

**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 (____)

(Joint Administration Requested)

**MOTION OF THE DEBTORS FOR ENTRY OF AN ORDER
(A) APPROVING BIDDING PROCEDURES IN CONNECTION WITH A
TRANSACTION BY PUBLIC AUCTION; (B) SCHEDULING A HEARING TO
CONSIDER THE TRANSACTION; (C) APPROVING THE FORM AND MANNER
OF NOTICE THEREOF; (D) APPROVING CONTRACT PROCEDURES;
AND (E) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors-in-possession (collectively, the “Debtors” or “Sellers”) by and through their proposed undersigned counsel, hereby submit this motion (the “Motion”) for entry of an order substantially in the form annexed hereto (the “Bidding Procedures Order”): (a) approving the procedures in connection with the solicitation and acceptance of higher and better bids (the “Bidding Procedures”) substantially in the form annexed as Exhibit 1 to the Bidding Procedures Order, including the Breakup Fee and Expense Reimbursement as defined and set forth in the asset purchase agreement (the “Agreement”)²

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 (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.

² A copy of the Agreement is attached as Exhibit A to the Sale Motion (defined below) filed contemporaneously herewith and incorporated herein by reference. Except where otherwise indicated, capitalized terms used but not



among the Debtors and Landry's, LLC (together with its permitted successors, assigns and designees, the "Stalking Horse Bidder") with respect to the proposed sale (the "Sale") of substantially all of the Debtors' assets (the "Purchased Assets"); (b) scheduling a hearing for the approval of the Sale (the "Sale Hearing") and setting objection deadlines with respect to the Sale; (c) approving the form and manner of notice of the Sale and related auction (the "Auction") for the Purchased Assets, substantially in the form annexed as **Exhibit 3** to the Bidding Procedures Order (the "Sale Notice"); (d) establishing procedures to determine Cure Costs and deadlines for objections to the potential assumption and assignment of executory contracts and unexpired leases; and (e) granting related relief. 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") and state as follows:

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the District of Delaware (the "Court") has jurisdiction over this Motion under 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. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. 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.³

2. The statutory predicates for the relief requested herein are (i) sections 105, 363, 365, 503, and 507 of title 11 of the United States Code (as amended or modified, the

defined in this Motion have the meanings ascribed to them in the Agreement, the Bidding Procedures, the First Day Declaration (defined below), or the Sale Motion, as applicable.

³ Pursuant to rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of 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 the Court in connection with this Motion if it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

“Bankruptcy Code”) and (ii) rules 2002, 6003, 6004, 6006, 9008, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Local Rule 6004-1.

BACKGROUND

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

4. 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.

5. 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.

6. Also filed contemporaneously herewith is the *Motion of the Debtors for Entry of an Order (i) Approving Asset Purchase Agreement and Authorizing the Sale of Certain Assets of the Debtors Outside the Ordinary Course of Business, (ii) Authorizing the Sale of Assets Free and Clear of All Liens, (iii) Authorizing the Assumption and Assignment or Rejection of Certain Executory Contracts and Unexpired Leases, and (iv) Granting Related Relief* (the “Sale Motion”), which is incorporated herein by reference.

A. The Proposed Sale

7. As described in more detail in the First Day Declaration and the Sale Motion, the Debtors, in the exercise of their reasonable business judgment, have determined that the most

effective way to maximize the value of the Debtors' estates for the benefit of their constituents was to seek bankruptcy protection and to sell their businesses and assets through a Sale pursuant to Bankruptcy Code section 363. The sale is supported by the Lenders, who do not object to the use of their cash collateral and are lending the Debtors additional amounts under the DIP Facility. In order to satisfy the requirements of the DIP Facility and maintain the support of the Lenders, customers and vendors, and maintain the Debtors' employee base, it is in the best interests of the Debtors and their estates to move expeditiously with a sale process, as discussed herein.

B. Marketing of the Debtors' Assets and Selection of the Stalking Horse Bidder

8. In June 2019, the Debtors retained Piper Jaffray & Co. ("Piper Jaffray") to evaluate the Debtors' operations and present strategic alternatives to their board of directors. After analyzing their strategic alternatives, the Debtors tasked Piper Jaffray with marketing their assets. Piper Jaffray has prepared extensive marketing materials and began marketing the Debtors' assets in August 2019. After receiving and analyzing various proposals, the Debtors selected the Stalking Horse Bidder in connection with a sale transaction subject to higher or otherwise better bids.

9. Piper Jaffray continues to market the Debtors' assets postpetition. The Debtors expect that Piper Jaffray's marketing process may result in competing bids being submitted by the proposed December 16, 2019 Bid Deadline. The Debtors believe that, based on consultations with Piper Jaffray, the marketing period, which will have spanned approximately fourteen (14) weeks prepetition and five (5) weeks during these Chapter 11 Cases, is a reasonable and sufficient period to solicit bids on the Debtors' assets given the current market. The Debtors believe that the marketing efforts will be sufficient to ensure the highest or otherwise best offer,

particularly in light of the Debtors' limited financing options and ongoing cash needs. Further, the Debtors believe that a delayed process likely would lead to the deterioration of the operating performance of their businesses and the value of their assets.

10. The Debtors also believe that, based on consultations with Piper Jaffray, the Bidding Procedures negotiated with the Stalking Horse Bidder will solicit the highest or otherwise best offer for the Debtors' assets under the circumstances of these Chapter 11 Cases.

C. Proposed Bidding Procedures

11. The Debtors seek to conduct an open and transparent sale process pursuant to which the winning bidder will enter into an asset purchase agreement, substantially in the form of the Agreement, for the purchase of substantially all of the Debtors' assets, free and clear of liens, claims, encumbrances, and interests with such liens, claims, encumbrances, and interests attaching to the sale proceeds.

12. The Bidding Procedures (as summarized below) were developed consistent with the Debtors' need to proceed with an expedited sale process to preserve the going-concern value of the Debtors' assets and the objective of promoting active bidding that will result in the highest or otherwise best offer for the Purchased Assets. Moreover, the Bidding Procedures reflect the Debtors' objective of conducting the Auction in a controlled, but fair and open, fashion that promotes interest in the Purchased Assets by financially-capable, motivated bidders who are likely to close the Sale.

13. The following paragraphs in this section summarize key provisions of the Bidding Procedures, and are qualified in their entirety by reference to the actual Bidding Procedures.

A. The Termination Fee. Unless the Stalking Horse Bidder is the Backup Bidder, upon the approval of a sale of all or substantially all of the Purchased Assets to any third party (other than the Stalking Horse Bidder) (an "Alternative Transaction"), in consideration for the Stalking Horse Bidder having expended

considerable time and expense in connection with the Agreement and the negotiation thereof and the identification and quantification of assets of the Debtors, the Debtors are required to pay the Stalking Horse Bidder the Breakup Fee in an amount equal to (i) \$1.2 million, *plus* (ii) up to \$300,000 of the actual, reasonable and documented expenses of the Stalking Horse Bidder incurred in connection with the negotiation, execution and preparation for the consummation of the transactions contemplated by the Agreement (such Expense Reimbursement, together with the Breakup Fee, the "Termination Fee") by wire transfer of immediately available funds to the account specified by the Stalking Horse Bidder to the Debtors in writing. The Termination Fee shall be paid three (3) Business Days following closing of an Alternative Transaction, and shall be paid to the Stalking Horse Bidder prior to the payment of the proceeds of such sale to any third party asserting a Lien on the Purchased Assets (and no Lien of any third party shall attach to the portion of the sale proceeds representing the Breakup Fee and the Expense Reimbursement). Except for the Stalking Horse Bidder, no other party submitting an offer or Bid for the Purchased Assets or a Qualifying Bid shall be entitled to any expense reimbursement, breakup fee, termination, or similar fee or payment.

The Termination Fee shall constitute an allowed administrative expense claim against the Debtors' bankruptcy estates pursuant to Bankruptcy Code sections 363, 503(b) and 507(a)(2).

B. Participation Requirements. To be eligible to participate in the Auction, each offer, solicitation or proposal (each, a "Bid"), and each party submitting such a Bid (each, a "Bidder"), must be determined by the Debtors to satisfy each of the following conditions:

1. Confidentiality. To participate in the bidding process and to receive access to due diligence, a party must submit to the Debtors an executed confidentiality agreement in the form and substance satisfactory to the Debtors.
2. Good Faith Deposit. Each Bid, other than the Agreement submitted by the Stalking Horse Bidder, must be accompanied by a cash deposit in the amount equal to ten percent (10%) of the Bid to be held in a segregated account to be identified and established by the Debtors (the "Good Faith Deposit"). The Good Faith Deposits of all Qualified Bidders shall be held in one or more segregated accounts by the Debtors, but shall not become property of the Debtors' estates absent further order of the Court. The Good Faith Deposit of any Qualified Bidder that is neither the Successful Bidder nor the Backup Bidder shall be returned to such Qualified Bidder not later than two (2) business days after the Sale Hearing. The Good Faith Deposit of the Backup Bidder shall be returned to the Backup Bidder on the date that is the earlier of one (1) Business Day after (a) the closing of the transaction with the Successful Bidder and (b) the Outside Backup Date (defined

below). If the Successful Bidder timely closes the winning transaction, its Good Faith Deposit shall be credited towards its purchase price.

3. Same or Better Terms. The Bid must be on terms that are substantially the same or better than the terms of the Agreement, as determined by the Debtors (in consultation with the Lenders) and the Bid must identify which assets the Bidder intends to purchase and include executed transaction documents (a “Competing Transaction”). A Bid shall include a copy of the Agreement marked to show all changes requested by the Bidder. A Bid will not be considered as qualified for the Auction if (i) such Bid contains additional material representations and warranties, covenants, closing conditions, termination rights other than as may be included in the Agreement (it being agreed and understood that such Bid shall modify the Agreement as needed to comply in all respects with the Bidding Procedures Order and will remove provisions that apply only to the Stalking Horse Bidder as the stalking horse bidder such as the Termination Fee); (ii) such Bid is not received by the Debtors in writing on or prior to the Bid Deadline, and (iii) such Bid does not contain evidence that the Person submitting it has received unconditional debt and/or equity funding commitments (or has unrestricted and fully available cash) sufficient in the aggregate to finance the purchase contemplated thereby, including proof that the Good Faith Deposit has been made.
4. Corporate Authority. The Bid must include written evidence reasonably acceptable to the Debtors (in consultation with the Lenders) demonstrating appropriate corporate authorization to consummate the proposed Competing Transaction.
5. Proof of Financial Ability to Perform. The Bid must include written evidence that the Debtors reasonably conclude (in consultation with the Lenders) demonstrates that the Bidder has the necessary financial ability to close the Competing Transaction and provide adequate assurance of future performance under all contracts to be assumed and assigned in such Competing Transaction.
6. Contingencies. A Bid may not (i) contain representations and warranties, covenants, termination rights, financing, due diligence contingencies other than as may be included in the Agreement (it being agreed and understood that such Bid shall modify the Agreement as needed to comply in all respects with the Bidding Procedures Order (including removing any termination rights in conflict with the Bidding Procedures Order) and will remove provisions that apply only to the Stalking Horse Bidder as the stalking horse bidder, such as the Termination Fee) or (ii) be conditioned on obtaining financing or any internal approval, or on the outcome or review of due diligence, but may be subject to the accuracy in all material respects of specified

representations and warranties at the Closing.

