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**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA**

In re

**HAVRE AERIE #166
EAGLES,**

Debtors.

Case No. **12-60679-11**

O R D E R

At Butte in said District this 16th day of April, 2020.

In this Chapter 11¹ bankruptcy, the Debtor filed an Unopposed Motion to Defer Payments Under Debtors' Ch. 11 Plan dated October 24, 2012 ("Motion"). This case was commenced on April 27, 2012. Debtor's Chapter 11 Plan filed at ECF No. 59 was confirmed by the Court on March 20, 2013, at ECF No. 119. This case was closed on May 31, 2013.

In the Motion, Debtor seeks to defer until August 2020 the payments owing to Independence Bank and Kaycee Groven under Debtor's confirmed Chapter 11 Plan. Debtor seeks to defer the payments because due to the current COVID-19 pandemic, the Debtor's bar and restaurant, which generate revenue to enable the Debtor to make such payments, have been temporarily closed. Debtor cites paragraph 7.01.j as authority to grant the relief requested. This paragraph of Debtor's confirmed Plan reads: "The Bankruptcy Court shall retain and have exclusive jurisdiction over the Reorganized Case . . . [t]o approve or confirm a modification of

¹ Unless specified otherwise, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, all "Rule" references are to the Federal Rules of Bankruptcy Procedure, and all "Civil Rule" references are to the Federal Rules of Civil Procedure. All references to "ECF No." are to the numbers assigned to the documents filed in the case as they appear on the docket maintained by the Clerk of Court.

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this Plan proposed by the Debtor after the Confirmation Date and to grant moratoria, extensions of payments to any of the Classes of Claims for any reasonable period of time due to circumstances presently unforeseeable[.] While the foregoing appears to give this Court jurisdiction to consider the post-confirmation relief requested by Debtor, Debtor makes no mention of whether its Plan has been substantially consummated and whether the relief it seeks is a permissible modification of Debtor's Plan under § 1127(b).² Furthermore, Debtor has not moved to reopen this case nor has Debtor paid the reopening fee of \$1,167.³ Unless and until this case is reopened,

IT IS ORDERED that Debtor's Motion filed at ECF No. 138 is denied, without prejudice.

BY THE COURT:



Hon. Benjamin P. Hursh
United States Bankruptcy Court
District of Montana

² Section 1127(b) permits modification of a Chapter 11 plan “at any time after confirmation of such plan and before substantial confirmation of such plan[.]”

³ As a practical matter, it would seem that Debtor could enter into agreements with Independence Bank and Kaycee Groven to extend the plan payment dates during Debtor's closure as a result of the COVID-19 pandemic without the need to reopen this case or involve the Court. If, however, relief from the Court is needed, subject to reopening the case, paying the fee, and addressing the issues raised by the Court, the Court will consider any future motions.