

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

In re:

HRI HOLDING CORP., *et al.*<sup>1</sup>

Debtors.

Chapter 11

Case No. 19-12415 (\_\_\_)

(Joint Administration Requested)

**MOTION OF THE DEBTORS FOR ENTRY OF INTERIM AND FINAL ORDERS  
(A) AUTHORIZING THE DEBTORS TO PAY ALL OR A PORTION OF THE  
PREPETITION CLAIMS OF CERTAIN CRITICAL VENDORS AND  
(B) AUTHORIZING FINANCIAL INSTITUTIONS TO HONOR AND  
PROCESS RELATED CHECKS AND TRANSFERS**

The above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) by and through their proposed undersigned counsel, hereby submit this *Motion of the Debtors for Entry of Interim and Final Orders (a) Authorizing the Debtors to Pay All or a Portion of the Prepetition Claims of Certain Critical Vendors and (b) Authorizing Financial Institutions to Honor and Process Related Checks and Transfers* (the “Motion”). In support of the Motion, the Debtors rely on the *Declaration of Matthew R Manning in Support of the Debtors’ Chapter 11 Petitions and First Day Pleadings* (the “First Day Declaration”),<sup>2</sup> filed contemporaneously with this Motion, and respectfully state as follows:

<sup>1</sup> 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 (4948), Houlihan’s Texas Holdings, Inc. (5485), Houlihan’s Restaurants of Texas, Inc. (4948), JGIL Mill OP LLC (0741), JGIL Millburn, LLC (6071), JGIL Millburn 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.

<sup>2</sup> Except where otherwise indicated, capitalized terms used but not defined in this Motion have the meanings ascribed to them in the First Day Declaration.



**JURISDICTION AND VENUE**

1. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated February 29, 2012. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and the Court may enter a final order consistent with Article III of the United States Constitution.<sup>3</sup>

2. The statutory predicates for the relief sought herein are sections 105(a), 363, 364, and 553 of chapter 11 of Title 11 of the United States Code (as amended or modified, the “Bankruptcy Code”), rules 6003 and 6004(h) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

**GENERAL BACKGROUND**

4. On the date hereof (the “Petition Date”), the Debtors commenced the above captioned cases (the “Chapter 11 Cases”) by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code with the Court.

5. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to Bankruptcy Code sections 1107(a) and 1108. As of the date of this Motion, no trustee, examiner or statutory committee has been appointed in these Chapter 11 Cases.

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<sup>3</sup> Pursuant to rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedures for the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), the Debtors hereby confirm their consent to entry of a final order by this Court in connection with this Motion if it is later determined that this Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

6. Additional information regarding the circumstances leading to the commencement of these Chapter 11 Cases and information regarding the Debtors' businesses and capital structure is set forth in detail in the First Day Declaration filed contemporaneously with this Motion and incorporated herein by reference.

**RELIEF REQUESTED**

7. By this Motion, the Debtors seek authority to pay Critical Vendors (defined below) in the ordinary course of business as they determine is necessary or appropriate in order to induce the Critical Vendors to make, and continue to make, timely deliveries and provide services that are critical to the Debtors' operations. The Debtors propose to pay such claims if, in their sole discretion and business judgment, a Critical Vendor's failure to provide products and services ordered prepetition would be detrimental to the Debtors' business operations.

8. The Debtors also request that the Debtors' banks be authorized and directed to receive, process, honor, and pay any and all checks drawn on the Debtors' accounts on account of payments to Critical Vendors that have not cleared as of the Petition Date as the Debtors may direct.

9. The Debtors further request that payment of any Critical Vendor be subject to the following conditions:

- (a) the Critical Vendor must waive its right to file or otherwise assert against the Debtors or their estates, any lien or claim related to any prepetition amounts allegedly owed to the Critical Vendor by the Debtors arising from agreements or other arrangements entered into prior to the Petition Date to the extent of the amounts paid pursuant to the proposed order and not otherwise disgorged as provided therein, other than filing proofs of claim in the Debtors' cases;
- (b) to the extent the Critical Vendor has already obtained or asserted any such lien or claim, it must take all necessary actions to remove such liens and withdraw such claims;

- (c) the Critical Vendor must continue doing business with the Debtors in the ordinary course according to terms no less favorable to the Debtors than those in place prior to the Petition Date; and
- (d) to the extent that a Critical Vendor is paid pursuant to an order granting this Motion refuses to continue doing business with the Debtors, then the Debtors may, on notice to the affected Critical Vendor, seek disgorgement of such payments to the Debtors' estates.