7. Irrevocable. A Bid must be irrevocable through the Auction, provided, however, that if such Bid is accepted as the Successful Bid or a Backup Bid, such Bid shall continue to remain irrevocable, subject to the terms and conditions of the Bidding Procedures.
 8. Amount of Bid. Each Bid must be for all of the Purchased Assets and shall clearly show the amount of the purchase price. In addition, a Bid (a) must propose a purchase price equal to or greater than the aggregate of the sum of (i) the value of the Bid set forth in the Agreement executed by the Stalking Horse Bidder, as determined by the Debtor (in consultation with the Lenders); (ii) the dollar value of the Termination Fee in cash, and (iii) \$250,000 (the initial overbid amount), in cash and (b) must obligate the Bidder to pay, to the extent provided in the Agreement, all amounts which the Stalking Horse Bidder under the Agreement has agreed to pay, including all Assumed Liabilities.
 9. Adequate Assurance of Future Performance. Each Bid shall be accompanied by adequate assurance of future performance information (the "Adequate Assurance Information"), including (i) information about the Bidder's financial condition, such as federal tax returns for two (2) years, a current financial statement or bank account statements, (ii) information demonstrating (in the Debtors' reasonable business judgment, in consultation with the Lenders) that the Bidder has the financial capacity to consummate the proposed Competing Transaction, (iii) evidence that the Bidder has obtained authorization or approval from its board of directors (or comparable governing body) with respect to the submission of its Bid, (iv) the identity and exact name of the Bidder (including any equity holder or other financial backer if the Bidder is an entity formed for the purpose of consummating the proposed Competing Transaction, and (v) such additional information regarding the Bidder as the Bidder may elect to include. By submitting a Bid, Bidders agree that the Debtors may disseminate their Adequate Assurance Information to affected landlord and contract counterparties in the event that the Debtors determine such bid to be a Qualified Bid.
 10. Affirmative Statement. Each Bid shall be accompanied by an affirmative statement (i) it has and will continue to comply with these Bidding Procedures; (ii) its bid does not entitle such Qualified Bidder to any breakup fee, termination fee, expense reimbursement or similar type of payment or reimbursement; and (iii) it waives any substantial contribution administrative expense claims under Bankruptcy Code section 503(b) related to bidding for the Assets.
- C. Bid Deadline. Regardless of when a party qualifies as a Preliminarily Interested Investor, the following parties must receive a Bid in writing, on or before

December 16, 2019 at 4:00 p.m. (Prevailing Eastern Time) or such earlier date as may be agreed to by the Debtors (the “Bid Deadline”): (i) the Debtors, 8700 State Line Road, Suite 100, Leawood, Kansas 66206 (Attn: Michael Archer and Cindy Parres); (ii) counsel to the Debtors, Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, Delaware 19801 (Attn: Adam G. Landis and Kimberly A. Brown), landis@lrclaw.com and brown@lrclaw.com, and (iii) investment banker to the Debtors, Piper Jaffray & Co., 2321 Rosecrans Avenue, Suite 3200, El Segundo, California 90245 (Attn: Teri Stratton), teri.l.stratton@pjc.com; (iv) counsel to the Lenders, Katten Muchin Rosenman LLP, 515 South Flower Street, Suite 1000, Los Angeles, California 90071-2212 (Attn: William B. Freeman), bill.freeman@katten.com and 575 Madison Avenue, New York, New York 10022-2585 (Attn: Karen B. Dine), karen.dine@katten.com.

- D. Qualified Bid. The Debtors will review each Bid received from a Bidder to determine, in their sole discretion (in consultation with the Lenders), whether it meets the requirements set forth above. A Bid received from a Bidder before the Bid Deadline that meets the above requirements, as determined by the Debtors (in consultation with the Lenders), shall constitute a “Qualified Bid,” and such Bidder shall constitute a “Qualified Bidder.” The Debtors shall inform Bidders whether or not their Bids have been designated as Qualified Bids no later than twenty-four (24) hours after such Bids are received and shall contemporaneously inform the Stalking Horse Bidder of all Bids that the Debtors consider to be a Qualified Bid. Notwithstanding anything herein to the contrary, the Agreement submitted by the Stalking Horse Bidder shall be deemed a Qualified Bid, and the Stalking Horse Bidder is a Qualified Bidder for each phase of the Auction.
- E. Auction. If one or more Qualified Bids (other than the Agreement submitted by the Stalking Horse Bidder) are received by the Bid Deadline, the Debtors will conduct an auction (the “Auction”) to determine the highest or otherwise best Qualified Bid. If no Qualified Bid (other than the Agreement) is received by the Bid Deadline, no Auction shall be conducted and the Stalking Horse Bidder shall be deemed to be the Successful Bidder. Only Qualified Bidders may participate in the Auction. Prior to the Auction, the Debtors shall provide copies of all Qualified Bids to all Qualified Bidders, including the Stalking Horse Bidder.

The Auction shall take place on December 18, 2019 at 10:00 a.m. (prevailing Eastern Time) at the offices of Landis Rath & Cobb LLP, or such other place and time as the Debtors shall notify all Qualified Bidders, including the Stalking Horse Bidder, counsel for the Stalking Horse Bidder and other invitees in accordance with the Bidding Procedures.

Prior to the Auction, the Debtors will share with all Qualified Bidders, including the Stalking Horse Bidder, the highest or otherwise best bid received at the Bid Deadline (each, a “Baseline Bid”). Qualified Bidders will be permitted to revise, increase and/or enhance their bids at the Auction based upon the terms of the Baseline Bid. All Qualified Bidders will have the right to make additional modifications to their Qualified Bid or Agreement, consistent with the Bidding

Procedures, as applicable, at the Auction.

1. The Debtors Shall Conduct the Auction. The Debtors and their professionals shall direct and preside over the Auction. At the start of the Auction, the Debtors shall announce which Qualified Bid(s) is/are deemed to be the highest or otherwise best (each Qualified Bid an “Auction Baseline Bid”). Each Qualified Bidder participating in the Auction must confirm that it has not engaged in any collusion with respect to the bidding or sale of the Debtors’ assets.

Only the Debtors, the Lenders, the Stalking Horse Bidder and any other Qualified Bidder, in each case, along with their representatives, shall attend the Auction in person, and only the Stalking Horse Bidder and such other Qualified Bidders will be entitled to make any Bids at the Auction.

2. Terms of Overbids. An “Overbid” is any bid made at the Auction subsequent to the Debtors’ announcement of an Auction Baseline Bid. To submit an Overbid for purposes of this Auction, a Bidder must comply with the following conditions:

- i. Minimum Overbid Increment. Any Overbid after the Auction Baseline Bid shall be made in increments valued at not less than \$100,000 as determined by the Debtors (in consultation with the Lenders). Additional consideration in excess of the amount set forth in an Auction Baseline Bid may include cash and/or noncash consideration. For purposes of the Overbid, the Stalking Horse Bidder shall be entitled to a credit in the amount of the Termination Fee.

- ii. Remaining Terms Are the Same as for Qualified Bids. Except as modified herein, an Overbid must comply with the conditions for a Qualified Bid set forth above, provided, however, that the Bid Deadline shall not apply. Any Overbid must remain open and binding on the Bidder until and unless the Debtors accept a higher Overbid.

3. Backup Bidder. Notwithstanding anything in the Bidding Procedures to the contrary, if an Auction is conducted, the party with the next highest or otherwise best Qualified Bid at the Auction, as determined by the Debtors, in the exercise of its business judgment (in consultation with the Lenders) will be designated as the backup bidder (the “Backup Bidder”). The Backup Bidder shall be required to keep its initial Bid (or if the Backup Bidder submitted one or more Overbids at the Auction, its final Overbid) (the “Backup Bid”) open and irrevocable until the earlier of 4:00 p.m. (prevailing Eastern Time) on the date that is twenty-one (21) days after the date of the Sale Hearing

(the “Outside Backup Date”) or the closing of the transaction with the Successful Bidder. Following the Sale Hearing, if the Successful Bidder fails to consummate an approved transaction, because of a breach or failure to perform on the part of such Successful Bidder (defined herein), the Debtors may designate (in consultation with the Lenders) the Backup Bidder to be the new Successful Bidder, and the Debtors will be authorized, but not required, to consummate the transaction, with the Backup Bidder without further order of the Bankruptcy Court. In such case, the defaulting Successful Bidder’s deposit shall be forfeited to the Debtors, and the Debtors specifically reserve the right to seek all available damages from the defaulting Successful Bidder. The deposit of the Backup Bidder shall be held by the Debtors until the earlier of one (1) Business Day after (i) the closing of the transaction with the Successful Bidder and (ii) the Outside Backup Date.

- F. Additional & Modified Procedures. The Debtors may announce at the Auction additional or modified rules and procedures that are reasonable under the circumstances (*e.g.*, limitations in the amount of time to make subsequent Overbids, changes in minimum overbid increments, etc.) for conducting the Auction so long as such rules are not inconsistent with the Bidding Procedures or the Agreement.
- G. Closing the Auction. The Auction shall continue until the Debtors determine in their reasonable business judgment (in consultation with the Lenders) that there is a highest or otherwise best Qualified Bid at the Auction for all of the Purchased Assets (each a “Successful Bid” and each Bidder submitting such Successful Bid, a “Successful Bidder”). The Auction shall not close unless and until all Bidders who have submitted Qualified Bids have been given a reasonable opportunity to submit an Overbid at the Auction to the then-existing Overbids and the Successful Bidder has submitted fully executed sale and transaction documents memorializing the terms of the Successful Bid. Within twenty-four (24) hours following conclusion of the Auction, the Debtors shall file a notice on the Bankruptcy Court’s docket identifying (with specificity) the Successful Bidder for the Purchased Assets and any applicable Backup Bidders. The Debtors shall not consider any Bids submitted after the conclusion of the Auction and any and all such Bids shall be deemed untimely and shall under no circumstances constitute a Qualified Bid.
- H. Sale Hearing. The Debtors will seek a sale hearing (the “Sale Hearing”) on December 20, 2019. Objections, if any, to the sale of the Purchased Assets to the Successful Bidder and the transaction contemplated by the Agreement must be in writing and filed with the Court no later than 4:00 p.m. (prevailing Eastern Time) on December 13, 2019 and be served such that they are actually received by: (i) the Debtors, 8700 State Line Road, Suite 100, Leawood, Kansas 66206 (Attn: Michael Archer and Cindy Parres); (ii) counsel to the Debtors, Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, Delaware 19801 (Attn:

Adam G. Landis and Kimberly A. Brown), landis@lrclaw.com and brown@lrclaw.com; (iii) investment banker to the Debtors, Piper Jaffray & Co., 2321 Rosecrans Avenue, Suite 3200, El Segundo, California 90245 (Attn: Teri Stratton), teri.l.stratton@pjc.com; (iv) counsel for the Stalking Horse Bidder, Hunton Andrews Kurth, LLP, 600 Travis Street, Suite 4200, Houston, Texas 77002 (Attn: Mark Arnold and Mark Young), markarnold@huntonak.com and markyoung@huntonak.com and Cole Schotz P.C., 500 Delaware Avenue, Suite 1410, Wilmington, Delaware 19801 (Attn: Noman L. Pernick), npernick@coleschotz.com; (v) counsel to the Lenders, Katten Muchin Rosenman LLP, 515 South Flower Street, Suite 1000, Los Angeles, California 90071-2212 (Attn: William B. Freeman) and 575 Madison Avenue, New York, New York 10022-2585 (Attn: Karen B. Dine), karen.dine@katten.com; (vi) the Office of the United States Trustee, United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801 (Attn: Jane Leamy); and (vii) counsel to any statutory committee appointed in the Chapter 11 Cases.

14. Pursuant to Local Rule 6004-1: (i) each bidder participating at the Auction will be required to make a Non-Collusion Representation; (ii) the Auction will be conducted openly and may be attended by the Debtors, their professionals, any statutory committee, and its professionals and the Auction Participants. Any creditor wishing to attend the Auction may do so by contacting, no later than three (3) business days prior to the start of the Auction, Debtors' counsel at the address and contact information listed below, Qualified Bidders and their professionals, and creditors and their respective counsel, financial advisors, and/or other authorized representatives as set forth in the Bidding Procedures; (iii) the only persons or entities who will be permitted to Bid at the Auction are the authorized representatives of each Qualified Bidder, including the Stalking Horse Bidder; and (iv) the Auction will be transcribed. The Bidding Procedures are typical for asset sales of this size and nature and require a deposit from Qualified Bidders, other than the Stalking Horse Bidder.

15. Other than expressly set forth in the Bidding Procedures, the Debtors (in consultation with the Lenders) reserve the right to: (a) determine which bidders are Qualified Bidders; (b) determine which Bids are Qualified Bids; (c) determine which Qualified Bid is the highest or otherwise best proposal and which is the next highest or otherwise best proposal;

(d) reject any Bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bidding Procedures or the requirements of the Bankruptcy Code or (iii) contrary to the best interests of the Debtors and their estates; (e) impose additional terms and conditions with respect to all potential bidders other than the Stalking Horse Bidder; (f) extend the deadlines set forth herein; and (g) continue or cancel the Auction and/or Sale Hearing in open court without further notice or by filing a notice on the docket.

16. The Stalking Horse Bidder is a Qualified Bidder, and the Stalking Horse Bidder's bid is a Qualified Bid.

D. The Termination Fee

17. The Stalking Horse Bidder has requested bid protections consisting of the Breakup Fee in the amount of \$1.2 million and the Expense Reimbursement of up to \$300,000 of actual reasonable and documented out-of-pocket costs and expenses in connection with the Sale payable to the Stalking Horse Bidder upon the terms and conditions set forth in Section 7.4(c)(i) of the Agreement to partially defray the substantial out-of-pocket costs the Stalking Horse Bidder has and is expected to incur in this process. The Termination Fee is warranted here in consideration of the Stalking Horse Bidder's substantial expenditure of time, energy and resources, and the benefits to the Debtors' estate of securing a "stalking horse" or guaranteed minimum bid and setting a floor price at the Auction. Pursuant to Section 7.4(c)(i), if the Agreement is terminated as a result of the Debtors closing an Alternative Transaction, the Termination Fee shall be paid by wire transfer within three (3) Business Days of the closing of such Alternative Transaction.

