

**KLESTADT WINTERS JURELLER SOUTHARD & STEVENS, LLP**

Tracy L. Klestadt  
Joseph C. Corneau  
200 West 41<sup>st</sup> Street, 17<sup>th</sup> Floor  
New York, New York 10036  
Telephone: (212) 972-3000  
Facsimile: (212) 972-2245

-and-

**RIKER DANZIG SCHERER HYLAND & PERRETTI LLP**

Joseph L. Schwartz (admitted *pro hac vice*)  
Tara J. Schellhorn  
Rachel F. Gillen (admitted *pro hac vice*)  
Headquarters Plaza, One Speedwell Avenue  
Morristown, New Jersey 07960  
Telephone: (973) 538-0800  
Facsimile: (973) 538-1984

Proposed Attorneys for the Debtors and Debtors-in-Possession

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----	x	
	:	
In re	:	Chapter 11
	:	
COCOA SERVICES, L.L.C., <u>et al.</u> , <sup>1</sup>	:	
	:	
Debtors.	:	Case No. 17-11936
	:	
	:	Jointly Administered
	:	
-----	x	

**NOTICE OF POTENTIAL ASSUMPTION  
AND ASSIGNMENT OF EXECUTORY CONTRACTS IN CONNECTION WITH THE  
SALE AND ASSIGNMENT OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS**

<sup>1</sup> Debtors in these Bankruptcy Cases and the last four digits of their respective taxpayer identification number are as follows: Cocoa Services, L.L.C. (3769); Morgan Drive Associates, L.L.C. (2335). The Debtors' principal office is located at 400 Eagle Court, Swedesboro, New Jersey 08085.

**PLEASE TAKE NOTICE OF THE FOLLOWING:**

1. On July 21, 2017, Cocoa Services, L.L.C. ("Cocoa Services") and Morgan Drive Associates, L.L.C. ("Morgan Drive"), the debtors and debtors-in-possession (each a "Debtor" and together, the "Debtors") in the above-captioned cases filed with the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") a motion (the "Sale Motion") [Docket No. 28] for the entry of (i) an order (the "Bidding Procedures Order")<sup>2</sup> (a) authorizing and approving bidding procedures (the "Bidding Procedures") with respect to the Debtors' sale and assignment of substantially all of their assets (as defined in the Motion) to JB Cocoa Holding, Inc. ("JB Cocoa") or a third party that makes a higher and/or better offer (the "Proposed Sale"), (b) approving the form and manner of notices thereof, (c) establishing JB Cocoa as the "staking horse" bidder for substantially all of the Debtors' assets, (d) approving the Asset Purchase Agreement by and among the Debtors and JB Cocoa, and (e) setting a hearing to consider approval of the Proposed Sale (the "Sale Hearing"); (ii) entry of an order approving the sale and assignment of substantially all of the Debtors' assets free and clear of liens, claims, interests and encumbrances and (iii) granting related relief.

2. On August 14, 2017, the Bankruptcy Court entered the Bidding Procedures Order [Docket No. 68] approving the relief requested in the Motion.

3. The Sale Hearing will take place on **September 26, 2017 at 2:00 p.m.** before the Honorable James L. Garrity, Jr., United States Bankruptcy Judge, in the Bankruptcy Court, located at One Bowling Green, New York, NY 10004. The Debtors will have accepted the terms of the Winning Bidder only when such bid has been approved by the Bankruptcy Court pursuant to a Sale Order.

4. In connection with the Proposed Sale, and in accordance with the Assumption and Assignment Procedures set forth in the Sale Motion and the Bidding Procedures Order, the Debtors will seek to assume and assign the Cocoa Services' Contracts (as defined in the Sale Motion) and execute and deliver to any Winning Bidder such documents or other instruments as may be necessary to assign and transfer the Cocoa Services' Contracts. Each of the Cocoa Services' Contracts is identified on the Contracts Schedule attached hereto as **Schedule 1** (the "Proposed Assumed Contracts Notice"). The cure costs (the "Cure Costs") under the Cocoa Services' Contracts, if any, that the Debtors believe is required to be paid to the applicable counterparty (the "Counterparty") to each of the Cocoa Services' Contracts to cure any monetary defaults under such Cocoa Services' Contracts pursuant to 11 U.S.C. §§ 365(b)(1)(A) and (B) is set forth on the Proposed Assumed Contracts Notice.

