

**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 FOR ENTRY OF AN ORDER AUTHORIZING THE DEBTORS
TO HONOR CERTAIN PREPETITION OBLIGATIONS TO CUSTOMERS AND
TO OTHERWISE CONTINUE CERTAIN CUSTOMER PRACTICES
AND PROGRAMS IN THE ORDINARY COURSE OF BUSINESS**

The above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) by and through their proposed undersigned counsel, hereby submit this *Motion for Entry of an Order Authorizing the Debtors to Honor Certain Prepetition Obligations to Customers and to Otherwise Continue Certain Customer Practices and Programs in the Ordinary Course of Business* (the “Motion”). In support of the Motion, the Debtors rely on the *Declaration of Matthew R. Manning in Support of the Debtors’ Petitions and First Day Pleadings* (the “First Day Declaration”),² and respectfully state as follows:

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 in this Motion have the meanings ascribed to them in the First Day Declaration.



JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated February 29, 2012. This is a core proceeding pursuant to 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 sought herein are sections 105(a), 363, 507, 1107(a), and 1108 of title 11 of chapter 11 of the United States Code (as amended or modified, the “Bankruptcy Code”).

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

GENERAL BACKGROUND

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

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

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

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 this Court in connection with this Motion if it is later determined that this Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

Motion and incorporated herein by reference.

THE DEBTORS' CUSTOMER PROGRAMS

7. Prior to the Petition Date, and in the ordinary course of their business and as is customary in the restaurant industry, the Debtors instituted and engaged in certain activities to develop and sustain a positive reputation and relationship with their customers. To that end, the Debtors implemented various customer programs and policies across all of its restaurants that are designed to ensure customer satisfaction, develop and sustain customer relationships and loyalty, improve profitability, and generate goodwill for the Debtors and their brands. Among these programs and policies are their Gift Card Program, Charitable Giving Program and Promotional Program (all of which are defined herein).

8. The Debtors believe that in order to maintain their valuable customer base and goodwill, the Debtors must assure their customers of the Debtors' ongoing satisfaction of the Customer Obligations (defined below) to prevent losing customer patronage and goodwill. Below is a brief overview of these Customer Programs and the associated Customer Obligations.

A. The Gift Card Program

9. Prior to the Petition Date, the Debtors sold in the ordinary course of business pre-paid electronic and traditional gift cards in various denominations (the "Gift Cards") to be used at the Debtors' restaurant locations (the "Gift Card Program"). The Gift Cards may be purchased at the Debtors' restaurants or online on the Debtors' websites. Once purchased, a Gift Card may be used like cash for purchases at the Debtors' restaurants, but may not be redeemed for cash or monetary credit, except as required by applicable state law. Upon purchase, the Gift Cards are "activated" and may then be redeemed at any time with no expiration date.

10. As of the Petition Date, the Debtors believe that certain customers have not yet redeemed these gift cards. The Debtors estimate that, as of the Petition Date, there is approximately \$1.6 million of unredeemed value under the Gift Card Program.

11. The Debtors also utilize the services of certain gift card issuers, service providers, sellers, and processors (collectively, the “Gift Card Servicers”) to streamline the Gift Card Program whose services include, among other things, the (i) establishment and implementation of a FINCEN compliant, closed loop stored value Gift Card program, (ii) production and issuance of physical Gift Cards, (iii) maintenance of a Gift Card database, (iv) authorization and processing of Gift Card transactions and (v) certain web-based support tools (collectively, the “Gift Card Services”). The Debtors estimate, as of the Petition Date, that approximately \$5,000 in fees related to the Gift Card Services remain unpaid. The Debtors seek authority to continue to pay any fees related to the Gift Card Services, including any prepetition obligations, in the ordinary course of their businesses to avoid any interruption of their ability to issue, process and service Gift Card transactions.

