

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

In re:

HRI HOLDING CORP., *et al.*¹

Debtors.

Chapter 11

Case No. 19-12415 (MFW)

(Jointly Administered)

SOLICITATION PROCEDURES

On September 16, 2020, the above-captioned debtors and debtors in possession (the “Debtors”) filed: (a) the *Disclosure Statement for the Joint Chapter 11 Plan of HRI Holding Corp. and Its Debtor Affiliates* dated September 16, 2020 [D.I. 735] (including all exhibits thereto and as amended, supplemented or otherwise modified from time to time, the “Disclosure Statement”); (b) the *Joint Chapter 11 Plan of HRI Holding Corp. and Its Debtor Affiliates* dated September 16, 2020 [D.I. 734] (including all exhibits thereto and as amended, supplemented or otherwise modified from time to time, the “Plan”); and (c) the *Motion of the Debtors for Entry of an Order (I) Approving the Disclosure Statement on an Interim Basis; (II) Scheduling a Combined Hearing on Final Approval of the Disclosure Statement and Plan Confirmation and Deadlines Related Thereto; (III) Approving the Solicitation, Notice and Tabulation Procedures and the Forms Related Thereto; and (IV) Granting Related Relief* (the “Motion”).²

Definitions

- a. “**Ballot**” means the ballot accompanying the Disclosure Statement upon which certain holders of Impaired Claims entitled to vote shall, among other things, indicate their acceptance or rejection of the Plan in accordance with the Plan and the procedures governing the solicitation process, and which must be actually received on or before the Voting Deadline.

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: HRI Holding Corp. (4677), Houlihan’s Restaurants, Inc. (8489), HDJG Corp. (3479), Red Steer, Inc. (2214), Sam Wilson’s/Kansas, Inc. (5739), Darryl’s of St. Louis County, Inc. (7177), Darryl’s of Overland Park, Inc. (3015), Houlihan’s of Ohio, Inc. (6410), HRI O’Fallon, Inc. (4539), Algonquin Houlihan’s Restaurant, L.L.C. (0449), Geneva Houlihan’s Restaurant, L.L.C. (3156), Hanley Station Houlihan’s Restaurant, LLC (8058), Houlihan’s Texas Holdings, Inc. (5485), Houlihan’s Restaurants of Texas, Inc. (4948), JGIL Mill OP LLC (0741), JGIL Millburn, LLC (6071), JGIL Milburn Op LLC (N/A), JGIL, LLC (5485), JGIL Holding Corp. (N/A), JGIL Omaha, LLC (5485), HOP NJ NY, LLC (1106), HOP Farmingdale LLC (7273), HOP Cherry Hill LLC (5012), HOP Paramus LLC (5154), HOP Lawrenceville LLC (5239), HOP Brick LLC (4416), HOP Secaucus LLC (5946), HOP Heights LLC (6017), HOP Bayonne LLC (7185), HOP Fairfield LLC (8068), HOP Ramsey LLC (8657), HOP Bridgewater LLC (1005), HOP Parsippany LLC (1520), HOP Westbury LLC (2352), HOP Weehawken LLC (2571), HOP New Brunswick LLC (2637), HOP Holmdel LLC (2638), HOP Woodbridge LLC (8965), and Houlihan’s of Chesterfield, Inc. (5073). The Debtors’ corporate headquarters and the mailing address is 8700 State Line Road, Suite 100, Leawood, Kansas 66206.

² Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Motion, the Plan or the Disclosure Statement, as applicable.