---

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Sale Motion, Bidding Procedures and the Bidding Procedures Order, as applicable. Any summary of the Bidding Procedures or the Bidding Procedures Order contained herein is qualified in its entirety by the actual terms and conditions thereof. To the extent that there is any conflict between any such summary and such actual terms and conditions, the actual terms and conditions shall control.

5. Cure Objections.

- a) Cure Objection Deadline. Any Counterparty to a Cocoa Services' Contract that wishes to object to the proposed assumption, assignment, and sale of the Cocoa Services' Contract, the subject of which objection is the Debtors' proposed Cure Costs to cure any outstanding monetary defaults then existing under such contract (each, a "Cure Objection") shall file and serve such Cure Objections as follows: Cure Objections shall be filed, served and actually received by the Court (including providing two copies, single-sided to Chambers) and shall be simultaneously served on the following parties (collectively, the "Objection Recipients"), so as to be actually received by the Objection Recipients by no later than **September 14, 2017 at 4:00 p.m.** (the "Cure Objection Deadline"): (i) counsel for the Debtors (Attn: Joseph L. Schwartz, Esq. and Jason Navarino, Esq.), (ii) the Office of the U.S. Trustee (Attn: Serene Nakano, Esq.); (iii) Baker, Manock & Jenson, PC (Attn: Carl R. Refuerzo, Esq. and Courtney R. McKeever, Esq.) and Trenk, DiPasquale, Della Fera & Sodono, P.C. (Attn: Adam D. Wolper, Esq. and Ross J. Switkes, Esq.), as counsel to JB Cocoa; (iv) the attorneys (if applicable) of any Winning Bidder(s); (v) the attorneys (if applicable) of any applicable Backup Bidder(s); (vi) Thompson & Knight, LLP, as counsel to Bank of the West (Attn: Anthony Pirraglia, Esq.) and (vii) Windels Marx Lane & Mittendorf LLP (Attn: James Sullivan), as counsel for Alan Nisselson, Interim Chapter 7 Trustee of Transmar Commodity Group, Ltd. Any reply by the Debtors or other Objection Recipients shall be filed, served and actually received by the Court (including providing two copies, single-sided to Chambers) by no later than **September 20, 2017 at 4:00 p.m. (prevailing Eastern Time)**. Cure Objections must state, with specificity, the legal and factual bases thereof, including any appropriate documentation in support thereof.
- b) Resolution of Cure Objections. The Bidding Procedures Order requires that the Debtors and a Counterparty that has filed a Cure Objection first confer in good faith to attempt to resolve the Cure Objection without Court intervention. If the parties are unable to consensually resolve the Cure Objection prior to the commencement of the Sale Hearing, the amount to be paid or reserved with respect to such objection shall be determined by the Court at the Sale Hearing. The Court shall make all necessary determinations relating to the applicable Cure Costs and Cure Objection at a hearing scheduled pursuant to the following paragraph.<sup>3</sup>
- c) Adjournment of Cure Objections. If a timely Cure Objection cannot otherwise be resolved by the parties, such objection shall be heard at the Sale Hearing; provided that, a Cure Objection (and only a Cure Objection) may, at the Debtors' discretion, after consulting with the Consultation Parties<sup>4</sup> and the Winning Bidder, be adjourned (an "Adjourned Cure Objection") to a subsequent hearing. An Adjourned Cure Objection may be resolved after the closing date of the applicable Proposed Sale

---

<sup>3</sup> All other Sale Objections to the proposed assumption and assignment of the Debtors' right, title, and interest in, to, and under a Cocoa Services' Contract, if it is ultimately designated as a contract to be assumed or assigned by a Winning Bidder, will be heard at the Sale Hearing.

<sup>4</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Sale Motion.

(and therefore the contract of the Counterparty in question may be assumed and assigned at Closing), provided that, the Debtors maintain a cash reserve equal to the Cure Costs the objecting Counterparty believes is required to cure the asserted monetary default under the implicated Cocoa Services' Contract.