10. The relief requested herein is without prejudice to the Debtors' right to contest the amounts of any claims on any grounds the Debtors deem appropriate.

#### **THE DEBTORS' CRITICAL VENDORS**

11. The Debtors own and operate four (4) restaurant concepts through 47 full-service restaurants concentrated within the Midwest and East Coast corridors. To operate their restaurants, the Debtors require a wide variety of quality fresh meat, dairy, beverages, condiments, dry and canned goods, paper products, and alcohol. The Debtors also require the services of certain maintenance providers to service their restaurant equipment and print and design providers to create and print menus for each of the Debtors' restaurants. If the delivery of products to the Debtors is stopped or delayed for even one (1) day, the Debtors could not operate their restaurants. Without a complete and constant supply of products, the Debtors would be extremely disadvantaged in highly competitive market segments and could suffer a swift attrition in customer patronage, which could be difficult, if not impossible, to restore. The Debtors' businesses depend on, among other things, the Debtors' ability to retain their vendors, cook and serve fresh, quality dishes and drinks, and maintain their reputation and customer loyalty. The Debtors need to be able to assure their customers, vendors and employees that, notwithstanding the filing of these Chapter 11 Cases, they will continue to operate at the highest level.

12. As of the Petition Date, approximately \$1.6 million of the amount owed to the Critical Vendors was for goods provided within twenty (20) days of the Petition Date and, therefore, are likely administrative claims. The Debtors propose an overall Critical Vendor payment cap of \$1.6 million on an interim basis and \$2.3 million on a final basis (together the “Payment Caps”).

**BASIS FOR RELIEF REQUESTED**

13. The Debtors believe the relief sought herein is not only critical to the Debtors’ sale efforts, but also is immediately necessary in light of the nature of the Debtors’ operations. If the requested relief is not granted and certain Critical Vendors refuse to continue to supply goods and services to the Debtors postpetition, the Debtors will be unable to continue operating their restaurants and keep their customers satisfied, which will certainly endanger the success of the Debtors’ Chapter 11 Cases and substantially harm all creditors.

14. In certain instances, the Critical Vendors are “sole-source” suppliers that maintain an effective monopoly on the goods necessary to run the Debtors’ operations. In fact, several states require restaurants to purchase alcohol solely from state run liquor stores and/or state approved distributors. In other instances, it is simply too difficult and costly, both in terms of time and pricing, for the Debtors to find another vendor who would supply comparable products or services. The Critical Vendors have institutional knowledge about the Debtors and experience with the Debtors’ restaurant needs that are nearly impossible to replace. Any delay or disruption caused by the Critical Vendors’ suspending performance would erode customer confidence and result in the likelihood that the Debtors’ customers would turn to one of the Debtors’ competitors.

15. In addition, the Debtors and their advisors have carefully examined whether the agreement to pay some or all of the Critical Vendors' unsecured claims, on an expedited basis, would reduce the immediate and irreparable harm to the Debtors' business operations that would result from the nonpayment of any such claim. Specifically, the Debtors have undertaken a thorough review of their accounts payable and their list of prepetition vendors to identify those vendors who are uniquely critical to the Debtors' operations.

16. In this regard, the Debtors have consulted and continue to consult with the appropriate members of their management team to identify those vendors that are in fact critical to the Debtors' operations (the "Critical Vendors"), using the following criteria: (a) whether the vendor in question is a "sole-source" or "limited source" provider; (b) whether the Debtors receive advantageous pricing or other terms from a vendor such that replacing the vendor postpetition would result in significantly higher costs to the Debtors; (c) the overall impact on the Debtors' operations if the vendor ceased or delayed shipments; and/or (d) whether the vendor might be able to obtain (or has obtained) mechanics liens, possessory liens, shippers liens, or similar state law trade liens on property necessary to the Debtors' ongoing operations. Applying these criteria, the Debtors have designated, in their discretion, the Critical Vendors.