E. Notice of Auction and Sale

18. The Debtors seek to have the Auction commence on December 18, 2019 – thirty-five (35) days from the Petition Date. Within one Business Day of the entry of the Bidding

Procedures Order, the Debtors will serve by first class mail, copies of: (i) the Bidding Procedures Order and (ii) the Sale Notice upon the following entities: (a) all creditors or their counsel known to the Debtors to assert a lien (including any security interest), claim, right, interest, or encumbrance of record against all or any portion of the Purchased Assets; (b) the Office of the United States Trustee for the District of Delaware; (c) counsel to the Stalking Horse Bidder; (d) the Lenders; (e) all parties in interest who have requested notice pursuant to Bankruptcy Rule 2002; (g) all applicable federal, state and local taxing and regulatory authorities of the Debtors or recording offices or any other governmental authorities that, as a result of the sale of the Purchased Assets, may have claims, contingent or otherwise, in connection with the Debtors' ownership of the Purchased Assets or have any known interest in the relief requested by the Motion, which shall include the attorneys general for the State of Delaware and for each state in which the Debtors operate a business; (h) all counterparties to any executory contract or unexpired lease of the Debtors; and (i) all potential bidders previously identified or otherwise known to the Debtors (collectively, the "Sale Notice Parties").

19. The Debtors further request, pursuant to Bankruptcy Rule 9014, that objections, if any, to the proposed Sale: (a) be in writing; (b) comply with the Bankruptcy Rules and the Local Rules; (c) be filed with the Clerk of the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801; and (d) be served on: (i) the Debtors, 8700 State Line Road, Suite 100, Leawood, Kansas 66206 (Attn: Michael Archer and Cindy Parres); (ii) counsel to the Debtors, Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, Delaware 19801 (Attn: Adam G. Landis, Esq. and Kimberly A. Brown, Esq.); (iii) investment banker to the Debtors, Piper Jaffray & Co., 2321 Rosecrans Avenue, Suite 3200, El Segundo, California 90245 (Attn: Teri Stratton); (iv) counsel for the Stalking Horse

Bidder, Hunton Andrews Kurth, LLP, 600 Travis Street, Suite 4200, Houston, Texas 77002 (Attn: Mark Arnold and Mark Young) and Cole Schotz P.C., 500 Delaware Avenue, Suite 1410, Wilmington, Delaware 19801 (Attn: Noman L. Pernick); (v) counsel to the Lenders, Katten Muchin Rosenman LLP, 515 South Flower Street, Suite 1000, Los Angeles, California 90071-2212 (Attn: William B. Freeman) and 575 Madison Avenue, New York, New York 10022-2585 (Attn: Karen B. Dine); (vi) the Office of the United States Trustee, United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801 (Attn: Jane Leamy); and (vii) counsel to any statutory committee, if any, in accordance with Local Rule 2002-1(b) on or before 4:00 p.m. (prevailing Eastern Time) on December 13, 2019 (the “Sale Objection Deadline”).

F. Provisions Relating to Executory Contracts and Unexpired Leases, Including Determination of Cure Costs and Deadlines for Objection to Assumption and Assignment of All Contracts

20. Given the number of executory contracts and unexpired leases to which the Debtors are party, the Debtors seek to establish (a) procedures for determining the Cure Costs and (b) the deadline for objections to the Cure Costs and/or the proposed assumption and assignment of executory contracts and unexpired leases (collectively, the “Contract Procedures”).

21. Pursuant to the Agreement, the Debtors will provide the Stalking Horse Bidder a schedule (such schedule is referred to herein as the “Contracts Schedule”) setting forth (x) each Contract, Lease or Real Property Lease to which any Seller is a party or by which any Seller is bound and that is used in or related to the businesses or any of the Purchased Assets, (y) all Cure Costs (if any) for each such Contract or Real Property Leases and (z) a general description of each such Contract and Real Property Lease.

22. On or before one (1) Business Day after the entry of the Bidding Procedures Order, the Debtors shall serve by first class mail or hand delivery the Contract Notice, substantially in the form attached as Exhibit 4 to the Bidding Procedures Order, on all non-Debtor parties to the Contracts Schedule. The Contract Notice shall identify the Contracts Schedule and provide the Cure Costs that the Debtors believe must be paid to cure all prepetition defaults under such Contracts and Real Property Lease.

23. Any objection to the Cure Cost or to the assumption and assignment to the Stalking Horse Bidder, including with respect to adequate assurance of future performance of the Stalking Horse Bidder (collectively, a "Contract Objection"), must be filed with the Court no later than 4:00 p.m. (prevailing Eastern Time) on December 13, 2019 (the "Contract Objection Deadline"), and served, so as to be received the same day as the objection is filed, on (i) the Debtors, 8700 State Line Road, Suite 100, Leawood, Kansas 66206 (Attn: Michael Archer and Cindy Parres); (ii) counsel to the Debtors, Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, Delaware 19801 (Attn: Adam G. Landis and Kimberly A. Brown); (iii) investment banker to the Debtors, Piper Jaffray & Co., 2321 Rosecrans Avenue, Suite 3200, El Segundo, California 90245 (Attn: Teri Stratton); (iv) counsel for the Stalking Horse Bidder, Hunton Andrews Kurth, LLP, 600 Travis Street, Suite 4200, Houston, Texas 77002 (Attn: Mark Arnold and Mark Young) and Cole Schotz P.C., 500 Delaware Avenue, Suite 1410, Wilmington, Delaware 19801 (Attn: Noman L. Pernick); (v) counsel to the Lenders, Katten Muchin Rosenman LLP, 515 South Flower Street, Suite 1000, Los Angeles, California 90071-2212 (Attn: William B. Freeman) and 575 Madison Avenue, New York, New York 10022-2585 (Attn: Karen B. Dine); (vi) the Office of the United States Trustee, United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801 (Attn: Jane Leamy); and

(vii) counsel to any statutory committee appointed in these Chapter 11 Cases.

24. To facilitate a prompt resolution of (i) disputes relating to the Cure Costs and (ii) any other objections relating to the assumption and assignment of the Contracts or Real Property Lease, the Debtors propose the following procedures:

- Any Contract Objection must state the basis for such objection and state with specificity what Cure Cost the party to the Contract or Real Property Lease believes is required (in all cases with appropriate documentation in support thereof). If no Contract Objection is timely received, the Cure Cost set forth in the Contract Notice shall be controlling, notwithstanding anything to the contrary in the Contract or Real Property Lease or other documents as of the date of the Contract Notice. The Contract Notice shall also provide that the Contract Objection to any Cure Cost or assumption and assignment will be heard at the Sale Hearing or at a later hearing, as determined by the Debtors. If a Successful Bidder that is not the Stalking Horse Bidder prevails at the Auction, then the deadline to object to assumption and assignment (solely on the grounds of adequate assurance of future performance) shall be extended to the Sale Hearing, provided, however, that the deadline to object to the Cure Cost shall not be extended.
- Unless a non-Debtor party to any Contract or Real Property Lease files an objection to the Cure Cost by the applicable objection deadline, then such counterparty shall be:
 - (a) forever barred from objecting to the Cure Cost and
 - (b) forever barred and estopped from asserting or claiming any Cure Cost, other than the Cure Cost on the schedule of the Contract Notice, against the Debtors, the Stalking Horse Bidder, or any Successful Bidder or any other assignee of the relevant contract or lease.
- Unless a non-Debtor party to any Contract or Real Property Lease files a timely objection to the assumption and assignment of the contract to the Stalking Horse Bidder or the other Successful Bidder, then such counterparty shall be deemed to have consented to the assumption and assignment to the Successful Bidder.

Designation by the Stalking Horse Bidder or other Qualified Bidder

25. No later than one (1) Business Day prior to the start of the Auction, the Stalking Horse Bidder shall designate each Contract or Real Property Lease on the Contracts Schedule as

“Transferred,” “Rejected,” or “Designation Rights Asset,”⁴ by delivering written notice to the Debtors.

26. Each Qualified Bidder, other than the Stalking Horse Bidder, shall, by delivering written notice to the Debtors by the Bid Deadline, designate each Contract or Real Property Lease on the Contracts Schedule it wishes to be an Assigned Contract.

27. Immediately prior to the Sale Hearing, the Debtors shall file the list of Assigned Contracts as of such date.

RELIEF REQUESTED

28. By this Motion, the Debtors seek entry of the Bidding Procedures Order (i) approving the Bidding Procedures in connection with the solicitation and acceptance of higher and better bids, including the Termination Fee, with respect to the Sale of the Purchased Assets, (ii) scheduling the Sale Hearing for December 20, 2019, and setting objection deadlines with respect to the Sale, (iii) approving the form and manner of notice of the Sale and related Auction, (iv) establishing procedures to determine Cure Costs and deadlines for objections to the potential assumption and assignment of executory contracts and unexpired leases, and (v) granting related relief.

BASIS FOR RELIEF

I. Approval of the Bidding Procedures Is Appropriate and in the Best Interests of the Debtors’ Estates and Their Creditors

(1) *The Bidding Procedures Are Appropriate under the Circumstances*

29. Maximization of proceeds received by the estate is one of the dominant goals of

⁴ Pursuant to section 7.5 of the Agreement, the Stalking Horse Bidder has the right, exercisable until one (1) Business Day prior to the Auction, to designate, in writing, certain contracts, agreements and leases, if any, as “Designation Rights Assets.” On or before fifteen (15) days after the Closing (the “Contract Designation Deadline”), the Stalking Horse Bidder must inform the Debtors whether any Contract or Real Property Lease should either be included in or excluded from the definition of Assigned Contracts.

any proposed sale of estate property. *See In re Mushroom Transp. Co.*, 382 F.3d 325, 339 (3d Cir. 2004) (debtor-in-possession “had a fiduciary duty to protect and maximize the estate’s assets”). In the hope of maximizing the value received by the estate, courts typically establish procedures that are intended to enhance competitive bidding by, among other things, setting forth the rules that will govern the auction process. *See, e.g., In re Fin. News Network, Inc.*, 126 B.R. 152, 156 (Bankr. S.D.N.Y. 1991) (“court-imposed rules for the disposition of assets . . . [should] provide an adequate basis for comparison of offers, and [should] provide for a fair and efficient resolution of bankrupt estates”); *In re Edwards*, 228 B.R. 552, 561 (Bankr. E.D. Pa. 1998) (bid procedures should allow for “an open and fair public sale designed to maximize value for the estate”).

30. The Debtors believe that the Bidding Procedures are designed to maximize the value received for the Purchased Assets and prevent any chilling of potential bids by establishing a transparent, competitive and fair bidding process. The process set forth in the Bidding Procedures allows for a timely and efficient auction process given the circumstances facing the Debtors, while providing bidders with ample time and information to submit a timely bid and perform diligence. The Bidding Procedures are designed to ensure that the Purchased Assets will be sold for the highest or otherwise best possible purchase price by subjecting the value of the Purchased Assets to market testing and permitting prospective Buyers to bid on the Purchased Assets. Accordingly, the Debtors and all parties-in-interest can be assured that the consideration received for the Purchased Assets will be fair and reasonable and that the proposed Bidding Procedures will not chill bidding by any Potential Bidders.

31. Procedures to dispose of assets, similar to the proposed Bidding Procedures have been approved in other large, complex chapter 11 cases in this District. *See, e.g., In re*

EdgeMarc Energy Holdings, LLC, Case No. 19-11104 (BLS) (Bankr. D. Del. June 21, 2019); *In re Things Remembered, Inc.*, Case No. 19-10234 (KG) (Bankr. D. Del. Feb. 21, 2019); *In re Argos Therapeutics, Inc.*, Case No. 18-12714 (KJC) (Bankr. D. Del. Dec. 20, 2018); *In re Bertucci's Holdings, Inc.*, Case No. 18-10894 (MFW) (Bankr. D. Del. May 7, 2018); *In re Seastar Holdings, Inc.*, Case No. 18-10039 (CSS) (Bankr. D. Del. Jan. 29, 2018); *In re Peekay Acquisition, LLC*, Case No. 17-11722 (BLS) (Bankr. D. Del. Sep. 7, 2017); *In re Jumio, Inc.*, Case No. 16-10682 (BLS) (Bankr. D. Del. Apr. 21, 2016); *In re City Sports, Inc.*, Case No. 15-12054 (KG) (Bankr. D. Del. Oct. 23, 2015); *In re Saladworks*, Case No. 15-10327 (LSS) (Bankr. D. Del. Mar. 11, 2015); *In re iGPS Co. LLC*, Case No. 13-11459 (KG) (Bankr. D. Del. July 31, 2013); *Tri-Valley Corp.*, Case No. 12-12291 (MFW) (Bankr. D. Del. Sep. 5, 2012); *WP Steel Venture LLC*, Case No. 12-11661 (KJC) (Bankr. D. Del. June 21, 2012).