- d) **Failure to File Timely Cure Objection.** If a Counterparty fails to timely file with the Court and serve on the Objection Recipients a Cure Objection, the Counterparty shall be deemed to have consented to the assumption, assignment, and sale of the Cocoa Services' Contract (unless such Counterparty has timely filed an Adequate Assurance Objection (as hereinafter defined) with respect to the Cocoa Services' Contract) to the applicable Winning Bidder and shall be forever barred from asserting any objection with regard to such assumption, assignment, and sale. Further, in the event no objections are timely filed and served, the Cure Costs set forth in the Assumption and Assignment Notice shall be controlling and will be the only amount necessary to cure outstanding defaults under the Cocoa Services' Contract under Bankruptcy Code section 365(b), notwithstanding anything to the contrary in any Cocoa Services' Contract, or any other document, and the Counterparty to the Cocoa Services' Contract shall be deemed to have consented to the Cure Costs and shall be forever barred from asserting any other claims related to such Cocoa Services' Contract against the Debtors or any Winning Bidder(s), or the property of any of them.

6. Adequate Assurance.

- e) Adequate Assurance Information. The Debtors shall provide, with respect to JB Cocoa and each Qualified Party, such information, as is reasonably requested by a Counterparty, to demonstrate that JB Cocoa or such other Qualified Party is able to fulfill all obligations in connection with satisfying adequate assurance of future performance under any Cocoa Services' Contract ("Adequate Assurance Information"). The Debtors shall: (a) **within 24 hours of receipt of an Offer from a Potential Bidder (other than JB Cocoa) and (b) with respect to JB Cocoa, by no later than twenty (20) days before the Sale Hearing, or by September 6, 2017 at 5:00 p.m.** (the later of (a) and (b), the "Adequate Assurance Deadline"), provide a copy of the Adequate Assurance Information to those Counterparties (or their counsel) who have (x) submitted a written request (e-mail to Debtors' counsel is acceptable) for Adequate Assurance Information and (y) confirmed in writing to the Debtors' counsel (e-mail is acceptable) their agreement to keep such Adequate Assurance Information strictly confidential and use it solely for the purpose of evaluating whether a Potential Bidder, including JB Cocoa, has provided adequate assurance of future performance under the implicated Cocoa Services' Contract.
- f) Adequate Assurance Objection Deadline. Any Counterparty to a Cocoa Services' Contract that wishes to object to the proposed assumption, assignment, and sale of the Cocoa Services' Contract, the subject of which objection is a Winning Bidder's proposed form of adequate assurance of future performance with respect to such contract (each, an "Adequate Assurance Objection") shall file with the Court

(including providing two copies, single-sided to Chambers) and simultaneously serve on the Objection Recipients an Adequate Assurance Objection, which must state, with specificity, the legal and factual bases thereof, including submitting any appropriate documentation in support thereof, so as to be actually received by **September 14, 2017 at 4:00 p.m. (prevailing Eastern Time)** (the “Adequate Assurance Objection Deadline”). Replies, if any, to Adequate Assurance Objections shall be filed, served and actually received by the Court (including providing two copies, single-sided to Chambers) by **September 20, 2017 at 4:00 p.m. (prevailing Eastern Time)**.

- g) Resolution of Adequate Assurance Objections. The Bidding Procedures Order requires that the Debtors and a Counterparty that has filed an Adequate Assurance Objection first confer in good faith to attempt to resolve the Adequate Assurance Objection without Court intervention. If the parties are unable to consensually resolve the Adequate Assurance Objection prior to the commencement of the Sale Hearing, such objection and all issues of adequate assurance of future performance by the applicable Winning Bidder shall be determined by the Court at the Sale Hearing.
- h) **Failure to File Timely Adequate Assurance Objection. If a Counterparty fails to timely file with the Court and serve on the Objection Recipients an Adequate Assurance Objection, the Counterparty shall be deemed to have consented to the assumption, assignment, and sale of the Cocoa Services’ Contract (unless the Counterparty has filed a timely Cure Objection with respect to the Cocoa Services’ Contract) to the applicable Winning Bidder and shall be forever barred from asserting any objection with regard to such assumption, assignment, and sale. Further, in the event no objections are filed and served, the applicable Winning Bidder shall be deemed to have provided adequate assurance of future performance with respect to the implicated Cocoa Services’ Contract in accordance with section 365(f)(2)(B) of the Bankruptcy Code, notwithstanding anything to the contrary in the Cocoa Services’ Contract, or any other document.**