**A. The Court May Authorize Payment to Critical Vendors Pursuant to Bankruptcy Code Section 363**

17. Courts have authorized payment of prepetition obligations under Bankruptcy Code section 363 where a sound business purpose exists for doing so. *See, e.g., In re Hancock Fabrics, Inc.*, Case No. 07-10353 (BLS) (Bankr. D. Del. April 13, 2007) (pursuant to section 363, authorizing payment of prepetition claims to certain vendors deemed critical by debtors); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (finding that a sound business justification existed to justify payment of certain claims); *Armstrong World Indus., Inc.*

*v. James A. Phillips, Inc. (In re James A. Phillips, Inc.)*, 29 B.R. 391, 397 (S.D.N.Y. 1983) (authorizing, pursuant to section 363, contractor to pay prepetition claims of some suppliers who were potential lien claimants, because payments were necessary for general contractors to release funds owed to debtors).

18. The Debtors believe payment of some of the amounts owed to Critical Vendors is necessary to preserve the Debtors' businesses as the Debtors pursue a value-maximizing sale transaction. The need for the flexibility to pay such claims is particularly acute in the period immediately following the Petition Date. While the Debtors are focused on maximizing the value of the Debtors' assets and stabilizing their businesses, Critical Vendors may attempt to assert their considerable leverage by denying the provision of the products and services going forward, suddenly and without notice, in an effort to cripple the Debtors' operations and compel payment.

19. Thus, maintaining the products and services provided by the Critical Vendors is vital to the Debtors' continuing business operations and the success of these Chapter 11 Cases. As such, the Debtors submit that the amount of the Payment Caps pales in comparison to the likely damage to the Debtors' businesses should the relief requested herein not be granted and the resulting impediment to the success of these Chapter 11 Cases. Accordingly, not only will the Debtors' other creditors not be impaired by payment to the Critical Vendors, but such creditors will benefit by this Court empowering the Debtors to negotiate payment to the Critical Vendors to achieve a smooth transition into bankruptcy and continued operations. In light of the foregoing, the Debtors submit they have a sound business purpose for paying certain of the Critical Vendors' prepetition claims.

20. Furthermore, if the relief sought herein is not granted, Critical Vendors will have no incentive to continue to finance the Debtors on beneficial trade terms and may insist that the Debtors pay for their goods on accelerated payment terms, cash in advance or a cash on delivery basis. Any further expansion of these activities by other Critical Vendors would be detrimental to the Debtors, their estates and their creditors.

**B. The Court May Also Grant the Motion Pursuant to the Bankruptcy Code and the Necessity of Payment Doctrine**

21. Bankruptcy Code section 105(a) authorizes the Court to issue “any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a). The purpose of Bankruptcy Code section 105(a) is to “assure the bankruptcy courts [sic] power to take whatever action is appropriate or necessary in aid of the exercise of [its] jurisdiction.” 2 COLLIER ON BANKRUPTCY ¶ 105.01 (15<sup>th</sup> ed. Rev. 2010). Under Bankruptcy Code section 105(a), courts may permit pre-plan payments of prepetition obligations when essential to the continued operation of a debtor’s businesses. *See In re Just for Feet, Inc.*, 242 B.R. 821, 825 (D. Del. 1999). The Debtors submit that the relief requested in this Motion is critical to the Debtors and is justified under Bankruptcy Code section 105(a).