32. In sum, the Debtors believe that the proposed Bidding Procedures provide an appropriate framework for expeditiously establishing that the Debtors are receiving the best or otherwise highest offer for the Purchased Assets. Accordingly, the proposed Bidding Procedures are reasonable, appropriate and within the Debtors' sound business judgment under the circumstances.

(2) *The Overbid Protections Are Appropriate Under the Circumstances*

33. The Minimum Overbid Increment is appropriate under the circumstances and will enable the Debtors to simultaneously maximize value while limiting the chilling effect in the marketing process. This provision also is consistent with the overbid increments previously approved by courts in this District. *See, e.g., In re Things Remembered, Inc.*, Case No. 19-19234 (KG) (Bankr. D. Del. Feb. 21, 2019); *In re Argos Therapeutics, Inc.*, Case No. 18-12714 (KJC) (Bankr. D. Del. Dec. 20, 2018); *In re Bertucci's Holdings, Inc.*, Case No. 18-10894 (MFW)

(Bankr. D. Del. May 7, 2018); *In re Seastar Holdings, Inc.*, Case No. 18-10039 (CSS) (Bankr. D. Del. Jan. 29, 2018); *In re Peekay Acquisition, LLC*, Case No. 17-11722 (BLS) (Bankr. D. Del. Sep. 7, 2017); *Jumio, Inc.*, Case No. 16-10682 (BLS) (Bankr. D. Del. Apr. 21, 2016); *Saladworks*, Case No. 15-10327 (LSS) (Bankr. D. Del. Mar. 11, 2015); *Tri-Valley Corp.*, Case No. 12-12291 (MFW) (Bankr. D. Del. Sep. 5, 2012); *WP Steel Venture LLC*, Case No. 12-11661 (KJC) (Bankr. D. Del. June 21, 2012).

(3) *The Termination Fee, if Approved by the Court, Is an Actual and Necessary Cost of Preserving the Debtors' Estates*

34. Bid incentives such as the Termination Fee encourage a potential buyer to invest the time, money and effort required to negotiate with a debtor, and perform the necessary due diligence attendant to the acquisition of a debtor, despite the inherent risks and uncertainties of the chapter 11 process. The Debtors submit that approval of the Termination Fee is justified by the facts and circumstances of these Chapter 11 Cases, whether considered under the business judgment rule or as an administrative expense of the estates.

35. Moreover, the Termination Fee is a material inducement for, and condition of, the Stalking Horse Bidder's entry into the Agreement. The Stalking Horse Bidder has put forth considerable time and resources to negotiate the Agreement, which will serve as a floor price at the Auction and, regardless of whether other Qualified Bids are received, will benefit the Debtors' estates. The Debtors believe that the Termination Fee is fair and reasonable in view of (a) the analysis and negotiation undertaken by the Stalking Horse Bidder in connection with the transaction and (b) the fact that, if the Termination Fee is triggered, the Stalking Horse Bidder's efforts will have influenced the chances that the Debtors will receive the highest or otherwise best offer for the Purchased Assets to the benefit of all of the Debtors' stakeholders.

36. Approval of the Termination Fee is governed by standards for determining the appropriateness of bidding incentives in the bankruptcy context established by the Third Circuit in *Calpine Corp. v. O'Brien Env'tl. Energy, Inc. (In re O'Brien Env'tl. Energy, Inc.)*, 181 F.3d 527 (3d Cir. 1999). In *O'Brien*, the Third Circuit concluded that “the determination whether bidding incentives are allowable under section 503(b) must be made in reference to general administrative expense jurisprudence. In other words, the allowability of [these fees] . . . depends upon the requesting party’s ability to show that the fees were actually necessary to preserve the value of the estate.” *O'Brien*, 181 F.3d at 535. In *O'Brien*, the Third Circuit identified two instances in which such a benefit to the estate may be found. First, a benefit may be found if the bidding incentive promotes a more competitive bidding process, “such as by inducing a bid that otherwise would not have been made and without which bidding would have been limited.” *Id.* at 537. Second, “if the availability of break-up fees and expenses were to induce a bidder to research the value of the debtor and convert that value to a dollar figure on which other bidders can rely, the bidder may have provided a benefit to the estate by increasing the likelihood that the price at which the debtor is sold will reflect its true worth.” *Id.*

37. In recognition of the expenditure of time, energy and resources as well as the benefits to the Debtors’ estates of securing a “stalking horse” or minimum bid and setting a floor price at the Auction, promoting additional competitive bidding and by increasing the likelihood that the ultimate sale price will reflect the true value of the Purchased Assets, the Debtors submit that approval of the Termination Fee is warranted for the Stalking Horse Bidder. The Debtors’ ability to offer the Termination Fee enables the Debtors to ensure the sale of the Purchased Assets to a contractually-committed bidder at a price the Debtors believe to be fair while, at the same time, providing the Debtors with the potential of a greater return to the estates. Moreover,

the Stalking Horse Bidder has spent, and likely will continue to spend, considerable time, money and energy pursuing the Sale and has engaged in extended and lengthy good faith negotiations under extremely stressful time pressures.

38. The Debtors and the Stalking Horse Bidder each have acted in good faith throughout this process. The amount of the Breakup Fee, \$1.2 million, and up to \$300,000 Expense Reimbursement, represents approximately three percent (3%) of the Purchase Price (exclusive of the value of the assumption of the Assumed Liabilities and reimbursed expenses), and is not so high that it would cause any chilling effect on other prospective buyers, and will have no adverse effect on any creditors. Pursuant to Section 7.4(c)(i) of the Agreement, if the Debtors close on an Alternative Transaction, the Termination Fee shall be paid by wire transfer of immediately available funds three (3) Business Days following closing of such Alternative Transaction – in which case the Stalking Horse Bidder’s participation will have necessarily created value for the Debtors’ estate in excess of the amount of the Termination Fee. Absent authorization of the payment of the Termination Fee, the Debtors might lose the opportunity to obtain the highest or otherwise best available offer for the Purchased Assets and the downside protection that will be afforded by the Agreement.

39. The Stalking Horse Bidder has provided a material benefit to the Debtors and their creditors by increasing the likelihood that the Debtors will receive the best possible price for the Purchased Assets. Furthermore, approval of the Bidding Procedures, including the Termination Fee, is required by the Agreement as a condition to the Stalking Horse Bidder’s obligation to proceed with the transaction contemplated in the Agreement. *See In re Reliant Energy Channelview, L.P.*, 594 F.3d 200 (3d Cir. 2010).

40. In light of the benefit to the Debtors' estates that will be realized by having a signed purchase agreement, enabling the Debtors to preserve the value of their estates and promote more competitive bidding, ample support exists for the approval of the Termination Fee. The Debtors' payment of the Termination Fee under the circumstances described herein is (i) an actual and necessary cost and expense of preserving the Debtors' estates, within the meaning of Bankruptcy Code section 503(b); (ii) of substantial benefit to the Debtors' estates and (iii) reasonable and appropriate in light of the efforts and the significant due diligence costs and expenses that have been and will be expended by the Stalking Horse Bidder. Thus, the Debtors request that the Court approve and authorize payment of the Termination Fee pursuant to the terms of the Agreement.

(4) *The Proposed Sale Notice, the Proposed Dates for the Sale Objection Deadlines, the Cure Objection Deadline and the Sale Hearing Are Appropriate*

41. The Debtors submit that the Sale Objection Deadline is reasonable and appropriate under the circumstances. Pursuant to Local Rule 9006-1(c)(ii), "[w]here a motion is filed and served in accordance with Local Rule 9006-1(c)(i), the deadline for objection(s) shall be no later than seven (7) days before the hearing date." Del. Bankr. L.R. 9006-1(c)(ii). As noted above, the proposed December 13, 2019 Sale Hearing is more than twenty-one (21) days from notice of this Motion and the December 13, 2019 Sale Objection Deadline has been scheduled seven (7) days in advance thereof. As such, the Debtors submit that the proposed Sale Objection Deadline meets the requirements of the Bankruptcy Rules and the Local Rules.

42. The Debtors also submit that the notice to be provided through the Sale Notice and the method of service proposed herein fully complies with the requirements set forth in Bankruptcy Rule 2002 and constitute good and adequate notice of the Bidding Procedures and

the subsequent proceedings related thereto, including the proposed dates for (a) the Bid Deadline; (b) the Sale Objection Deadline; (c) the Contract Objection Deadline; and (d) the Sale Hearing. Therefore, the Debtors respectfully request the Court approve the proposed notice procedures.

(5) *The Contract Procedures Provide Adequate Notice and Opportunity to Object and Should be Approved*

43. Bankruptcy Code section 365(a) provides, in pertinent part, that a debtor-in-possession “subject to the court’s approval, may assume or reject any executory contract or [unexpired] lease of the debtor.” 11 U.S.C. § 365(a). The Debtors respectfully submit that the proposed Contract Procedures are appropriate and reasonably tailored to provide the Contract Parties with adequate notice of the proposed assumption and assignment of the applicable Contract, as well as proposed Cure Costs, if applicable. Such Contract Parties will then be given an opportunity to object to such notice. The Contract Procedures further provide that, in the event an objection is not resolved, the Court will determine related disputed issues (including any adequate assurance of future performance issues). Accordingly, the Debtors submit that implementation of the proposed Contract Procedures is appropriate in these Chapter 11 Cases.

44. The Contract Procedures comport with the requirements of Bankruptcy Code section 365 (as described fully below) and Bankruptcy Rule 6006, and the non-Debtor contract counterparties’ rights to adequate assurance are unaffected and fully preserved. The Debtors respectfully submit that the notices required by the Contract Procedures are sufficient to assume and assign the Assumed Contracts because they are reasonably tailored to provide notice and an opportunity to object to the proposed assumption and assignment. Thus, the Debtors submit that the Contract Procedures should be approved.

REQUEST FOR RELIEF UNDER BANKRUPTCY RULES 6004(h) AND 6006(d)

45. Bankruptcy Rule 6004(h) provides that an “order authorizing the use, sale, or lease of property . . . is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Similarly, Bankruptcy Rule 6006(d) provides that an “order authorizing the trustee to assign an executory contract or unexpired lease . . . is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise.” The Debtors request that the Bidding Procedures Order be effective immediately by providing that the fourteen (14) day stays under Bankruptcy Rules 6004(h) and 6006(d) are waived.

46. The purpose of Bankruptcy Rules 6004(h) and 6006(d) is to provide sufficient time for an objecting party to appeal before an order can be implemented. *See* Advisory Committee Notes to Fed. R. Banks. P. 6004(h) and 6006(d). Although Bankruptcy Rules 6004(h) and 6006(d) and the Advisory Committee Notes are silent as to when a court should “order otherwise” and eliminate or reduce the fourteen-day stay period, Collier on Bankruptcy suggests that the fourteen (14) day stay period should be eliminated to allow a sale or other transaction to close immediately “where there has been no objection to the procedure.” 10 Collier on Bankruptcy ¶ 6064.09 (L. King, 15th rev. ed. 1988). Furthermore, Collier’s provides that if an objection is filed and overruled, and the objecting party informs the Court of its intent to appeal, the stay may be reduced to the amount of time actually necessary to file such appeal. *Id.*

NOTICE AND NO PRIOR REQUEST

47. 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 Stalking Horse Bidder; (e) all applicable federal, state and local taxing and regulatory authorities of the Debtors; (f) all non-Debtor counterparties to the Debtors' Contracts and Real Property Leases; (g) the Debtors' insurance premium financiers; and (h) all parties who have requested notice in these Chapter 11 Cases pursuant to Bankruptcy Rule 2002. In light of the nature of relief requested in this Motion, the Debtors respectfully submit that no further notice is necessary.

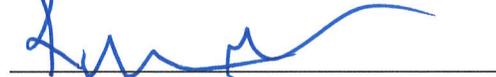
48. No prior request for the relief sought in this Motion has been made to this or any other court.

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WHEREFORE, the Debtors respectfully request that the Court (a) enter the Bidding Procedures Order in substantially the form attached hereto, (i) approving the Bidding Procedures in connection with the solicitation and acceptance of higher or otherwise better bids, including the Termination Fee, with respect to the Sale of the Purchased Assets, (ii) scheduling the Sale Hearing and setting objection deadlines with respect to the Sale, (iii) approving the form and manner of notice of the Sale and related Auction, (iv) establishing procedures to determine Cure Costs and deadlines for objections to the potential assumption and assignment of executory contracts and unexpired leases, and (b) granting such other and further relief as is just and proper.