7. Sale Objections by Counterparties.

- a) Sale Objection Deadline. Any Counterparty to a Cocoa Services’ Contract that wishes to file a Sale Objection (other than a Cure Objection or an Adequate Assurance Objection) to the proposed assumption, assignment and sale of the Cocoa Services’ Contract shall file with the Court (including providing two copies, single sided, to Chambers) and serve on the Objection Recipients its Sale Objection, which must state, with specificity, the legal and factual bases thereof, including any appropriate documentation in support thereof, by no later than **September 14, 2017 at 4:00 p.m. (prevailing Eastern Time)** (the “Sale Objection Deadline”). Replies, if any, to Sale Objections shall be filed, served and actually received by the Court (including providing two copies, single-sided, to Chambers) by **September 20, 2017 at 4:00 p.m. (prevailing Eastern Time)**.

- b) **Failure of Counterparties to File Timely Sale Objection. If a Counterparty fails to timely file with the Court and serve on the Objection Recipients a Sale Objection, the Counterparty shall be deemed to have consented to the assumption, assignment, and sale of the Cocoa Services' Contract (unless the Counterparty has filed a timely Cure Objection or Adequate Assurance Objection with respect to the Cocoa Services' Contract) to the applicable Winning Bidder and shall be forever barred from asserting any objection with regard to such assumption, assignment, and sale.**

8. The inclusion of a Cocoa Services' Contract or Cure Costs on the Proposed Assumed Contracts Notice shall not constitute or be deemed a determination or admission by the Debtors, the Winning Bidder(s), or any other party in interest that such contract or other document is an executory contract or an unexpired lease within the meaning of the Bankruptcy Code or that the stated Cure Costs are due (all rights with respect thereto being expressly reserved). The Debtors and JB Cocoa reserve all of their rights, claims, and causes of action with respect to each Cocoa Services' Contract or other document listed on the Proposed Assumed Contracts Notice. The Proposed Assumed Contracts Notice shall be without prejudice to each Winning Bidder's rights, if any, under the applicable asset purchase agreement, to subsequently exclude any Cocoa Services' Contract from the assumption or assignment prior to the closing of an applicable Proposed Sale.

9. The Debtors' assumption and/or assignment of a Cocoa Services' Contract is subject to approval by the Bankruptcy Court and consummation of the Proposed Sale. Absent consummation of the Proposed Sale and entry of a Sale Order approving the assumption and assignment of the Cocoa Services' Contract, the Cocoa Services' Contract shall be deemed neither assumed nor assigned, and shall in all respects be subject to subsequent assumption or rejection by the Debtors.

10. Copies of the Motion, the Bidding Procedures Order, and the Bidding Procedures may be obtained free of charge at the website dedicated to the Debtors' chapter 11 cases maintained by their claims and noticing agent and administrative advisor, Prime Clerk LLC (<https://cases.primeclerk.com/cocoaservices/>). Copies of these documents also are available for inspection during regular business hours at the Office of the Clerk of the Bankruptcy Court, located at One Bowling Green, New York, NY 10004, and may be viewed for a fee on the internet at the Bankruptcy Court's website (<http://www.nysb.uscourts.gov/>) by following the directions for accessing the ECF system on such website.