22. Moreover, the relief requested in this Motion is supported by the well-established “necessity of payment” rule (also referred to as the “doctrine of necessity”). The United States Court of Appeals for the Third Circuit recognized the “necessity of payment” doctrine in *In re Lehigh & New England Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981). The Third Circuit held that a court could authorize the payment of prepetition claims if such payment was essential to the continued operation of the debtor. *Id.* (stating courts may authorize payment of prepetition claims when there “is the possibility that the creditor will employ an immediate economic sanction, failing such payment”); *see also In re Penn Central Transp. Co.*, 467 F.2d 100, 102 n.1

(3d Cir. 1972) (holding necessity of payment doctrine permits “immediate payment of claims of creditors where those creditors will not supply services or material essential to the conduct of the business until their pre-reorganization claims have been paid”); *In re Motor Coach Int’l, Inc.*, 2009 U.S. Dist. LEXIS 10024 (D. Del. Feb. 10, 2009) (reaffirming viability of doctrine of necessity in Third Circuit with respect to payment of prepetition critical vendor claims); *Just for Feet*, 242 B.R. at 824-45 (noting that, in the Third Circuit, debtors may pay prepetition claims that are essential to the continued operation of the business); *Pension Benefit Guaranty Corp. v. Sharon Steel Corp. (In re Sharon Steel Corp.)*, 159 B.R. 730, 736 (Bankr. W.D. Pa. 1993) (embracing “necessity of payment” doctrine and citing *Leigh & New England Ry. Co.* with approval); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191-92 (Bankr. D. Del. 1994) (same). The rationale in these cases applies to the Debtors’ efforts to continue their businesses and to preserve the going-concern value for the benefit of their creditors. Without the authority to pay Critical Vendors, the Debtors’ ability to continue operations and to maximize the value of their assets would be significantly reduced.

23. Allowing the Debtors to pay the Critical Vendors, pursuant to all or some of the above-referenced provisions, is especially appropriate where, as here, doing so is consistent with the “two recognized policies” of chapter 11 of the Bankruptcy Code—preserving going-concern value and maximizing the value of property available to satisfy creditors. *See Bank of Am. Nat’l Trust & Savs. Assoc. v. 203 N LaSalle St. P’ship*, 526 U.S. 434, 453 (1999). Indeed, courts in this district regularly grant relief consistent with that which the Debtors are seeking in this Motion. *See, e.g., In re Perkins & Marie Callender’s, LLC*, Case No. 19-11743 (KG) (Bankr. D. Del. Sept. 10, 2019); *In re RUI Holding Corp.*, Case No. 19-11509 (JTD) (Bankr. D. Del. Aug. 7, 2019); *In re Pernix Sleep, Inc.*, Case No. 19-10323 (CSS) (Bankr. D. Del. Mar. 22, 2019); *In*

*re Bertucci's Holdings, Inc.*, Case No. 18-18094 (MFW) (Bankr. D. Del. May 3, 2018); *In re Seastar Holdings, Inc.*, Case No. 18-10039 (CSS) (Bankr. D. Del. Jan. 29, 2018); *In re SFX Entertainment, Inc.*, Case No. 16-10238 (MFW) (Bankr. D. Del. Feb. 3, 2016); *In re Appleseed's Intermediate Holdings LLC*, Case No. 11-10160 (KG) (Bankr. D. Del. Feb. 23, 2011); *In re OTC Holdings Corp.*, Case No. 10-12636 (BLS) (Bankr. D. Del. Sept. 17, 2010); *In re Am. Safety Razor Co., LLC*, Case No. 10-12351 (MFW) (Bankr. D. Del. Aug. 23, 2010); *In re NEC Holdings Corp.*, Case No. 10-11890 (KG) (Bankr. D. Del. July 13, 2010). The Debtors respectfully submit that similar relief is warranted in these cases because without the products and services provided by the Critical Vendors, the Debtors could not continue in an uninterrupted manner to operate their restaurants or progress toward a successful sale transaction.

24. As explained above, payment to the Critical Vendors is essential to the continued, uninterrupted operation of the Debtors' businesses and the ability to maximize the value of the Debtors' assets. Accordingly, the Debtors request that the relief requested herein be granted.