Dated: November 14, 2019
Wilmington, Delaware

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*Proposed Counsel for the Debtors
and Debtors-In-Possession*

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 (____)

(Joint Administration Requested)

ORDER (A) APPROVING BIDDING PROCEDURES IN CONNECTION WITH A TRANSACTION BY PUBLIC AUCTION; (B) SCHEDULING A HEARING TO CONSIDER THE TRANSACTION; (C) APPROVING THE FORM AND MANNER OF NOTICE THEREOF; (D) APPROVING CONTRACT PROCEDURES; AND (E) GRANTING RELATED RELIEF

Upon the *Motion of the Debtors and Debtors-In-Possession for Entry of an Order (A) Approving Bidding Procedures in Connection with a Transaction by Public Auction; (B) Scheduling a Hearing to Consider the Transaction; (C) Approving the Form and Manner of Notice Thereof; (D) Approving Contract Procedures; and (E) Granting Related Relief* (the “Motion”)² filed by the above captioned debtors and debtors-in-possession (the “Debtors”).

Having reviewed the Motion, and the record in these Chapter 11 Cases; having considered the statements of counsel for the Debtors and the Stalking Horse Bidder, the Court finds that establishing bidding procedures and sale procedures in connection with a sale of the Purchased

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 (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.

² Except where otherwise indicated, capitalized terms used but not defined shall have the meanings ascribed to them in the Motion, the Bidding Procedures attached hereto as Exhibit 1, or the Agreement, as applicable.

Assets, in accordance with the provisions contained in this Order, is in the best interests of the Debtors' estates.

IT IS HEREBY FOUND AND DETERMINED THAT:

A. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Federal Rule of Bankruptcy Procedure (the "Bankruptcy Rules") 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any findings of fact herein constitute conclusions of law, they are adopted as such. To the extent any conclusions of law herein constitute findings of fact, they are adopted as such.

B. The Court has jurisdiction over the Motion and the transaction contemplated by the Agreement 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 this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (M) and (O). Venue in this district is proper under 28 U.S.C. §§ 1408 and 1409.

C. The statutory bases for the relief requested in the Motion are (i) Bankruptcy Code sections 105, 363 and 365 and (ii) Bankruptcy Rules 2002(a)(2), 6004, 6006 and 9014 and Local Rules 2002-1 and 6004-1.

D. Good and sufficient notice of the Motion and the relief sought therein has been given under the circumstances, such notice complied with all applicable requirements of Bankruptcy Code sections 101-1532, the Bankruptcy Rules and the Local Rules, and no other or further notice is required except as set forth herein with respect to the hearing to be conducted to approve the transactions contemplated by the Agreement (the "Sale Hearing"). A reasonable opportunity to object or be heard regarding the relief provided herein has been afforded to parties in interest.

E. The Debtors' proposed notice of the Bidding Procedures is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the sale of substantially all of the Debtors' assets (the "Purchased Assets"), the auction (the "Auction") for the Purchased Assets, and the Bidding Procedures to be employed in connection therewith.

F. The Debtors have articulated good and sufficient reasons for the Court to: (i) approve the Bidding Procedures; (ii) set the Sale Hearing and approve the manner of notice of the Motion and the Sale Hearing; (iii) approve the procedures for the assumption and assignment of executory contracts and unexpired leases (collectively, the "Assigned Contracts"), including notice of proposed cure costs and the procedures set forth in the Agreement with respect to the Stalking Horse Bidder's rights to designate or change the character of such Assigned Contracts by the applicable Contract Designation Deadline; and (iv) grant the Breakup Fee and the Expense Reimbursement (together, the "Termination Fee") as provided in the Agreement and in this Order.

G. The entry of this Order is in the best interests of the Debtors, their estates, creditors, and other parties in interest.

H. The Bidding Procedures are fair, reasonable and appropriate, and are designed to maximize the value to be achieved for the Purchased Assets. The Bidding Procedures were negotiated in good faith by the Debtors and the Stalking Horse Bidder.

I. The Debtors have demonstrated a compelling business justification of the payment of the Termination Fee under the circumstances set forth in Agreement. The Termination Fee (i) is payable as provided in Section 7.4(c)(i) of the Agreement, (ii) is of substantial benefit to the Debtors' estates, (iii) is reasonable and appropriate, including in light of the size and nature of the sale and the efforts that have been or will be expended by the Stalking

Horse Bidder notwithstanding that the proposed sale is subject to higher or otherwise better offers for the Purchased Assets, (iv) was negotiated by the parties at arm's length and in good faith, and (v) is necessary to ensure that the Stalking Horse Bidder will continue to pursue its proposed acquisition of the Purchased Assets contemplated by the Agreement. The Stalking Horse Bidder is unwilling to commit to purchase the Purchased Assets under the terms of the Agreement without approval of the Termination Fee.

J. The Bidding Procedures comply with the requirements of Local Rule 6004-1(c).

K. The procedures of assumption and assignment of executory contracts and unexpired leases are fair, reasonable, and appropriate, and comply with the provisions of Bankruptcy Code section 365.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is GRANTED to the extent set forth herein.
2. Except as provided to the contrary herein, all objections to the Motion or the relief provided herein that have not been withdrawn, waived or settled, and all reservations of rights included therein, hereby are overruled and denied on the merits with prejudice.
3. The Bidding Procedures, attached hereto as **Exhibit 1**, are hereby approved in their entirety, are incorporated by reference and shall govern the bids and proceedings related to the sale and the Auction, and the Bidding Procedures Key Dates, attached hereto as **Exhibit 2**, are hereby approved in their entirety.
4. The Debtors are authorized to take any and all actions necessary or appropriate to implement the Bidding Procedures.
5. Landry's, LLC, together with its permitted successors, assigns and designees, is approved as the Stalking Horse Bidder for the Debtors' Assets, pursuant to the terms of the

Agreement attached as Exhibit A to the Sale Motion and the Agreement, in substantially such form, is hereby approved.

6. If the Debtors receive more than one Qualified Bid (as defined in the Bidding Procedures), an auction (the "Auction") shall take place on December 18, 2019 at 10:00 a.m. (prevailing Eastern Time) at the offices of Landis Rath & Cobb LLP, or such other place and time as the Debtors shall notify all Qualified Bidders, including the Stalking Horse Bidder, counsel for the Stalking Horse Bidder and other invitees in accordance with the Bidding Procedures. The Auction shall be conducted in accordance with the Bidding Procedures.

7. In the event another party other than the Stalking Horse Bidder is the Successful Bidder for the Debtors' Assets, subject to the terms of the Agreement, notwithstanding anything contrary in the Motion, the Debtors shall pay the Breakup Fee to the Stalking Horse Bidder in an amount equal to \$1.2 million and shall reimburse the Stalking Horse Bidder for the actual and reasonable out of pocket expenses up to a cap of \$300,000 incurred by the Stalking Horse Bidder in performance of the Stalking Horse Bidder's due diligence investigation, review, research, and analysis regarding the Debtors' assets and the negotiations and documentation of the Agreement.

8. The Termination Fee shall constitute an allowed administrative expense claim against the Debtors' bankruptcy estates pursuant to Bankruptcy Code sections 363, 503(b) and 507(a)(2).

9. The Termination Fee shall be payable by the Debtors within three (3) Business Days following the closing of an Alternative Transaction, and shall be paid to the Stalking Horse Bidder prior to the payment of the proceeds of such sale to any third party asserting a Lien on the Purchased Assets (and no Lien of any third party shall attach to the portion of the sale proceeds representing the Termination Fee). No further or additional order from the Court shall be

required in order to give effect to such provisions relating to the terms of payment of the Termination Fee and the Stalking Horse Bidders' professional advisors are not obligated to comply with any provisions of the Bankruptcy Code regarding Court approval of professional fees payable by the Debtors and included in the Expense Reimbursement.

10. The Sale Hearing shall be held before the Court on December 20, 2019 at _____ .m. (prevailing Eastern Time) and may be adjourned from time to time.

11. Objections, if any, to the sale of the Purchased Assets and the Sale contemplated by the Agreement, or the relief requested in the Sale Motion must: (a) be in writing; (b) state the basis of such objection with specificity; (c) comply with the Bankruptcy Rules and the Local Rules; (d) be filed with the Clerk of the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801 on or before 4:00 p.m. (prevailing Eastern Time) on December 13, 2019 (the "Sale Objection Deadline"); and (e) be served upon: (i) the Debtors, 8700 State Line Road, Suite 100, Leawood, Kansas 66206 (Attn: Michael Archer and Cindy Parres); (ii) counsel to the Debtors, Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, Delaware 19801 (Attn: Adam G. Landis and Kimberly A. Brown); (iii) investment banker to the Debtors, Piper Jaffray & Co., 2321 Rosecrans Avenue, Suite 3200, El Segundo, California 90245 (Attn: Teri Stratton); (iv) counsel for the Stalking Horse Bidder, Hunton Andrews Kurth, LLP, 600 Travis Street, Suite 4200, Houston, Texas 77002 (Attn: Mark Arnold and Mark Young) and Cole Schotz P.C., 500 Delaware Avenue, Suite 1410, Wilmington, Delaware 19801 (Attn: Noman L. Pernick); (v) counsel to the Lenders, Katten Muchin Rosenman LLP, 515 South Flower Street, Suite 1000, Los Angeles, California 90071-2212 (Attn: William B. Freeman), and 575 Madison Avenue, New York, New York 10022-2585 (Attn: Karen B. Dine); (vi) the Office of the United States Trustee, United States

Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801 (Attn: Jane Leamy); and (vii) counsel to any statutory committee appointed in these Chapter 11 Cases, in accordance with Local Rule 2002-1(b) on or before 4:00 p.m. (prevailing Eastern Time) on the Sale Objection Deadline.

12. The notice, substantially in the form attached hereto as **Exhibit 3** (the "Sale Notice"), is hereby approved.

13. On or before December 6, 2019, the Debtors will cause the Sale Notice and this Order to be sent by first-class mail, to the following: (a) all creditors or their counsel known to the Debtors to assert a lien (including any security interest), claim, right, interest, or encumbrance of record against all or any portion of the Purchased Assets; (b) the Office of the United States Trustee for the District of Delaware; (c) counsel to the Stalking Horse Bidder; (d) the Lenders; (e) all parties in interest who have requested notice pursuant to Bankruptcy Rule 2002; (f) all applicable federal, state and local taxing and regulatory authorities of the Debtors or recording offices or any other governmental authorities that, as a result of the sale of the Purchased Assets, may have claims, contingent or otherwise, in connection with the Debtors' ownership of the Purchased Assets or have any known interest in the relief requested by the Motion, which shall include the attorneys general for the State of Delaware and for each state in which the Debtors operate a business; (g) all counterparties to any executory contract or unexpired lease of the Debtors; and (h) all potential bidders previously identified or otherwise known to the Debtors.

14. The notice, substantially in the form attached hereto as **Exhibit 4** (the "Contract Notice"), of potential assumption and assignment of certain of the Debtors' executory contracts and unexpired leases to be listed in the Contract Notice (collectively, the

“Scheduled Contracts”), is hereby approved in its entirety. The Procedures in Section 7.5 of the Agreement, including with respect to the Stalking Horse Bidder’s rights to designate or change the character of Assigned Contracts by the applicable Contract Designation Deadline are approved.³

15. On or before December 6, 2019, the Debtors shall serve by first class mail or hand delivery the Contract Notice on all non-Debtor parties to the Scheduled Contracts. The Contract Notice shall identify the Scheduled Contracts and provide the cure costs that the Debtors believe must be paid to cure all prepetition defaults under the Scheduled Contracts (each a “Cure Cost” and, collectively, the “Cure Costs”).

16. Any objection to the Cure Cost or to the assumption and assignment to the Stalking Horse Bidder, including with respect to adequate assurance of future performance of the Stalking Horse Bidder (collectively, a “Contract Objection”), must be filed with the Court no later than December 13, 2019 at 4:00 p.m. (prevailing Eastern Time), and served, so as to be received the same day as the objection is filed, to (i)) the Debtors, 8700 State Line Road, Suite 100, Leawood, Kansas 66206 (Attn: Michael Archer and Cindy Parres); (ii) counsel to the Debtors, Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, Delaware 19801 (Attn: Adam G. Landis and Kimberly A. Brown); (iii) investment banker to the Debtors, Piper Jaffray & Co., 2321 Rosecrans Avenue, Suite 3200, El Segundo, California 90245 (Attn: Teri Stratton); (iv) counsel for the Stalking Horse Bidder, Hunton Andrews Kurth, LLP, 600 Travis Street, Suite 4200, Houston, Texas 77002 (Attn: Mark Arnold and Mark Young) and Cole Schotz P.C., 500 Delaware Avenue, Suite 1410, Wilmington, Delaware 19801 (Attn: Noman L.