B. The Charitable Giving Program

12. The Debtors support their local communities through certain charitable giving programs (the “Charitable Giving Programs”). In the ordinary course of business, the Debtors donate gift certificates called “Dine Outs” to various nonprofit organizations in their restaurants’ local communities, such as schools and youth sports organizations, to assist them in their fundraising efforts. In addition, the Debtors partner with certain 501(3)(c) nonprofit organizations to host “Dine to Donate” events during which the Debtors donate a certain percentage of sales revenue generated during the fundraiser to the partner organizations. The Debtors seek authority to continue, in the ordinary course of business, to administer the

Charitable Giving Programs, including administering any funds donated prepetition that have not yet been remitted.

C. The Promotional Program

13. In the ordinary course of business, the Debtors engage in the distribution of promotional materials to customers that are redeemable for a certain dollar amount, percentage discount or a particular food and/or beverage item (the “Promotional Program” and together with the Gift Card Program and the Charitable Giving Programs, the “Customer Programs”). One of the Debtors’ most utilized Promotional Programs is the email-based customer programs (the “Email Clubs”) for each of the Debtors’ restaurant concepts. The Email Clubs provide customers with targeted promotions such as welcome offers, a complimentary entrée on the customer’s birthday and invitations to exclusive events. In addition, the Debtors’ various restaurants run promotional events including happy hours, tasting events and wine specials. The Debtors believe that these promotional activities and events result in several million dollars of incremental revenue (net of the applicable discount) each year.

14. By this Motion, the Debtors seek authorization, but not direction, to honor the Promotional Program in a manner consistent with their past practices and to honor all Customer Obligations related thereto in the ordinary course of business.

RELIEF REQUESTED

15. By this Motion, the Debtors seek entry of an order substantially in the form attached hereto, authorizing the Debtors to (i) maintain and administer their Customer Programs and (ii) otherwise honor accrued prepetition obligations incurred by the Debtors under their Customer Programs (collectively, the “Customer Obligations”).

BASIS FOR RELIEF

16. The success and viability of the Debtors' businesses and the ability to successfully maximize value for their stakeholders depends largely on the patronage and loyalty of the Debtors' customers. Continuing to honor their obligations under the Customer Programs postpetition is critical to maintaining customer loyalty and satisfaction, and failure to do so would severely and irreparably impair the Debtors' customer base, brand and the going concern value of the Debtors' assets. Therefore, honoring their obligations under the Customer Programs is vital to the Debtors' business operations and the Debtors' ability to maximize the value of their assets for the benefit of all stakeholders. This is particularly true at this critical point in the calendar year since customers historically purchase the vast majority of Gift Cards sold on an annual basis during the last few months of the year. Failure to assure customers that the Gift Cards they have previously purchased are "good" will undoubtedly cripple the Debtors' ability to sell Gift Cards on a go forward basis during the critical holiday sales season.

17. Pursuant to Bankruptcy Code sections 363(c)(1), 1107(a) and 1108, the Debtors should be allowed to honor the Customer Obligations under the Customer Programs as part of operating their businesses in the ordinary course. Bankruptcy Code sections 1107(a) and 1108 authorize a debtor-in-possession to continue to operate its business. Bankruptcy Code section 363(c)(1) authorizes the debtor-in-possession to "use property of the estate in the ordinary course of business without notice or a hearing." The purpose of Bankruptcy Code section 363(c)(1) is to provide a debtor-in-possession with "flexibility to engage in ordinary transactions" required to operate its business without oversight by its creditors or the court. *In re Roth Am., Inc.*, 975 F.2d 949, 952 (3d Cir. 1992) ("Section 363 is designed to strike [a] balance, allowing a business to continue its daily operations without excessive court or creditor oversight and protecting secured

creditors and others from dissipation of the estate's assets.'") (quoting *U.S. ex rel. Harrison v. Estate of Deutscher (In re H&S Transp. Co.)*, 115 B.R. 592, 599 (M.D. Tenn. 1990)); *In re Nellson Nutraceutical, Inc.*, 369 B.R. 787, 796 (Bankr. D. Del. 2007).