**C. The Court May Also Authorize the Relief Requested as a Valid Exercise of the Debtors' Fiduciary Duties**

25. The Debtors, operating their businesses as debtors-in-possession pursuant to Bankruptcy Code sections 1107(a) and 1108, are fiduciaries "holding the bankruptcy estate and operating the business for the benefit of . . . its creditors and (if the value justifies) equity owners." *In re CoServ*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). Implicit in the duties of a debtor-in-possession is the duty "to protect and preserve the estate, including operating business's going-concern value." *Id.*

26. It has been noted that there are instances in which a debtor-in-possession can fulfill its fiduciary duty "by the preplan satisfaction of a pre-petition claim." *Id.* The *CoServ*

court specifically noted that preplan satisfaction of prepetition claims would be a valid exercise of a debtor's fiduciary duty when the payment "is the only means to effect a substantial enhancement of the estate" and also when the payment was to "sole suppliers of a given product." *Id.* at 497-98. The court provided a three-pronged test for determining whether a preplan payment on account of a prepetition claim was a valid exercise of a debtor's fiduciary duty:

First, it must be critical that the debtor deal with the claimant. Second, unless it deals with the claimant, the debtor risks the probability of harm, or, alternatively, loss of economic advantage to the estate or the debtor's going concern value, which is disproportionate to the amount of the claimant's pre-petition claim. Third, there is no practical or legal alternative by which the debtor can deal with the claimant other than by payment of the claim.

*Id.* at 498.

27. Payment to the Critical Vendors meets the test set forth in *CoServ*. As described above, the Debtors have narrowly tailored the amount to be paid under the Payment Caps to encompass only those suppliers that are essential to the Debtors' ongoing business operations. The shutdown of the Debtors' operations could cost the Debtors' estates substantial amounts in lost revenues, and furthermore, could adversely impact the Debtors' ongoing operations. Accordingly, the harm and economic disadvantage that would stem from the failure to pay the Critical Vendors is grossly disproportionate to the amount of the prepetition claims that would have to be paid in order to ensure the Critical Vendors' ongoing business with the Debtors, ensure the continued supply of critical goods and services to the Debtors and facilitate the Debtors' continued business operations and efforts to maximize the value of their assets. Finally, with respect to the Critical Vendors, the Debtors have examined other options short of payment to Critical Vendors and have determined that to avoid significant disruption of the Debtors' business operations there exists no practical available alternative to paying certain of the Critical Vendors' prepetition claims. Accordingly, the Debtors request that the Court grant the relief

requested herein.

**BANKRUPTCY RULE 6003 SATISFIED AND  
REQUEST FOR WAIVER OF STAY**

28. The Debtors further submit that because the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtors for the reasons set forth herein and in the First Day Declaration, Bankruptcy Rule 6003 has been satisfied and the relief requested herein should be granted.

29. Specifically, Bankruptcy Rule 6003 provides:

Except to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, grant relief regarding the following: . . . (b) a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition, but not a motion under Rule 4001.

Fed. R. Bankr. P. 6003.

30. The Third Circuit Court of Appeals has interpreted language similar to that used in Bankruptcy Rule 6003 in the context of preliminary injunctions. In that context, irreparable harm has been interpreted as a continuing harm that cannot be adequately redressed by final relief on the merits and for which monetary damages cannot provide adequate compensation. *See, e.g., Norfolk S. Ry. Co. v. City of Pittsburgh*, 235 Fed. Appx. 907, 910 (3d Cir. 2007) (citing *Glasco v. Hills*, 558 F.2d 179, 181 (3d Cir. 1977)). Further, the harm must be shown to be actual and imminent, not speculative or unsubstantiated. *See, e.g., Acierno v. New Castle County*, 40 F.3d 645, 653-55 (3d Cir. 1994).

31. As discussed above, it is essential that the Debtors pay certain prepetition claims of Critical Vendors. Any disruption in the Debtors' ability to obtain products or services from Critical Vendors may result in an immediate interruption or diminution in the Debtors' business

operations to the detriment of their estates and all parties-in-interest in these Chapter 11 Cases. Accordingly, the Debtors respectfully submit that they have satisfied the “immediate and irreparable harm” standard of Bankruptcy Rule 6003 and seek authority to pay the Critical Vendors as requested herein.