- b. **“Bankruptcy Court”** means the United States Bankruptcy Court for the District of Delaware having jurisdiction over these Chapter 11 Cases.
- c. **“Confirmation Hearing”** means the hearing conducted by the Bankruptcy Court pursuant to Bankruptcy Code section 1128(a) to consider confirmation of the Plan, as such hearing may be adjourned or continued from time to time and which currently is scheduled for November 5, 2020 at 10:30 a.m. (prevailing Eastern Time).
- d. **“Confirmation Hearing Notice”** means that certain notice of the hearing on final approval of the Disclosure Statement and confirmation of the Plan approved by the Bankruptcy Court in the Interim Approval and Procedures Order.
- e. **“Disclosure Statement”** means the Disclosure Statement [D.I. 735] filed on September 16, 2020 and approved on an interim basis by the Bankruptcy Court in the Interim Approval and Procedures Order.
- f. **“Interim Approval and Procedures Order”** means the *Order (I) Approving the Disclosure Statement on an Interim Basis; (II) Scheduling a Combined Hearing on Final Approval of the Disclosure Statement and Plan Confirmation and Deadlines Related Thereto; (III) Approving the Solicitation, Notice and Tabulation Procedures and the Forms Related Thereto; and (IV) Granting Related Relief* [D.I. 731].
- g. **“General Tabulation Procedures”** means the procedures set forth herein for the purposes of tabulating votes to accept or reject the Plan.
- h. **“Non-Voting Status Notice-Deemed to Accept”** means the notice the holders of Claims and Interests in Classes 1, 2 and 3 who are deemed to accept the Plan will receive in lieu of a Ballot.
- i. **“Non-Voting Status Notice-Deemed to Reject”** means the notice the holders of Claims and Interests in Classes 7, 8 and 9 who are deemed to reject the Plan will receive in lieu of a Ballot.
- j. **“Plan”** means the *Joint Chapter 11 Plan of HRI Holding Corp. and Its Debtor Affiliates* [D.I. 734], as may be amended or modified from time to time, filed on September 16, 2020.
- k. **“Objection Deadline”** means **October 26, 2020 at 4:00 p.m. (prevailing Eastern Time)**, the date set by the Bankruptcy Court as the deadline to file and serve objections to the Plan.
- l. **“Opt-In Form”** means the form to elect to opt-in to the third party releases set forth in the Plan.
- m. **“Opt-In Deadline”** means **October 26, at 11:59 p.m. (prevailing Eastern Time)**, the date set by the Bankruptcy Court as the deadline to submit the Opt-In

Form, unless otherwise agreed to in writing (which may be by email) by the Debtors, in consultation with counsel to the Committee and counsel to the Prepetition Secured Lenders.

- n. **“Resolution Event”** has the meaning set forth in section D.4. of the Solicitation Procedures.
- o. **“Solicitation Package”** consists of the documents set forth in section C.1. of the Solicitation Procedures.
- p. **“Solicitation Procedures”** means the procedures set forth herein.
- q. **“KCC”** means Kurtzman Carson Consultants LLC the noticing, claims and administrative agent retained by the Debtors in these Chapter 11 Cases.
- r. **“Voting Deadline”** means **October 26, 2020 at 11:59 p.m. (prevailing Eastern Time)**, the date set by the Bankruptcy Court as the deadline for receipt of Ballots by KCC, unless otherwise agreed to in writing (which may be by email) by the Debtors, in consultation with counsel to the Committee and counsel to the Prepetition Secured Lenders.
- s. **“Record Date”** has the meaning set forth in section A of the Solicitation Procedures.

Solicitation Procedures

A. The Record Date

The Bankruptcy Court has approved September 16, 2020, at 4:00 p.m. (prevailing Eastern Time), as the record date (the **“Record Date”**) for purposes of determining, among other things, which holders of Claims are entitled to vote on the Plan.

B. The Voting Deadline

The Bankruptcy Court has approved **October 26, 2020 at 11:59 p.m. (prevailing Eastern Time)** as the deadline for the delivery of Ballots voting to accept or reject the Plan (the **“Voting Deadline”**). To be counted as votes to accept or reject the Plan, all Ballots must be properly executed, completed and delivered by (i) using the return envelope provided or by delivery by: (a) first class mail, (b) overnight courier or (c) personal delivery, or (ii) submitting it via electronic online transmission through a customized online balloting portal on the Debtors’ case website, <https://kccllc.net/hri>, so that the Ballot is actually received by KCC no later than the Voting Deadline. The Ballot will clearly indicate the appropriate return address and directions for electronic submission. Ballots returnable to KCC should be sent to: HRI Ballot Processing Center c/o KCC 222 N. Pacific Coast Hwy., Ste. 300, El Segundo, CA 90245.