³ The Agreement provides that the Stalking Horse Bidder has the right to elect to have the Debtors assume and assign executory contracts and unexpired leases and that the Stalking Horse Bidder shall be responsible for payment of the Cure Costs after an executory contract or unexpired lease is designated for assumption and the assumption becomes effective.

Pernick); (v) counsel to the Lenders, Katten Muchin Rosenman LLP, 515 South Flower Street, Suite 1000, Los Angeles, California 90071-2212 (Attn: William B. Freeman) and 575 Madison Avenue, New York, New York 10022-2585 (Attn: Karen B. Dine); (vi) the Office of the United States Trustee, United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801 (Attn: Jane Leamy); and (vii) counsel to any statutory committee appointed in these Chapter 11 Cases.

17. Any Contract Objection must state the basis for such objection and state with specificity what Cure Cost the party to the Contract or Real Property Lease believes is acquired (in all cases with appropriate documentation in support thereof). If no Contract Objection is timely received, the Cure Cost set forth in the Contract Notice shall be controlling, notwithstanding anything to the contrary in the Contract or Real Property Lease or other documents as of the date of the Contract Notice. The Contract Notice shall also provide that the Contract Objection to any Cure Cost or assumption and assignment will be heard at the Sale Hearing or at a later hearing, as determined by the Debtors. If a Successful Bidder that is not the Stalking Horse Bidder prevails at the Auction, then the deadline to object to assumption and assignment (solely on the grounds of adequate assurance of future performance) shall be extended to the Sale Hearing, provided, however, that the deadline to object to the Cure Cost shall not be extended.

18. Unless a non-Debtor party to any Contract or Real Property Lease files an objection to the Cure Cost by the applicable objection deadline, then such counterparty shall be (a) forever barred from objection to the Cure Cost and (b) forever barred and estopped from asserting or claiming any Cure Cost, other than the Cure Cost on the schedule of the Contract Notice, against the Debtors, the Stalking Horse Bidder, or any Successful Bidder or any other

assignee of the relevant contract or lease.

19. Unless a non-Debtor party to any Contract or Real Property Lease files a timely objection to the assumption and assignment of the applicable Contract or Real Property Lease to the Stalking Horse Bidder or the other Successful Bidder, then such counterparty shall be deemed to have consented to the assumption and assignment to the Stalking Horse Bidder or the other Successful Bidder.

20. Compliance with the foregoing notice provisions shall constitute sufficient notice of the Debtors' proposed sale of the Debtors' assets free and clear of liens, claims, interests and encumbrances, pursuant to Bankruptcy Code section 363(f) and otherwise, and except as set forth in this Order, no other or further notice of the sale shall be required to be provided by the Debtors.

21. The Stalking Horse Bidder is entitled to make any additional bids at the Auction in compliance with the Bidding Procedures. For purposes of any Overbid, the Stalking Horse Bidder shall be entitled to a credit in the amount of the Termination Fee.

22. The Sale Hearing may be continued, from time to time, without further notice to creditors or other parties in interest other than by announcement of said continuance before the Court on the date scheduled for such hearing or in the hearing agenda for such hearing.

23. Section 7.4(c)(i) of the Agreement is hereby approved. In connection therewith, the Debtors' obligation to pay the Termination Fee, as provided by the Agreement, is hereby approved and shall survive termination of the Agreement and shall be payable as provided in Section 7.4(c)(i) of the Agreement.

24. Except for the Stalking Horse Bidder, no other party submitting an offer or Bid for the Purchased Assets or a Qualifying Bid shall be entitled to any expense reimbursement,

breakup, termination, or similar fee or payment.

25. Except as otherwise provided in the Agreement or this Order, the Debtors further reserve the right as they may reasonably determine to be in the best interests of their estates (in consultation with the Lenders) to: (a) determine which bidders are Qualified Bidders; (b) determine which Bids are Qualified Bids; (c) determine which Qualified Bid is the highest or otherwise best proposal and which is the next highest or otherwise best proposal; (d) reject any Bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bidding Procedures or the requirements of the Bankruptcy Code or (iii) contrary to the best interests of the Debtors and their estates; (e) impose additional terms and conditions with respect to all potential bidders; (f) extend the deadlines set forth herein; and (g) continue or cancel the Auction and/or Sale Hearing in open court without further notice or by filing a notice on the docket. Before extending any deadline, the Debtor shall consult with the Stalking Horse Bidder.

26. All persons and entities that participate in the bidding process or the Auction shall be deemed to have knowingly and voluntarily submitted to the exclusive jurisdiction of this Court with respect to all matters related to the terms and conditions of the transfer of Purchased Assets, the Auction and any transaction contemplated herein.

27. To the extent that any chapter 11 plan confirmed in these cases or any order confirming any such plan or any other order in these case (including any order entered after any conversion of these Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code) alters, conflicts with or derogates from the provisions of this Order, the provisions of this Order shall control. The Debtors' obligations under this Order, the provisions of this Order and the portions of the Agreement pertaining to the Bidding Procedures shall survive conversion of these cases to cases under chapter 7 of the Bankruptcy Code, confirmation of any plan of reorganization or

discharge of claims thereunder and shall be binding upon the Debtors, a Chapter 7 trustee, the reorganized or reconstituted debtors, as the case may, after the effective date of a confirmed plan or plans in the Debtors' cases (including any order entered after any conversion of these cases to cases under chapter 7 of the Bankruptcy Code).

28. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 6006(d), 7062, 9014 or any other provisions of the Bankruptcy Rules or the Local Rules stating the contrary, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry and no automatic stay shall apply to this Order.

29. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

30. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

31. In the event there is any inconsistency between the Motion, the Bidding Procedures, or this Order, this Order shall govern. The rights and obligations of the Stalking Horse Bidder and the Debtors are subject to the full terms and conditions of the Agreement, which shall control in the event of any conflict between this Order and the Agreement.

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32. The Court shall retain jurisdiction over any matters related to or arising from the implementation of this Order. All matters arising from or related to the implementation of this Order may be brought before the Court as a contested matter, without the necessity of commencing an adversary proceeding.

Dated: _____, 2019
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

BIDDING PROCEDURES¹

By the Motion dated November 13, 2019, HRI Holding Corp. and its affiliated debtors and debtors-in-possession (collectively, the “Debtors”) sought approval of, among other things, the procedures through which they will determine the highest or otherwise best price for the sale of substantially all of their assets (the “Purchased Assets”) described in the Asset Purchase Agreement dated as of November 13, 2019 (the “Agreement”) by and among Landry’s, LLC as purchaser (together with its permitted successors, assigns and designees, the “Stalking Horse Bidder”) and the Debtors, as sellers, a copy of which is attached as **Exhibit A** to the Sale Motion.

On _____, 2019, the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) entered an order (the “Bidding Procedures Order”), which, among other things, authorized the Debtors to determine the highest or otherwise best price for the Purchased Assets through the process and procedures set forth below (the “Bidding Procedures”).

Unless expressly indicated, the following Bidding Procedures apply to all bidders regardless of the phase of the Auction which the bidder intends to participate.

Access to Diligence Materials

To participate in the bidding process and to receive access to due diligence (the “Diligence Materials”), a party must submit to the Debtors an executed confidentiality agreement in the form and substance satisfactory to the Debtors and evidence demonstrating the party’s financial capability to close a transaction involving some or all of the Purchased Assets (a “Competing Transaction”) as determined by the Debtors, in consultation with the Lenders.

A party who qualifies for access to Diligence Materials shall be a “Preliminary Interested Investor.” All due diligence requests must be directed to the Debtors.

For any Preliminary Interested Investor who is a competitor of the Debtors or is affiliated with any competitor of the Debtors, the Debtors reserve the right to withhold any Diligence Materials that the Debtors, in their sole discretion, determine are business-sensitive or otherwise not appropriate for disclosure to such Preliminary Interested Investor.

No due diligence will continue after the Bid Deadline (defined below). The Debtors shall provide the Stalking Horse Bidder with access to all material due diligence materials, management presentations, on-site inspections, and other information provided to any Preliminary Interested Investor that were not previously made available to the Stalking Horse Bidder as soon as reasonably practicable and in no event later than five (5) Business Days after the date the Debtors made such information available to any Preliminary Interested Investor. Neither the Debtors nor any of their respective representatives will be obligated to furnish any

¹ Capitalized terms used but not defined herein shall have the meanings set forth in the motion to approve these Bidding Procedures (the “Motion”) or the Agreement, as applicable.

information relating to the Assets to any person other than to Preliminary Interested Investors. The Debtors make no representations or warranty as to the information to be provided through this due diligence process or otherwise, except to the extent set forth in the Agreement or in any other definitive agreement a Successful Bidder executed and delivered to the Debtors.

Bid Qualification Process

To be eligible to participate in the Auction (defined below), each offer, solicitation or proposal (each, a “Bid”), and each party submitting such a Bid (each, a “Bidder”), must be determined by the Debtors (in consultation with the Lenders) to satisfy each of the following conditions:

- (a) In writing.
- (b) Good Faith Deposit: Each Bid, other than the Stalking Horse Bidder’s Agreement, must be accompanied by a cash deposit in the amount equal to ten percent (10%) of the Bid to a segregated account to be identified and established by the Debtors (the “Good Faith Deposit”).
- (c) Same or Better Terms: The Bid must be on terms that are substantially the same or better than the terms of the Agreement, as determined by the Debtors (in consultation with the Lenders) and the Bid must identify which assets the Bidder intends to purchase and include executed transaction documents (a “Competing Transaction”). A Bid shall include a copy of the Agreement marked to show all changes requested by the Bidder. A Bid will not be considered qualified for the Auction if (i) such Bid contains additional material representations and warranties, covenants, closing conditions, termination rights other than as may be included in the Agreement (it being agreed and understood that such Bid shall modify the Agreement as needed to comply in all respects with the Bid Procedures Order and will remove provisions that apply only to the Stalking Horse Bidder as the stalking horse bidder such as the Termination Fee); (ii) such Bid is not received by the Debtors in writing on or prior to the Bid Deadline, and (iii) such Bid does not contain evidence that the Person submitting it has received unconditional debt and/or equity funding commitments (or has unrestricted and fully available cash) sufficient in the aggregate to finance the purchase contemplated thereby, including proof that the Good Faith Deposit has been made.
- (d) Corporate Authority: The Bid must include written evidence reasonably acceptable to the Debtors (in consultation with the Lenders) demonstrating appropriate corporate authorization to consummate the proposed Competing Transaction.
- (e) Proof of Financial Ability to Perform: The Bid must include written evidence that the Debtors reasonably conclude (in consultation with the Lenders) demonstrates that the Bidder has the necessary financial ability to close the Competing Transaction and provide adequate assurance of future performance

under all contracts to be assumed and assigned in such Competing Transaction.

(f) Contingencies: A Bid may not (i) contain representations and warranties, covenants, termination rights, financing, due diligence contingencies other than as may be included in the Agreement (it being agreed and understood that such Bid shall modify the Agreement as needed to comply in all respects with the Bidding Procedures Order (including removing any termination rights in conflict with the Bidding Procedures Order) and will remove provisions that apply only to the Stalking Horse Bidder as the stalking horse bidder, such as the Termination Fee) or (ii) be conditioned on obtaining financing or any internal approval, or on the outcome or review of due diligence, but may be subject to the accuracy in all material respects of specified representations and warranties at the Closing.

(g) Irrevocable: A Bid must be irrevocable through the Auction, provided, however, that if such Bid is accepted as the Successful Bid or a Backup Bid (each as defined herein), such Bid shall continue to remain irrevocable, subject to the terms and conditions of the Bidding Procedures.

(h) Bid Deadline. Regardless of when a party qualifies as a Preliminarily Interested Investor, the following parties must receive a Bid in writing, on or before December 16, 2019 at 4:00 p.m. (prevailing Eastern Time) or such earlier date as may be agreed to by the Debtors (the "Bid Deadline"): (i) the Debtors, 8700 State Line Road, Suite 100, Leawood, Kansas 66206 (Attn: Michael Archer and Cindy Parres); (ii) counsel to the Debtors, Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, Delaware 19801 (Attn: Adam G. Landis and Kimberly A. Brown), landis@lrclaw.com and brown@lrclaw.com, and (iii) investment banker to the Debtors, Piper Jaffray & Co., 2321 Rosecrans Avenue, Suite 3200, El Segundo, California 90245 (Attn: Teri Stratton), teri.l.stratton@pjc.com; (iv) counsel to the Lenders, Katten Muchin Rosenman LLP, 515 South Flower Street, Suite 1000, Los Angeles, California 90071-2212 (Attn: William B. Freeman), bill.freeman@katten.com and 575 Madison Avenue, New York, New York 10022-2585 (Attn: Karen B. Dine), karen.dine@katten.com.