32. The Debtors further seek a waiver of any stay of the effectiveness of the order approving this Motion. Pursuant to Bankruptcy Rule 6004(h), “[an] order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of fourteen (14) days after entry of the order, unless the court orders otherwise.” As set forth above, the relief requested herein is essential to prevent irreparable damage to the Debtors’ operations, going-concern value and their effort to pursue a sale of their businesses at maximum value for the benefit of all of their stakeholders.

33. Accordingly, the relief requested herein is appropriate under the circumstances and under Bankruptcy Rules 6003 and 6004(h).

### **RESERVATION OF RIGHTS**

34. Nothing contained in this Motion or any actions taken by the Debtors pursuant to relief granted in the interim order or final order is intended or should be construed as: (a) an admission as to the validity, priority or amount of any particular claim against a Debtor entity; (b) a waiver of the Debtors’ or any other party-in-interest’s rights to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Motion; (e) a request or authorization to assume any agreement, contract or lease pursuant to Bankruptcy Code section 365; (f) a waiver or limitation of the Debtors’ or any other party-in-interest’s rights under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors or any other

party-in-interest that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to this Motion are valid and the Debtors and all other parties-in-interest expressly reserve their rights to contest the extent, validity or perfection, or to seek avoidance of such liens. If the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity, priority or amount of any particular claim or waiver of the Debtors' or any other party-in-interest's rights to subsequently dispute such claim.

**NOTICE AND NO PRIOR REQUEST**

35. Notice of this Motion has been given to the following parties or, in lieu thereof, to their counsel, if known: (a) the Office of the United States Trustee for the District of Delaware; (b) each of the Debtors' creditors holding the thirty (30) largest unsecured claims as set forth in the consolidated list filed with the Debtors' petitions; (c) the Lenders; (d) the United States Department of Justice; (e) all parties who have requested notice in these Chapter 11 Cases pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested in this Motion, the Debtors respectfully submit that no further notice is necessary.

36. No prior request for the relief sought in this Motion has been made to this or any other court.

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WHEREFORE, the Debtors respectfully request that this Court enter interim and final orders granting the relief requested herein and grant the Debtors such other and further relief as is just and proper.

Dated: November 14, 2019  
Wilmington, Delaware

**LANDIS RATH & COBB LLP**



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and Debtors-In-Possession*

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

In re:

HRI HOLDING CORP., *et al.*<sup>1</sup>

Debtors.

Chapter 11

Case No. 19-12415 (\_\_\_)

(Joint Administration Requested)

**INTERIM ORDER AUTHORIZING THE DEBTORS TO PAY ALL OR A PORTION OF  
THE PREPETITION CLAIMS OF CERTAIN CRITICAL VENDORS AND  
AUTHORIZING FINANCIAL INSTITUTIONS TO HONOR AND  
PROCESS RELATED CHECKS AND TRANSFERS**

Upon the *Motion of the Debtors for Entry of Interim and Final Orders (A) Authorizing the Debtors to Pay All or a Portion of the Prepetition Claims of Certain Critical Vendors and (B) Authorizing Financial Institutions to Honor and Process Related Checks and Transfers* (the "Motion");<sup>2</sup> and upon the First Day Declaration; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated February 29, 2012; and the Court having found that is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and the Court may enter an order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and this Motion in this District is proper pursuant to

<sup>1</sup> 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 (4948), 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.

<sup>2</sup> All capitalized terms not otherwise defined herein shall have the same meanings ascribed to them in the Motion.