C. Solicitation Procedures

1. **The Solicitation Package:** The Solicitation Package shall contain copies of the following:

- (a) a cover letter describing the contents of the Solicitation Package;
- (b) the Disclosure Statement, the Plan and all exhibits thereto (on a disk or flash drive in PDF format);
- (c) the Interim Approval and Procedures Order (on a disk or flash drive in PDF format);
- (d) the Confirmation Hearing Notice;
- (e) the Ballot, including voting instructions;
- (f) a pre-addressed return envelope; and
- (g) such other materials as the Court may direct or authorize.

2. **Distribution of the Solicitation Package:** The Solicitation Package shall be served on all known holders of Claims classified in Classes 4, 5 and 6.

The Debtors shall make every reasonable effort to ensure that holders of more than one Claim in the Voting Classes receive no more than one Solicitation Package on account of such Claims.

3. **Distribution of Materials:** In addition, the Office of the United States Trustee and counsel to the Official Committee of Unsecured Creditors shall be served the Solicitation Package. The Debtors will mail, or cause to be mailed, a copy of the Confirmation Hearing Notice to all parties on the 2002 List. The Debtors also will mail, or cause to be mailed, the Confirmation Hearing Notice and the applicable Non-Voting Status Notice and Opt-In Form to all known holders of Claims and Interests that are not entitled to vote on the Plan.

D. Voting and General Tabulation Procedures

1. **Who May Vote:** Only the following holders of Claims in the Voting Class are entitled to vote:

- a. Holders of Claims for which Proofs of Claim have been timely-filed, or deemed timely filed, as reflected on the claims register as of the Record Date; provided, however, that certain holders of Claims subject to a pending objection shall not be entitled to vote unless they become eligible to vote through a Resolution Event, as set forth in more detail in section D.4. herein;
- b. Holders of Claims that are listed in the Debtors' Schedules and Statements, with the exception of those Claims that are scheduled as contingent,

unliquidated or disputed (excluding such scheduled Claims that have been superseded by a timely-filed Proof of Claim);

- c. Holders whose Claims arise pursuant to an agreement or settlement with the Debtors, as reflected in a document filed with the Bankruptcy Court, in a final order of the Bankruptcy Court, or in a document executed by the Debtors pursuant to authority granted by the Bankruptcy Court, in each case regardless of whether a Proof of Claim has been filed; and
- d. The assignee of any transferred or assigned Claim, only if: (i) transfer or assignment has been fully effectuated pursuant to the procedures dictated by Bankruptcy Rule 3001(e) and (ii) such transfer is reflected on the Claims Register on or before the Record Date.

2. **Establishing Claim Amounts:** In tabulating votes, the following hierarchy will be used to determine the amount of the Claim associated with each vote:

- a. the amount of the Claim settled and/or agreed upon by the Debtors, as reflected in a Bankruptcy Court pleading, stipulation, agreement, or other document filed with the Bankruptcy Court, in a final order of the Bankruptcy Court or in a document executed by the Debtors pursuant to authority granted by the Bankruptcy Court;
- b. the amount of the Claim Allowed (temporarily or otherwise) pursuant to a Resolution Event in accordance with the Solicitation Procedures;
- c. the amount of the Claim contained in a Proof of Claim that has been timely filed by the applicable claims bar date (or deemed timely filed by the Bankruptcy Court under applicable law); provided that Ballots cast by holders whose Claims are not listed in the Schedules, but that timely file a Proof of Claim in an unliquidated or unknown amount that are not the subject of an objection, will count for satisfying the numerosity requirement of Bankruptcy Code section 1126(c) and will count as Ballots for Claims in the amount of \$1.00 solely for the purposes of satisfying the dollar amount provisions of section 1126(c) of the Bankruptcy Code; provided, further, that to the extent the amount of the Claim contained in the Proof of Claim is different from the amount of the Claim set forth in a document filed with the Bankruptcy Court as referenced in the Solicitation Procedures, the amount of the Claim in the document filed with the Bankruptcy Court will supersede the amount of the Claim set forth on the respective Proof of Claim;
- d. the amount of the Claim listed in the Schedules; provided, that such Claim is not listed in the Schedules as contingent, unliquidated or disputed, or any combination thereof, and has not been paid; and
- e. in the absence of any of the foregoing, zero.