18. Here, continuing to honor the Customer Obligations under the Customer Programs in the ordinary course of business without interruption is permitted by Bankruptcy Code sections 363(c), 1107(a) and 1108 without further motion to the Court. Nevertheless, out of an abundance of caution, the Debtors seek the Court's authorization, but not direction, in their discretion to honor the Customer Obligations under the Customer Programs.

19. Bankruptcy Code section 105(a) authorizes the Court to issue "any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." The purpose of section 105(a) is to "assure the bankruptcy courts [*sic*] power to take whatever action is appropriate or necessary in aid of the exercise of their jurisdiction." 2 Collier on Bankruptcy ¶ 105.01 (15th ed. rev. 2010). The relief requested in this Motion is critical to the Debtors' business operations and is justified under Bankruptcy Code section 105(a).

20. Honoring the Debtors' obligations under the Customer Obligations is necessary and appropriate, and may also be authorized under Bankruptcy Code sections 105(a) and 363(b) pursuant to the "doctrine of necessity." Numerous courts have used their section 105(a) equitable powers under the necessity of payment doctrine to authorize the expenditure of resources to satisfy a debtor's prepetition obligations where such resources are necessary to effectuate the "paramount purpose" of chapter 11 cases, which is to preserve a debtor's potential for rehabilitation. *See In re Lehigh Co. & New England Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (holding that "if payment of a claim which arose prior to reorganization is essential to the continued operation of the . . . [business] during reorganization, payment may be authorized even

if it is made out of [the] corpus”); *see also In re Just for Feet, Inc.*, 242 B.R. 821, 825 (D. Del. 1999) (“to invoke the necessity of payment doctrine, a debtor must show that payment of the pre-petition claims is critical to the debtor’s reorganization”); *Pension Benefit Guaranty Corp. v. Sharon Steel Corp. (In re Sharon Steel Corp.)*, 159 B.R. 730, 736 (Bankr. W.D. Pa. 1993) (embracing “necessity of payment” doctrine and citing *In re Leigh & New England Ry. Co.* with approval); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 176-77 (Bankr. S.D.N.Y. 1989) (necessity of payment doctrine “recognizes the existence of the judicial power to authorize a debtor in a reorganization case to pay pre-petition claims where such payment is essential to the continued operation of the debtor”); *In re Gulf Air, Inc.*, 112 B.R. 152, 153-54 (Bankr. W.D. La. 1989) (allowing payment of prepetition claims under the “doctrine of necessity”).

21. A bankruptcy court’s exercise of its authority under Bankruptcy Code section 105(a) and the “doctrine of necessity” is appropriate to carry out specific statutory provisions of chapter 11, such as Bankruptcy Code sections 1107(a), 1108 and 363(b)(1), which authorize a debtor-in-possession to maintain and operate its business and use estate property outside of the ordinary course of business. Indeed, a debtor-in-possession operating a business under Bankruptcy Code section 1108 has a fiduciary duty to protect and preserve the estate, including the going concern value of an operating business. *See In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) (“There are occasions when this [fiduciary] duty can only be fulfilled by the preplan satisfaction of a prepetition claim”). A bankruptcy court’s exercise of its authority under section 105(a) is also necessary to carry out two central policies underlying chapter 11: (a) to permit the successful rehabilitation of the debtor, *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 527 (1984), and (b) to preserve going concern value and maximize property available to satisfy all creditors. *Bank of Am. Nat’l Tr. & Sav. Ass’n v. 203 N. LaSalle St. P’ship*,

526 U.S. 434, 453 (1999).

22. The Debtors' business relationships with their customers are among the most valuable assets in these Chapter 11 Cases. Failure to honor their Customer Obligations under the Customer Programs would undermine customer satisfaction, jeopardize customer loyalty and adversely impact the Debtors' future revenue, which would significantly impact their going concern value and impair their ability to sell their assets for maximum value. Accordingly, the Debtors submit that the relief requested herein is necessary and appropriate, is in the best interests of their estates and creditors and should be granted in all respects.