(i) Amount of Bid. Each Bid must be for all of the Purchased Assets and shall clearly show the amount of the purchase price. In addition, a Bid (a) must propose a purchase price equal to or greater than the aggregate of the sum of (i) the value of the Bid set forth in the Agreement executed by the Stalking Horse Bidder, as determined by the Debtor (in consultation with the Lenders); (ii) the dollar value of the Termination Fee in cash, and (iii) \$250,000 (the initial overbid amount), in cash and (b) must obligate the Bidder to pay, to the extent provided in the Agreement, all amounts which the Stalking Horse Bidder under the Agreement has agreed to pay, including all Assumed Liabilities.

(j) Adequate Assurance of Future Performance. Each Bid shall be accompanied by adequate assurance of future performance information (the "Adequate Assurance Information"), including (i) information about the Bidder's

financial condition, such as federal tax returns for two (2) years, a current financial statement, or bank account statements, (ii) information demonstrating (in the Debtors' reasonable business judgment, in consultation with the Lenders) that the Bidder has the financial capacity to consummate the proposed Competing Transaction, (iii) evidence that the Bidder has obtained authorization or approval from its board of directors (or comparable governing body) with respect to the submission of its Bid, (iv) the identity and exact name of the Bidder (including any equity holder or other financial backer if the Bidder is an entity formed for the purpose of consummating the proposed Competing Transaction, and (v) such additional information regarding the Bidder as the Bidder may elect to include. By submitting a Bid, Bidders agree that the Debtors may disseminate their Adequate Assurance Information to affected landlords and contract counterparties in the event that the Debtors determine such bid to be a Qualified Bid.

(k) Affirmative Statement. Each Bid shall be accompanied by an affirmative statement (i) it has and will continue to comply with these Bidding Procedures; (ii) its bid does not entitle such Qualified Bidder to any breakup fee, termination fee, expense reimbursement, or similar type of payment or reimbursement; and (iii) it waives any substantial contribution administrative expense claims under Bankruptcy code section 503(b) related to bidding for the Assets.

The Debtors will review each Bid received from a Bidder to determine, in their sole discretion (in consultation with the Lenders), whether it meets the requirements set forth above. A Bid received from a Bidder before the Bid Deadline that meets the above requirements, as determined by the Debtors (in consultation with the Lenders), shall constitute a "Qualified Bid," and such Bidder shall constitute a "Qualified Bidder." The Debtors shall inform Bidders whether or not their Bids have been designated as Qualified Bids no later than twenty-four (24) hours after such Bids are received. Notwithstanding anything herein to the contrary, the Agreement submitted by the Stalking Horse Bidder shall be deemed a Qualified Bid, and the Stalking Horse Bidder is a Qualified Bidder for each phase of the Auction.

Auction

If one or more Qualified Bids (other than the Agreement submitted by the Stalking Horse Bidder) are received by the Bid Deadline, the Debtors will conduct an auction (the "Auction") to determine the highest or otherwise best Qualified Bid. If no Qualified Bid (other than the Agreement) is received by the Bid Deadline, no Auction shall be conducted and the Agreement shall be deemed to be the Successful Bid and the Stalking Horse Bidder shall be deemed to be the Successful Bidder. Only Qualified Bidders may participate in the Auction. Prior to the Auction, the Debtors shall provide copies of all Qualified Bids to all Qualified Bidders, including the Stalking Horse Bidder.

The Auction shall take place on December 18, 2019 at 10:00 a.m. (prevailing Eastern Time) at the offices of Landis Rath & Cobb LLP, or such other place and time as the Debtors shall notify all Qualified Bidders, including the Stalking Horse Bidder, counsel for the Stalking Horse Bidder and other invitees in accordance with these Bidding Procedures.

(a) The Debtors Shall Conduct the Auction. The Debtors and their professionals shall direct and preside over the Auction. At the start of the Auction, the Debtors shall announce which Qualified Bid(s) is/are deemed to be the highest or otherwise best (each Qualified Bid an “Auction Baseline Bid”). Each Qualified Bidder participating in the Auction must confirm that it has not engaged in any collusion with respect to the bidding or sale of the Debtors’ assets.

Only the Debtors, the Lenders, the Stalking Horse Bidder, and any other Qualified Bidder, in each case, along with their representatives, shall attend the Auction in person; however, only the Stalking Horse Bidder and such other Qualified Bidders will be entitled to make any Bids at the Auction.

Prior to the Auction, the Debtors will share with all Qualified Bidders, including the Stalking Horse Bidder, the highest or otherwise best bid received at the Bid Deadline (each, a “Baseline Bid”). Qualified Bidders will be permitted to revise, increase, and/or enhance their bids at the Auction based upon the terms of the Baseline Bid. All Qualified Bidders will have the right to make additional modifications to their Qualified Bid or Agreement, consistent with the Bidding Procedures, as applicable, at the Auction.

(b) Terms of Overbids. An “Overbid” is any bid made at the Auction subsequent to the Debtors’ announcement of an Auction Baseline Bid. To submit an Overbid for purposes of this Auction, a Bidder must comply with the following conditions:

(i) Minimum Overbid Increment. Any Overbid after the Auction Baseline Bid shall be made in increments valued at not less than \$100,000 as determined by the Debtors (in consultation with the Lenders). Additional consideration in excess of the amount set forth in an Auction Baseline Bid may include cash and/or noncash consideration. For purposes of the Overbid, the Stalking Horse Bidder shall be entitled to a credit in the amount of the Termination Fee.

(ii) Remaining terms are the same as for Qualified Bids. Except as modified herein, an Overbid must comply with the conditions for a Qualified Bid set forth above, provided, however, that the Bid Deadline shall not apply. Any Overbid must remain open and binding on the Bidder until and unless the Debtors accept a higher Overbid.

(c) Backup Bidder. Notwithstanding anything in the Bidding Procedures to the contrary, if an Auction is conducted, the party with the next highest or otherwise best Qualified Bid at the Auction, as determined by the Debtors, in the exercise of its business judgment (in consultation with the Lenders) will be designated as the backup bidder (the “Backup Bidder”). The Backup Bidder shall be required to keep its initial Bid (or if the Backup Bidder submitted one or more Overbids at the Auction, its final Overbid) (the “Backup Bid”) open and irrevocable until the earlier of 4:00 p.m. (prevailing Eastern Time) on the date that

is twenty-one (21) days after the date of the Sale Hearing (the “Outside Backup Date”) or the closing of the transaction with the Successful Bidder. Following the Sale Hearing, if the Successful Bidder fails to consummate an approved transaction, because of a breach or failure to perform on the part of such Successful Bidder, the Debtors may designate (in consultation with the Lenders) the Backup Bidder to be the new Successful Bidder, and the Debtors will be authorized, but not required, to consummate the transaction, with the Backup Bidder without further order of the Bankruptcy Court. In such case, the defaulting Successful Bidder’s deposit shall be forfeited to the Debtors, and the Debtors specifically reserve the right to seek all available damages from the defaulting Successful Bidder (defined herein). The deposit of the Backup Bidder shall be held by the Debtors until the earlier of one (1) Business Day after (i) the closing of the transaction with the Successful Bidder and (ii) the Outside Backup Date.

(d) Additional & Modified Procedures. The Debtors may announce at the Auction additional or modified rules and procedures that are reasonable under the circumstances (*e.g.*, limitations in the amount of time to make subsequent Overbids, changes in minimum overbid increments, etc.) for conducting the Auction so long as such rules are not inconsistent with the Bidding Procedures or the Agreement.

(e) Consent to Jurisdiction as Condition to Bidding. The Stalking Horse Bidder and all Qualified Bidders at the Auction shall be deemed to have consented to the core jurisdiction of the Bankruptcy Court and waived any right to a jury trial in connection with any disputes relating to these Bidding Procedures, the Agreement, the Auction, or the construction and enforcement of any documents related to a Competing Transaction.

(f) Closing the Auction. The Auction shall continue until the Debtors determine in their reasonable business judgment (in consultation with the Lenders) that there is a highest or otherwise best Qualified Bid at the Auction for all of the Purchased Assets (each a “Successful Bid” and each Bidder submitting such Successful Bid, a “Successful Bidder”). The Auction shall not close unless and until all Bidders who have submitted Qualified Bids have been given a reasonable opportunity to submit an Overbid at the Auction to the then-existing Overbids and the Successful Bidder has submitted fully executed sale and transaction documents memorializing the terms of the Successful Bid. Within twenty-four (24) hours following conclusion of the Auction, the Debtors shall file a notice on the Bankruptcy Court’s docket identifying (with specificity) the Successful Bidder for the Purchased Assets and any applicable Backup Bidders. The Debtors shall not consider any Bids submitted after the conclusion of the Auction and any and all such Bids shall be deemed untimely and shall under no circumstances constitute a Qualified Bid.

Termination Fee

The Stalking Horse Bidder is entitled to payment of its Termination Fee pursuant to the terms of the Agreement.

The Debtors recognize the value and benefits that the Stalking Horse Bidder has provided to the Debtors by entering into the Agreement, as well as the Stalking Horse Bidder's expenditure of time, energy and resources. Therefore, subject to the terms of the Agreement, the Debtors shall pay the Breakup Fee and the Expense Reimbursement to the Purchaser by wire transfer of immediately available funds to the account specified by the Stalking Horse Bidder to the Debtors in writing. The Termination Fee shall be paid three (3) Business Days following closing an Alternative Transaction, and shall be paid to the Stalking Horse Bidder prior to the payment of the proceeds of such sale to any third party asserting a Lien on the Purchased Assets (and no Lien of any third party shall attach to the portion of the sale proceeds representing the Breakup Fee and the Expense Reimbursement.)

The Termination Fee shall constitute an allowed administrative expense claim against the Debtors' bankruptcy estates pursuant to Bankruptcy Code sections 363, 503(b) and 507(a)(2).

Except for the Stalking Horse Bidder, no other party submitting an offer or Bid for the Purchased Assets or a Qualifying Bid shall be entitled to any expense reimbursement, breakup fee, termination or similar fee or payment.

In the event no Qualified Bid, other than the Stalking Horse Bid, is received, the Debtors reserve the right to request (in consultation with the Lenders) that the Bankruptcy Court advance the date of the Sale Hearing and provide notice of such new date to those parties in interest entitled to notice thereof.

The Sale Hearing may be adjourned or rescheduled from time to time.

Sale Hearing

The Debtors will seek a hearing (the "Sale Hearing") on December 20, 2019, at which the Debtors will seek approval of the transactions contemplated by the Agreement with the Successful Bidder. Objections, if any, to the sale of the Purchased Assets to the Successful Bidder and the transaction contemplated by the Agreement must be in writing and filed with the Bankruptcy Court no later than 4:00 p.m. (prevailing Eastern Time) on December 13, 2019 and be served such that they are actually received by: (i) the Debtors, 8700 State Line Road, Suite 100, Leawood, Kansas 66206 (Attn: Michael Archer and Cindy Parres); (ii) counsel to the Debtors, Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, Delaware 19801 (Attn: Adam G. Landis and Kimberly A. Brown), landis@lrclaw.com and brown@lrclaw.com; (iii) investment banker to the Debtors, Piper Jaffray & Co., 2321 Rosecrans Avenue, Suite 3200, El Segundo, California 90245 (Attn: Teri Stratton), teri.l.stratton@pjc.com; (iv) counsel for the Stalking Horse Bidder, Hunton Andrews Kurth, LLP, 600 Travis Street, Suite 4200, Houston, Texas 77002 (Attn: Mark Arnold and Mark Young), markarnold@huntonak.com and markyoung@huntonak.com and Cole Schotz P.C., 500 Delaware Avenue, Suite 1410, Wilmington, Delaware 19801 (Attn: Noman L. Pernick), npernick@coleschotz.com; (v) counsel

to the Lenders, Katten Muchin Rosenman LLP, 515 South Flower Street, Suite 1000, Los Angeles, California 90071-2212 (Attn: William B. Freeman) and 575 Madison Avenue, New York, New York 10022-2585 (Attn: Karen B. Dine), karen.dine@katten.com; (vi) the Office of the United States Trustee, United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801 (Attn: Jane Leamy); and (vii) counsel to any statutory committee appointed in the Chapter 11 Cases.

Return of Good Faith Deposit

The Good Faith Deposits of all Qualified Bidders shall be held in one or more segregated accounts by the Debtors, but shall not become property of the Debtors' estates absent further order of the Bankruptcy Court. The Good Faith Deposit of any Qualified Bidder that is neither the Successful Bidder nor the Backup Bidder shall be returned to such Qualified Bidder not later than two (2) Business Days after the Sale Hearing. The Good Faith Deposit of the Backup Bidder shall be returned to the Backup Bidder on the date that is the earlier of one (1) Business Day after (a) the closing of the transaction with the Successful Bidder and (b) the Outside Backup Date. If the Successful Bidder timely closes the winning transaction, its Good Faith Deposit shall be credited towards its purchase price.

