

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In Re:

HRI HOLDING CORP., et al.

CHAPTER 11

Case No. 19-12415 (MFW)

(Jointly Administered)

Debtors.

Related Docket No. 89

**LIMITED OBJECTION AND RESERVATION OF RIGHTS OF DIV CRANBERRY,
LLC TO DEBTORS' NOTICE OF ASSUMPTION AND CURE COST WITH RESPECT
TO EXECUTORY CONTRACTS OR UNEXPIRED LEASES
POTENTIALLY TO BE ASSUMED AND ASSIGNED IN CONNECTION
WITH SALE OF DEBTORS' ASSETS**

DIV Cranberry, LLC ("DIV" or "Landlord"), by its undersigned counsel, hereby files its Limited Objection to Debtors' Notice of Assumption and Cure Cost with respect to Executory Contracts or Unexpired Leases Potentially to be Assumed and Assigned in Connection with Sale of Debtors' Assets [D.I. 89]. In support of the same, DIV states as follows:

1. The Debtors commenced these above-captioned cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code on November 14, 2019. Pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code, the Debtors are operating their businesses and managing their affairs as debtors-in-possession.

2. By way of background, the September 14, 2007 lease (the "Lease") between DIV, as current Landlord, and Debtor Houlihan's Restaurants, Inc., as Tenant, contain very specific restrictions, permitted uses and covenants, which are of paramount concern for DIV and DIV's other tenants. The Lease is of real property in a shopping center.



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3. Without waiving its rights to adequate assurance of future performance under 11 USC § 365 (b)(3)(A-D), DIV does not object to the Lease being assumed and assigned to the prevailing buyer, except as noted herein.

4. In the Debtors' Notice of Sale of Certain Assets at Auction [D.I. 88], the Debtors propose to sell substantially all of their assets, including the Exhibit "A" Leases, to Landry's, LLC (the "Stalking Horse Bidder") or to the highest or otherwise best bidder (the "Prevailing Bidder"). In the 1984 Amendment to the Bankruptcy Code, Congress added Section 365(b)(3)(A-D), which specifically defines adequate assurance of future performance of a lease of real property in a shopping center includes adequate assurance as follows:

11 USC § 365 (b) (3) (A-D)

(A) of the source of rent and other consideration due under such lease, and in the case of an assignment, that the financial condition and operating performance of the proposed assignee and its guarantors, if any, shall be similar to the financial condition and operating performance of the debtor and its guarantors, if any, as of the time the debtor became the lessee under the lease;

(B) that any percentage rent due under such lease will not decline substantially;

(C) that assumption or assignment of such lease is subject to all the provisions thereof, including (but not limited to) provisions such as a radius, location, use, or exclusivity provision, and will not breach any such provision contained in any other lease, financing agreement, or master agreement relating to such shopping center; and

(D) that assumption or assignment of such lease will not disrupt any tenant mix or balance in such shopping center.

In the event the estate moves to assume, assign or sell the Lease, DIV specifically reserves its right to adequate assurance as provided above and to be consistent with the permitted terms of the Lease.

5. In the event the Lease is assumed and assigned to a Prevailing Bidder, DIV objects to such proposed assumption and assignment unless the Debtors and/or Prevailing Bidder complies with all the requirements set forth herein.

6. DIV also objects in part to the assumption and assignment of the Lease, specifically to the omission of any language obligating the Debtor or proposed assignee to take the unexpired leases subject to charges accrued as of the date of assumption, but not yet billed, including, but not limited to, common area maintenance, real estate taxes, overage rent, percent rent, and utilities as may be due under the terms of the Lease.

7. DIV is not opposed to the assumption and assignment of the Lease if the Stalking Horse Bidder or Prevailing Bidder intends to continue the current use of the premises in compliance with the terms of the Lease. In the event that either the Stalking Horse Bidder or Prevailing Bidder proposes an alternate use of any of the premises, then DIV reserves its right to object to any such proposed use.

WHEREFORE, DIV reserves the right to object to the proposed assignee to the extent Debtors have failed to provide adequate assurance of future performance, and reserves the right to object to an alternate use of the premises should Debtors' assignee propose such a change. DIV respectfully requests that the Court enter an Order approving Debtors' payment of the cure amounts listed in Exhibit "A", and for all further relief as this Court deems just and proper.

Dated: December 13, 2019

BAYARD, P.A.

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