The amount of the Claim established herein shall control for voting purposes only and shall not constitute the Allowed amount of any Claim. Moreover, any amounts filled in on Ballots by the Debtors through KCC are not binding for any purpose, including for purposes of voting and distribution.

3. **General Ballot Tabulation:** The following voting procedures and standard assumptions will be used in tabulating Ballots:

- a. except as otherwise provided herein or unless waived by the Debtors, unless the Ballot being furnished is timely submitted on or prior to the Voting Deadline, the Debtors shall reject such Ballot as invalid and, therefore, decline to count it in connection with Confirmation;
- b. KCC will date and time-stamp all Ballots when received. KCC shall retain all original Ballots and an electronic copy of the same for a period of one (1) year after the Effective Date of the Plan, unless otherwise ordered by the Bankruptcy Court;
- c. an original, executed Ballot is required to be submitted by the entity submitting any written Ballot. Subject to the other procedures and requirements herein, completed, executed Ballots may be submitted via the online “E-Balloting” portal maintained by KCC at <https://kccllc.net/hri>, and such holder’s signature will be deemed to be an original signature;
- d. Ballots should not be returned by electronic mail or facsimile—any Ballots submitted by electronic mail or facsimile will not be valid;
- e. the Debtors shall file the Voting Report at least two (2) business days prior to the Confirmation Hearing. The Voting Report shall, among other things, delineate every irregular Ballot including, without limitation, those Ballots that are late or (in whole or in material part) illegible, unidentifiable, lacking signatures or necessary information, received via facsimile or electronic mail, or damaged. The Voting Report shall indicate the Debtors’ intentions with regard to such irregular Ballots;
- f. the method of delivery of Ballots to KCC is at the election and risk of each holder of a Claim. Except as otherwise provided herein, such delivery will be deemed made only when KCC actually receives the originally executed Ballot;
- g. no Ballot should be sent to any of the Debtors, the Debtors’ agents (other than KCC), or the Debtors’ financial or legal advisors and if so sent will not be counted;
- h. if multiple Ballots are received from the same holder of a Claim with respect to the same Claim prior to the Voting Deadline, the last valid Ballot received prior to the Voting Deadline will supersede and revoke any prior dated Ballot;

- i. holders must vote all of their Claims within the Voting Class either to accept or reject the Plan and may not split any such votes. Accordingly, a Ballot that partially rejects and partially accepts the Plan will not be counted. Further, if a holder has multiple Claims within the Voting Class, the Debtors may, in their discretion, aggregate the Claims of any particular holder within a Class for the purpose of counting votes;
- j. a person signing or electronically submitting a Ballot in its capacity as a trustee, executor, administrator, guardian, attorney-in-fact, officer of a corporation, or otherwise acting in a fiduciary or representative capacity must indicate such capacity when signing and, if required or requested, submit proper evidence to the requesting party of the authority to so act on behalf of the subject holder;
- k. the Debtors, subject to contrary order of the Bankruptcy Court, may waive any defects or irregularities as to any particular Ballot at any time, either before or after the close of voting, and any such waivers shall be documented in the Voting Report;
- l. neither the Debtors, nor any other entity, will be under any duty to provide notification of defects or irregularities with respect to delivered Ballots other than as provided in the Voting Report, nor will any of them incur any liability for failure to provide such notification;
- m. unless waived by the Debtors, subject to contrary order of the Bankruptcy Court, any defects or irregularities in connection with deliveries of Ballots must be cured prior to the Voting Deadline or such Ballots will not be counted;
- n. in the event a designation for lack of good faith is requested by a party in interest under Bankruptcy Code section 1126(e), the Bankruptcy Court will determine whether any vote to accept and/or reject the Plan cast with respect to that Claim will be counted for purposes of determining whether the Plan has been accepted and/or rejected by such Claim;
- o. subject to any contrary order of the Bankruptcy Court, the Debtors reserve the right to reject any and all Ballots not in proper form, the acceptance of which, in the opinion of the Debtors, would not be in accordance with the provisions of the Bankruptcy Code or the Bankruptcy Rules; provided, however, that any such rejections shall be documented in the Voting Report;
- p. if a Claim has been estimated or otherwise Allowed for voting purposes by an order of the Bankruptcy Court pursuant to Bankruptcy Rule 3018(a), such Claim shall be temporarily Allowed in the amount so estimated or Allowed by the Bankruptcy Court for voting purposes only and not for purposes of allowance or distribution;

