as the Reorganized Debtor has exited Chapter 11, the next question is whether the Confirmation Order and the Plan prohibit the sale of assets outside of the ordinary course. The Reorganized Debtor believes the Confirmation Order and Plan does not prohibit the sale of the equipment. The following are the reasons the Confirmation Order and Plan do not prohibit the sale of the equipment:

First, under the Plan, the assets of the Debtor vest in the Reorganized Debtor. The Confirmation Order states at Paragraph 12:

> Vesting of the Assets. On the Effective Date, all assets of both Debtors will vest in the Reorganized Debtor, free and clear of Liens, Claims and encumbrances except as otherwise provided in the Plan and subject to the provisions of the Plan, and the Reorganized Debtor will have the responsibility to make the Distributions under the Plan. The Reorganized Debtor is hereby appointed the Distribution Agent for all purposes under the Plan.

Second, the confirmation order provides flexibility for the Debtor to undertake transactions to carry out the purpose of the Plan. The Confirmation Order states at paragraph 5:

> Authorization of Actions Under the Plan. The Debtor and its Counsel are authorized and directed to take any and all actions, execute and deliver any and all instruments and documents that it deems necessary and appropriate to effect and consummate the Plan and the Exit Financing and to carry out this Confirmation Order in accordance with all applicable nonbankruptcy laws, including, without limitation, federal and state law, securities and corporation laws, and having the same effect of such authorizations and approvals under such laws, without any requirement of further action by the members or shareholders of the Debtors. The approvals and authorizations specifically set forth in this

> Confirmation Order and the Plan are nonexclusive and are not intended to limit the authority of the Debtor thereof to take any and all actions necessary or appropriate to implement, effectuate and consummate any and all documents or transactions contemplated by the Plan and this Confirmation Order. Notwithstanding anything in the Plan to the contrary, nothing in the Plan shall be deemed to limit or expand the Court's or any other party's ability to engage in estimation proceedings beyond what is permitted by 11 U.S.C. § 502(c).

While the Sale Leaseback Transaction was not contemplated by the plan *per se*, it certainly was contemplated that the Reorganized Debtor would make the payments due under the Plan, and the Reorganized Debtor believes that the Sale Leaseback Transaction is necessary in order for it to do so. Accordingly, the Reorganized Debtor submits that the transaction is authorized by the above language in the Confirmation Order.

Third, the Plan specifically contemplates and allows sales of assets, so long as, the sales do not occur in the context of a change of control or involve a sale of assets of more than 50% of the assets the Reorganized Debtor. Section 4.6 of the Plan states in pertinent part:

> [I]f prior to December 31, 2027, there is a change in control of the Reorganized Debtor other than a purchase of the Reorganized Debtor's equity by Leaven, and the Reorganized Debtor does not elect to utilize the one-time payment option, then the Reorganized Debtor is prohibited from selling more than 50% of its Equity or Assets to a third-party unless such party assumes the obligation to the Holders of Class 6 Allowed Claims.

In this instance, there is no change of control of the Reorganized Debtor. Moreover, the Reorganized Debtor informed the undersigned that the equipment being sold under the Sale Leaseback Transaction does not encompass more than 50% of the Reorganized Debtor's Assets. Therefore, the prohibition contained in section 4.6 of the Plan is not applicable, and no other sale of assets is prohibited by the Plan.

So, in short, there is no statutory prohibition against the Reorganized Debtor prohibiting selling the subject equipment outside of the ordinary course of business. The Confirmation Order and Plan provide significant flexibility for the Debtor to carry out transactions to effectuate the purpose of the Plan. Finally, the Plan contemplates future sales of assets (outside of a change of control and less than 50% of assets). Therefore, the Reorganized Debtor believes that it does not require further court authorization to enter into and complete the Sale Leaseback Transaction.

Finally, the creditors will benefit from the Sale Leaseback Transaction. The Sale Leaseback Transaction will provide the Reorganized Debtor with sufficient liquidity to catch up on its past due plan payments. The Reorganized Debtor believes that the Sale Leaseback Transaction will provide the Debtor the ability to return to profitability and make all future plan payments, which include a percentage of profits to general unsecured creditors.

The Debtor has discussed this and otherwise communicated with Ms. Cornell via email, and Ms. Cornell has authorized the undersigned to inform the court that the U.S. Trustee has no

objection to the Reorganized Debtor entering into and carrying out the Sale Leaseback Transaction without further Court intervention.

We are happy to address any comments or questions the Court may have.

Yours very truly,

s//David H. Hartheimer
David H. Hartheimer