Reservation of Rights

Except as otherwise provided in the Agreement, Bidding Procedures Order or the Sale Order, the Debtors further reserve the right as they may reasonably determine to be in the best interest of their estates (in consultation with the Lenders), to: (a) determine which bidders are Qualified Bidders; (b) determine which Bids are Qualified Bids; (c) determine which Qualified Bid is the highest and best proposal and which is the next highest and best proposal; (d) reject any Bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bidding Procedures or the requirements of the Bankruptcy Code or (iii) contrary to the best interests of the Debtors and their estates; (e) impose additional terms and conditions with respect to all potential bidders other than the Stalking Horse Bidder; (f) modify these Bidding Procedures and/or implement additional procedural rules that the Debtors determine will better promote the goals of the bidding process; (f) extend the deadlines set forth herein; and (g) continue or cancel the Auction and/or Sale Hearing in open court without further notice or by filing a notice on the docket. Before extending any deadline, the Debtor shall consult with the Stalking Horse Bidder.

EXHIBIT 2

BIDDING PROCEDURES KEY DATES

EVENT	DATE
Hearing on the Motion for Bidding Procedures	December 5, 2019
Service of Bidding Procedures Order	December 6, 2019
Service of Contract Notice	December 6, 2019
Bid Deadline	December 16, 2019 at 4:00 p.m. (ET)
Assumption/Assignment and Cure Objection Deadline	December 13, 2019 at 4:00 p.m. (ET)
Sale Objection Deadline	December 13, 2019 at 4:00 p.m. (ET)
Auction	December 18, 2019 at 10:00 a.m. (ET)
Sale Hearing	December 20, 2019
Deadline to Close Sale	December 31, 2019
Adequate Assurance Objection (in the event the Stalking Horse Bidder is not the Successful Bidder)	At or before the Sale Hearing

EXHIBIT 3

**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 ()

(Joint Administration Requested)

NOTICE OF SALE OF CERTAIN ASSETS AT AUCTION

PLEASE TAKE NOTICE THAT:

1. Pursuant to the *Order (A) Approving Bidding Procedures in Connection with a Transaction by Public Auction; (B) Scheduling a Hearing to Consider the Transaction; (C) Approving the Form and Manner of Notice Thereof; (D) Approving Contract Procedures; and (E) Granting Related Relief* (the “Bid Procedures Order”) entered by the United States Bankruptcy Court for the District of Delaware (the “Court”) on _____, 2019 the above captioned debtors (the “Debtors”), have entered into an Agreement (the “Agreement”) with Landry’s, LLC (together with its permitted successors, assigns and designees, the “Stalking Horse Bidder”) for the sale of substantially all of the Debtors’ assets subject to a competitive bidding process as set forth in the Bidding Procedures Order. Capitalized terms used but not otherwise defined in this notice have the meanings ascribed to them in the Bid Procedures Order or the Agreement.

2. Copies of (i) the Motion, (ii) the Agreement, (iii) the proposed Sale Order, (iv) the Bidding Procedures, and (v) the Bid Procedures Order can be obtained by contacting the Debtors at Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, Delaware 19801 or by visiting the website of the Debtors’ claims and noticing agent, KCC LLC at www.kccllc.net/HRI free of charge.

3. All interested parties are invited to make an offer to purchase the Purchased Assets in accordance with the terms and conditions approved by the Court (the “Bidding”

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 (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.

Procedures”) by 4:00 p.m. (prevailing Eastern Time) on December 16, 2019. Pursuant to the Bidding Procedures, the Debtors may conduct an Auction for the Purchased Assets (the “Auction”) beginning at 10:00 a.m. (prevailing Eastern Time) on December 18, 2019 at the offices of Landis Rath & Cobb LLP or such later time or other place as the Debtors notify all Qualified Bidders who have submitted Qualified Bids. Interested bidders are encouraged to read the Bidding Procedures carefully and, for further information, are invited to contact the Debtors’ counsel Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, Delaware 19801 (Attn: Kimberly A. Brown, Esq.) brown@lrclaw.com; or its investment banker Piper Jaffray & Co., 444 South Flower Street, Suite 1675, Los Angeles, California 90071 (Attn: Teri Stratton) teri.l.stratton@pjc.com.

4. Participation at the Auction is subject to the Bidding Procedures and the Bidding Procedures Order.

5. A hearing to approve the Sale of the Purchased Assets to the highest or otherwise best bidder will be held on December 20, 2019 at _____:m (prevailing Eastern Time) at the Court. The hearing on the Sale may be adjourned without notice other than an adjournment in open court or as identified on the agenda.

6. Objections, if any, to the proposed Sale must be filed and served in accordance with the Bidding Procedures Order, and **actually received** no later than 4:00 p.m. (prevailing Eastern Time) on December 13, 2019.

7. This notice is qualified in its entirety by the Bid Procedures Order.

Dated: _____, 2019
Wilmington, Delaware

LANDIS RATH & COBB LLP

Adam G. Landis (No. 3407)
Kimberly A. Brown (No. 5138)
Matthew R. Pierce (No. 5946)
Nicolas E. Jenner (No. 6554)
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jenner@lrclaw.com

*Proposed Counsel for the Debtors
and Debtors-In-Possession*

EXHIBIT 4

**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 ()

(Joint Administration Requested)

**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**

PLEASE TAKE NOTICE THAT:

1. Pursuant to the Order (A) Approving Bidding Procedures in Connection with a Transaction by Public Auction; (B) Scheduling a Hearing to Consider the Transaction; (C) Approving the Form and Manner of Notice Thereof; and (D) Approving Contract Procedures; and (E) Granting Related Relief (the “Bid Procedures Order”) entered by the United States Bankruptcy Court for the District of Delaware (the “Court”) on _____, 2019 the above captioned debtors and debtors-in-possession (the “Debtors”), have entered into an Agreement (the “Agreement”) with Landry’s, LLC (together with its successors, assigns and designees, the “Stalking Horse Bidder”) for the sale of substantially all of the Debtors’ assets subject to a competitive bidding process as set forth in the Bid Procedures Order. The Debtors hereby provide notice of its intent to potentially assume and assign the prepetition executory contracts or unexpired leases (the “Scheduled Contracts”) listed on **Exhibit A** hereto to the Stalking Horse Bidder or the Successful Bidder, as the case may be. The inclusion of any executory contract or unexpired lease on **Exhibit A** does not require or guarantee that such executory contract or unexpired lease will be assumed or assigned, or that said lease or contract is executory, and all rights of the Debtors with respect thereto are reserved. Capitalized terms used but not otherwise defined in this notice have the meanings ascribed to them in the Bid Procedures Order or the Agreement.

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 (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.

2. Pursuant to the terms of the Agreement (or any asset sale and purchase agreement that the Debtors may enter into with the Successful Bidder), the Debtors may seek to assume and assign one or more of the Scheduled Contracts to the Stalking Horse Bidder or the Successful Bidder, as the case may be, subject to approval at the hearing to be held at _____ .m (prevailing Eastern Time) on December 20, 2019 (the “Sale Hearing”) before the Court. On the date of the closing of the transactions contemplated by the Agreement (the “Closing Date”), or as soon thereafter as is reasonably practicable, the Stalking Horse Bidder or the Successful Bidder, as the case may be, will pay the amount the Debtors’ records reflect is owing for prepetition arrearages, if any, as set forth on **Exhibit A** hereto (the “Cure Cost”). The Debtors’ records reflect that all postpetition amounts owing under the Scheduled Contracts have been paid and will continue to be paid until the assumption and assignment of the Scheduled Contracts and that, other than the Cure Cost, there are no other defaults under the Scheduled Contracts.

3. Objections, if any, to the assumption and assignment of a Scheduled Contract and/or to the proposed Cure Cost must (a) be in writing, (b) state with specificity the Cure Cost asserted to be required, (c) include appropriate documentation thereof, (d) be filed with the Court no later than [December 13], 2019 at 4:00 p.m. (prevailing Eastern Time) and served on the following parties: (i) the Debtors, 8700 State Line Road, Suite 100, Leawood, Kansas 66206 (Attn: Michael Archer and Cindy Parres); (ii) counsel to the Debtors, Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, Delaware 19801 (Attn: Adam G. Landis and Kimberly A. Brown), landis@lrclaw.com and brown@lrclaw.com; (iii) investment banker to the Debtors, Piper Jaffray & Co., 2321 Rosecrans Avenue, Suite 3200, El Segundo, California 90245 (Attn: Teri Stratton), teri.l.stratton@pjc.com; (iv) counsel for the Stalking Horse Bidder, Hunton Andrews Kurth, LLP, 600 Travis Street, Suite 4200, Houston, Texas 77002 (Attn: Mark Arnold and Mark Young), markarnold@huntonak.com and markyoung@huntonak.com and Cole Schotz P.C., 500 Delaware Avenue, Suite 1410, Wilmington, Delaware 19801 (Attn: Noman L. Pernick), npernick@coleschotz.com; (v) counsel to the Lenders, Katten Muchin Rosenman LLP, 515 South Flower Street, Suite 1000, Los Angeles, California 90071-2212 (Attn: William B. Freeman) and 575 Madison Avenue, New York, New York 10022-2585 (Attn: Karen B. Dine), karen.dine@katten.com; (vi) the Office of the United States Trustee, United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801 (Attn: Jane Leamy); and (vii) counsel to any statutory committee appointed in the Chapter 11 Cases.

4. If an objection to the assumption and assignment of a Scheduled Contract is timely filed and received, a hearing with respect to the objection will be held before the Court at the Sale Hearing, or as may be continued by the Debtors and noticed on the agenda filed on the docket, or such date and time as the Court may schedule. If no objection is timely received, the non-Debtor party to the Assigned Contract will be deemed to have consented to the assumption and assignment of the Assigned Contract and forever will be barred from asserting any other claims, including but not limited to the propriety or effectiveness of the assumption and assignment of the Assigned Contract, against the Debtors, the Stalking Horse Bidder, the Successful Bidder or the property of any of them in respect of the Scheduled Contract.

5. Pursuant to Bankruptcy Code section 365, there is adequate assurance of future

performance that the Cure Cost set forth in the Contract Notice will be paid in accordance with the terms of the Sale Order. There is adequate assurance of the Stalking Horse Bidder's future performance under the executory contract or unexpired lease to be assumed and assigned because of the significant resources of the Stalking Horse Bidder. If necessary, the Debtors will adduce facts at the hearing on any objection demonstrating the financial wherewithal of the Successful Bidder, and its willingness and ability to perform under the contracts to be assumed and assigned to it.

6. If an objection to the Cure Cost is timely filed and received and the parties are unable to consensually resolve the dispute, the amount to be paid under Bankruptcy Code section 365, if any, with respect to such objection will be determined at a hearing to be requested by the Debtors. At the Stalking Horse Bidder's or the Successful Bidder's discretion, and provided the Stalking Horse Bidder or the Successful Bidder escrow the disputed portion of the Cure Cost, the hearing regarding the Cure Cost may be continued until after the Closing Date and the Scheduled Contract(s) subjected to such Cure Cost shall, with the consent of the Stalking Horse Bidder or the Successful Bidder, be assumed and assigned to the Stalking Horse Bidder or the Successful Bidder at or following the closing of the Sale.

7. If no objection is timely received, the Cure Cost set forth in **Exhibit A** hereto will be controlling, notwithstanding anything to the contrary in any Scheduled Contract or any other document, and the non-Debtor party to the Scheduled Contract will be deemed to have consented to the Cure Cost and will be forever barred from asserting any other claims in respect of such Scheduled Contract against the Debtors, the Stalking Horse Bidder, or the Successful Bidder (as appropriate), or the property of any of them. The failure of any objecting person or entity to timely file its objection will be a bar to the assertion, at the Sale Hearing or thereafter, of any objection to the Sale Motion, the Sale or the Debtors' consummation of and performance under the Sale Agreement (including the transfer of the Purchased Assets and the Scheduled Contracts free and clear of all claims, liens, encumbrances, and interests), if authorized by the Court.

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8. Prior to the date of the closing of the Sale, the Debtors may amend their decision with respect to the assumption and assignment of any Scheduled Contract, including amending the Cure Cost, and provide a new notice amending the information provided in this notice, including, without limitation, a determination not to assume certain contracts.

Dated: _____, 2019
Wilmington, Delaware

LANDIS RATH & COBB LLP

Adam G. Landis (No. 3407)
Kimberly A. Brown (No. 5138)
Matthew R. Pierce (No. 5946)
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*Proposed Counsel for the Debtors
and Debtors-In-Possession*

EXHIBIT A

CONTRACTS SCHEDULE