- q. if an objection to a Claim is filed, such Claim shall be treated in accordance with the procedures set forth herein; and
- r. the following Ballots shall not be counted in determining the acceptance or rejection of the Plan: (a) any Ballot that is illegible or contains insufficient information to permit the identification of the holder of the Claim; (b) any Ballot cast by an entity that does not hold a Claim in a Class that is entitled to vote on the Plan; (c) any unexecuted Ballot; (d) any Ballot not marked to accept or reject the Plan or any Ballot marked both to accept and reject the Plan; or (e) any Ballot submitted by any entity not entitled to vote pursuant to the Solicitation Procedures.

4. **Temporary Allowance of Claims for Voting Purposes:** If a holder of a Claim is subject to a pending objection as of the Record Date, the holder of such Claim cannot vote unless one or more of the following events have taken place at least ten (10) days before the Voting Deadline (each, a “Resolution Event”):

- a. an order of the Bankruptcy Court is entered allowing such Claim pursuant to Bankruptcy Code section 502(b), after notice and a hearing;
- b. an order of the Bankruptcy Court is entered temporarily allowing such Claim for voting purposes only pursuant to Bankruptcy Rule 3018(a), after notice and a hearing;
- c. a stipulation or other agreement is executed between the holder of such Claim and the Debtors resolving the objection and allowing such Claim in an agreed upon amount;
- d. a stipulation or other agreement is executed between the holder of such Claim and the Debtors temporarily allowing the holder of such Claim to vote its Claim in an agreed upon amount; or
- e. the pending objection to such Claim is voluntarily withdrawn by the Debtors.

No later than two (2) business days after a Resolution Event, KCC shall distribute a Solicitation Package and a pre-addressed envelope to the relevant holder of such temporarily allowed Claim that has been allowed for voting purposes only (or for other purposes as set forth in an applicable order of the Bankruptcy Court) by such Resolution Event, which must be returned according to the instructions on the Ballot by no later than the Voting Deadline.

5. **Forms of Notices to Unimpaired Classes:** Certain holders of Claims that are not entitled to vote because they are unimpaired are otherwise presumed to accept the Plan under Bankruptcy Code section 1126(f) and will receive the Confirmation Hearing Notice and the Non-Voting Status - Deemed to Accept Notice and the Opt-In Form. The Confirmation Hearing Notice will instruct the holders how they may obtain copies of the documents contained in the Solicitation Package (excluding Ballots).

6. **Forms of Notices to Impaired Classes:** Certain holders of Claims or Interests that are not entitled to vote because they are Impaired, or are otherwise deemed to reject the Plan under Bankruptcy Code section 1126(g) will receive the Confirmation Hearing Notice, Non-Voting Status - Deemed to Reject Notice and the Opt-In Form. The Confirmation Hearing Notice will instruct the holders how they may obtain copies of the documents contained in the Solicitation Package (excluding Ballots).

E. Release, Exculpation and Injunction Language in the Plan

THE RELEASE, EXCULPATION AND INJUNCTION LANGUAGE IN ARTICLE VIII OF THE PLAN WILL BE INCLUDED IN THE DISCLOSURE STATEMENT AND FURTHER NOTICE IS PROVIDED WITH RESPECT TO SUCH PROVISIONS IN THE CONFIRMATION HEARING NOTICE.

F. Amendments to the Plan and the Solicitation Procedures

THE DEBTORS EXPRESSLY RESERVE THE RIGHT TO AMEND FROM TIME TO TIME THE TERMS OF THE PLAN IN ACCORDANCE WITH THE TERMS THEREOF (SUBJECT TO COMPLIANCE WITH THE REQUIREMENTS OF BANKRUPTCY CODE SECTION 1127 AND THE TERMS OF THE PLAN REGARDING MODIFICATION).

THE DEBTORS EXPRESSLY RESERVE THE RIGHT TO AMEND OR SUPPLEMENT THE SOLICITATION PROCEDURES TO BETTER FACILITATE THE SOLICITATION PROCESS.