[Remainder of page intentionally left blank]

Dated: August 15, 2017  
New York, New York

KLESTADT WINTERS JURELLER  
SOUTHARD & STEVENS, LLP

By: /s/ Tracy Klestadt  
Tracy Klestadt  
Joseph C. Corneau  
200 West 41<sup>st</sup> Street, 17<sup>th</sup> Floor  
New York, New York 10036  
Tel: (212) 972-3000  
Fax: (212) 972-2245  
Email: [tklestadt@klestadt.com](mailto:tklestadt@klestadt.com)  
[jcorneau@klestadt.com](mailto:jcorneau@klestadt.com)

- and -

RIKER DANZIG SCHERER HYLAND &  
PERRETTI LLP  
Joseph L. Schwartz (admitted *pro hac vice*)  
Tara J. Schellhorn  
Rachel F. Gillen (admitted *pro hac vice*)  
Headquarters Plaza, One Speedwell Avenue  
Morristown, New Jersey 07960  
Telephone: (973) 538-0800  
Facsimile: (973) 538-1984  
Email: [jschwartz@riker.com](mailto:jschwartz@riker.com)  
[tschellhorn@riker.com](mailto:tschellhorn@riker.com)  
[rgillen@riker.com](mailto:rgillen@riker.com)

Proposed Attorneys for the Debtors and  
Debtors-in-Possession

**Schedule 1**



Cocoa Services, L.L.C. Schedule 1  
Schedule 1 - Proposed Assumed Contracts Notice

DEBTOR PARTY TO AGR	NAME OF COUNTERPARTY	ADDRESS	TITLE OF CONTRACT	CONTRACT DATE	PROPOSED CURE AMOUNT
Cocoa Services, L.L.C.	NMHG Financial Services, Inc.	PO Box 643749 Pittsburgh, PA 15264-3749	Master Lease Agreement No. 8720688	February 27, 2012	\$335.60
Cocoa Services, L.L.C.	NMHG Financial Services, Inc.	PO Box 643749 Pittsburgh, PA 15264-3749	Schedule No. 001	February 27, 2012	\$0.00
Cocoa Services, L.L.C.	NMHG Financial Services, Inc.	PO Box 643749 Pittsburgh, PA 15264-3749	Schedule No. 002	May 16, 2012	\$0.00
Cocoa Services, L.L.C.	NMHG Financial Services, Inc.	PO Box 643749 Pittsburgh, PA 15264-3749	Schedule No. 003	December 27, 2012	\$0.00
Cocoa Services, L.L.C.	The Hershey Company	Arnold & Porter Kaye Scholer, LLP Attn: Benjamin Mintz, Kara Neaton 250 West 55th	Master Services Agreement	October 1, 2011	\$0.00
Cocoa Services, L.L.C.	The Hershey Company	Arnold & Porter Kaye Scholer, LLP Attn: Benjamin Mintz, Kara Neaton 250 West 55th	Hershey Work Authorization Schedule	October 1, 2011	\$0.00
Cocoa Services, L.L.C.	Logan Township Municipal Utilities Authority	PO Box 314 125 Main Street Bridgeport, NJ 08014	Non-Domestic Wastewater Discharge Agreement	January 1, 2015	\$0.00
Cocoa Services, L.L.C.	Eagle Food Registrations, Inc.	123 Webster Street Suite 300 Dayton, OH 45402	Eagle Food Registration Application/Contract	August 5, 2014	\$5,980.10
Cocoa Services, L.L.C.	ERV, Inc. dba Complete Recycling	2307 Fenton Parkway #107-191 San Diego, CA 92108	Recycling and Waste Master Services Provider Agreement	July 15, 2016	\$0.00
Cocoa Services, L.L.C.	RK Environmental Services, LLC	Shaun Funk 768 Carver Ave. Westwood, NJ 07675	Integrated Pest Management Service Agreement	May 16, 2013	\$0.00
Cocoa Services, L.L.C.	Randstad USA	Chris Cicchini PO BOX 7247-6655 Philadelphia, PA 19170-6655	Employee Staffing Service Agreement	March 16, 2016	\$0.00
Cocoa Services, L.L.C.	Aramark Uniform Servicers	PO Box 28050 New York, NY 10087-8050	Services Agreement	February 3, 2015	\$0.00
Cocoa Services, L.L.C.	Excell Maintenance Services, Inc.	Bob O'Sullivan 2250 US Route 322 Woolwich Twp, NJ 08085	Contract	February 22, 2017	\$3,055.86
Cocoa Services, L.L.C.	Waste Management	Douglas Hager Waste Management Camden PO Box 13648 Philadelphia, PA 19101	Services Agreement Non-Hazardous Wastes	September 5, 2014	\$0.00
<b>Total</b>					<b>\$9,371.56</b>