28 U.S.C. §§ 1408 and 1409; and it appearing that sufficient notice of the Motion has been given; and it appearing that the relief requested by the Motion is in the best interest of the Debtors' estates; and sufficient cause appearing therefor; it is hereby

ORDERED that the Motion is GRANTED on an interim basis as set forth herein; and it is further

ORDERED that the final hearing (the "Final Hearing") on the Motion will be held on \_\_\_\_\_, 2019 at \_\_\_\_\_ (prevailing Eastern Time). Any objections or responses to entry of a final order on the Motion must be filed on or before 4:00 p.m. (prevailing Eastern Time) on \_\_\_\_\_, 2019 and served on the following parties: (i) the Office of the United States Trustee, J. Caleb Boggs Federal Building, 844 North King Street, Suite 2207, Wilmington, Delaware 19801 (Attn: Jane M. Leamy, Esq.); (ii) Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, Delaware 19801 (Attn: Kimberly A. Brown, Esq. and Matthew R. Pierce, Esq.), and (iii) counsel to any official committee. In the event no objections to entry of a final order on the Motion are timely received, this Court may enter such final order without need for the Final Hearing; and it is further

ORDERED that the Debtors are authorized, but not required, in their sole discretion, to pay the Critical Vendors in the ordinary course of their business in an amount not to exceed \$1.4 million on an interim basis absent further order of the Court; and it is further

ORDERED that the Debtors will send each Critical Vendor a notice advising them of their status as such highlighting the material terms of this interim order, along with a copy of this interim order; and it is further

ORDERED that as a condition of receiving payment, each Critical Vendor is required to voluntarily agree in writing to (i) waive its right to file or otherwise assert against the Debtors or

their estates, any lien or claim related to any prepetition amounts allegedly owed to the Critical Vendor by the Debtors arising from agreements or other arrangements entered into prior to the Petition Date to the extent of the amounts paid pursuant to this Order and not otherwise disgorged as provided herein, other than filing proofs of claim in the Debtors' cases, (ii) to the extent the Critical Vendor has already obtained or asserted any such lien or claim, take all necessary actions to remove such lien and withdraw such claims, (iii) continue doing business with the Debtors in the ordinary course according to terms no less favorable to the Debtors than those in place prior to the Petition Date, and (iv) if a Creditor Vendor paid pursuant to this Order refuses to continue doing business with the Debtors, then the Debtors may, on notice to the affected Critical Vendor, seek disgorgement of such payments to the Debtors' estates; and it is further

ORDERED that notwithstanding the relief granted in this interim order and any actions taken pursuant to such relief, nothing in this interim order shall be deemed: (a) an admission as to the validity, priority or amount of any particular claim against a Debtor entity; (b) a waiver of the Debtors' or any other party-in-interest's right to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this interim order or the Motion; (e) a request or authorization to assume any agreement, contract or lease pursuant to Bankruptcy Code section 365; (f) a waiver or limitation of the Debtors' or any other party-in-interest's rights under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors or any other party-in-interest that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to this interim order are valid and the Debtors' and all other parties-in-interest's rights to contest the extent, validity or perfection or to seek avoidance of all such liens are reserved.

Any payment made pursuant to this interim order should not be construed as an admission as to the validity, priority or amount of any particular claim or a waiver of the Debtors' or any other party-in-interest's rights to subsequently dispute such claim; and it is further

ORDERED that all applicable banks and other financial institutions are hereby authorized to receive, process, honor, and pay any and all checks and funds transfers evidencing amounts paid by the Debtors pursuant to the Motion, whether presented or issued prior to or after the Petition Date. Such banks and financial institutions are authorized to rely on the representations of the Debtors as to which checks are issued or authorized to be paid pursuant to this Order; and it is further

ORDERED that Bankruptcy Rule 6003 is satisfied; and it is further

ORDERED that notwithstanding the applicability of Bankruptcy Rules 6004(h), 7062 and 9014, the term of this Order shall be immediately effective and enforceable upon its entry; and it is further

ORDERED that the Debtors are authorized to take all actions necessary to effectuate the relief granted in this order; and it is further

ORDERED that the Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Order.

Dated: November \_\_, 2019  
Wilmington, Delaware

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UNITED STATES BANKRUPTCY JUDGE

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

In re:

HRI HOLDING CORP., *et al.*<sup>1</sup>

Debtors.

Chapter 11

Case No. 19-12415 (\_\_\_\_)

(Joint Administration Requested)

**FINAL ORDER AUTHORIZING THE DEBTORS TO PAY ALL OR A PORTION OF  
THE PREPETITION CLAIMS OF CERTAIN CRITICAL VENDORS AND  
AUTHORIZING FINANCIAL INSTITUTIONS TO HONOR AND  
PROCESS RELATED CHECKS AND TRANSFERS**

Upon the *Motion of the Debtors for Entry of Interim and Final Orders (A) Authorizing the Debtors to Pay All or a Portion of the Prepetition Claims of Certain Critical Vendors and (B) Authorizing Financial Institutions to Honor and Process Related Checks and Transfers (the “Motion”)*;<sup>2</sup> and upon the First Day Declaration; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated February 29, 2012; and the Court having found that is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and the Court may enter an order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this District is proper pursuant to

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<sup>1</sup> 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 (4948), 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.

<sup>2</sup> All capitalized terms not otherwise defined herein shall have the same meanings ascribed to them in the Motion.

28 U.S.C. §§ 1408 and 1409; and it appearing that sufficient notice of the Motion has been given; and it appearing that the relief requested by the Motion is in the best interest of the Debtors' estates; and sufficient cause appearing therefor; it is hereby

ORDERED that the Motion is GRANTED on a final basis as set forth herein; and it is further

ORDERED that the Debtors are authorized, but not required, in their sole discretion, to pay the Critical Vendors in the ordinary course of its business in an amount not to exceed \$2.1 million absent further order of the Court; and it is further

ORDERED that as a condition of receiving payment, each Critical Vendor is required to voluntarily agree in writing to (i) waive its right to file or otherwise assert against the Debtors or their estates, any lien or claim related to any prepetition amounts allegedly owed to the Critical Vendor by the Debtors arising from agreements or other arrangements entered into prior to the Petition Date to the extent of the amounts paid pursuant to this Order and not otherwise disgorged as provided herein, other than filing proofs of claim in the Debtors' cases, (ii) to the extent the Critical Vendor has already obtained or asserted any such lien or claim, take all necessary actions to remove such lien and withdraw such claims, (iii) continue doing business with the Debtors in the ordinary course according to terms no less favorable to the Debtors than those in place prior to the Petition Date, and (iv) if a Creditor Vendor paid pursuant to this Order refuses to continue doing business with the Debtors, then the Debtors may, on notice to the affected Critical Vendor, seek disgorgement of such payments to the Debtors' estates; and it is further

ORDERED that notwithstanding the relief granted in this final order and any actions taken pursuant to such relief, nothing in this final order shall be deemed: (a) an admission as to

the validity, priority or amount of any particular claim against a Debtor entity; (b) a waiver of the Debtors' or any other party-in-interest's right to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this final order or the Motion; (e) a request or authorization to assume any agreement, contract or lease pursuant to Bankruptcy Code section 365; (f) a waiver or limitation of the Debtors' or any other party-in-interest's rights under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors or any other party-in-interest that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to this final order are valid and the Debtors' and all other parties-in-interest's rights to contest the extent, validity or perfection or to seek avoidance of all such liens are reserved. Any payment made pursuant to this final order should not be construed as an admission as to the validity, priority or amount of any particular claim or a waiver of the Debtors' or any other party-in-interest's rights to subsequently dispute such claim; and it is further

ORDERED that all applicable banks and other financial institutions are hereby authorized to receive, process, honor, and pay any and all checks and funds transfers evidencing amounts paid by the Debtors pursuant to the Motion, whether presented or issued prior to or after the Petition Date. Such banks and financial institutions are authorized to rely on the representations of the Debtors as to which checks are issued or authorized to be paid pursuant to this Order; and it is further

ORDERED that Bankruptcy Rule 6003 is satisfied; and it is further

ORDERED that notwithstanding the applicability of Bankruptcy Rules 6004(h), 7062 and 9014, the term of this Order shall be immediately effective and enforceable upon its entry; and it is further

ORDERED that the Debtors are authorized to take all actions necessary to effectuate the relief granted in this order; and it is further

ORDERED that the Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Order.

Dated: \_\_\_\_\_, 2019  
Wilmington, Delaware

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UNITED STATES BANKRUPTCY JUDGE