23. Moreover, obligations under the Gift Card Program may constitute priority claims under Bankruptcy Code section 507(a)(7) that must be paid in full, subject to the statutory maximum, under a plan of reorganization. Bankruptcy Code section 507(a)(7) provides priority treatment for:

allowed unsecured claims of individuals, to the extent of \$3,025 for each such individual, arising from the deposit, before the commencement of the case, of money in connection with the purchase, lease, or rental of property, or the purchase of services, for the personal, family, or household use of such individuals, that were not delivered or provided.

11 U.S.C. § 507(a)(7).

24. "The ostensible purpose of the seventh priority is to protect customers who make deposits for goods or services . . . that were not provided to the consumers at the time the debtor filed for bankruptcy." 2 *Collier on Bankruptcy*, ¶ 507.09 (15th ed. rev. 2010); *see also In re Tart's T.V., Furniture & Appliance Co., Inc.*, 165 B.R. 171, 173 (Bankr. E.D.N.C. 1994) (holders of extended warranty claims are entitled to priority under section 507(a)(7)).

25. Claims arising under the Debtors' Gift Card Program arguably could be considered "deposits" as the term is used in Bankruptcy Code section 507(a)(7), although courts

in this District are split on this issue. *Compare In re WW Warehouse, Inc.*, 313 B.R. 588, 592 (Bankr. D. Del. 2004) (defining a “deposit” as “[t]he act of giving money or other property to another who promises to preserve it or to use it and return it in kind” and concluding that gift cards constitute “deposits” entitled to priority treatment), *with In re City Sports, Inc.*, 554 B.R. 329, 338 (Bankr. D. Del. 2016) (holding that a gift card does not come under the definition of “deposit” and is not entitled to priority status).

26. To the extent the Customer Obligations arising under the Gift Card Program constitute priority claims, holders will be entitled to receive payment in full (subject to the statutory cap) under a chapter 11 plan pursuant to Bankruptcy Code section 1129(a)(9).⁴ Therefore, the Debtors believe that creditors of their estates will not be prejudiced by the continuation of such Customer Programs. In fact, honoring such claims now and maintaining good customer relations will benefit all creditors by enhancing the value of the Debtors’ businesses.

27. Any order, however, shall not be construed to limit, or in any way affect, the Debtors’ ability to contest any claim of any non-debtor counterparty to any of the Customer Programs on any grounds. Additionally, nothing in this Motion shall constitute an assumption or rejection by the Debtors of any Customer Programs, or any executory contract or unexpired lease. As such, the Debtors reserve all of their rights to assume, assign or reject any agreements in accordance with the applicable provisions of the Bankruptcy Code.

⁴ The Debtors do not concede that, and reserve the right to contest whether, claims for unused Gift Cards under the Gift Card Program constitute priority claims under Bankruptcy Code section 507(a)(7).

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

28. The Debtors further submit that because the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtors for the reasons set forth herein and in the First Day Declaration, rule 6003 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) has been satisfied and the relief requested herein should be granted.

29. Specifically, Bankruptcy Rule 6003 provides:

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

Fed. R. Bankr. P. 6003.

30. The Third Circuit Court of Appeals has interpreted language similar to that used in Bankruptcy Rule 6003 in the context of preliminary injunctions. In that context, irreparable harm has been interpreted as a continuing harm that cannot be adequately redressed by final relief on the merits and for which money damages cannot provide adequate compensation. *See, e.g., Norfolk S. Ry. Co. v. City of Pittsburgh*, 235 Fed. Appx. 907, 910 (3d Cir. 2007) (citing *Glasco v. Hills*, 558 F.2d 179, 181 (3d Cir. 1977)). Further, the harm must be shown to be actual and imminent, not speculative or unsubstantiated. *See, e.g., Acierno v. New Castle County*, 40 F.3d 645, 653-655 (3d Cir. 1994).

31. The Debtors strongly believe that honoring their Customer Obligations under their Customer Programs uninterrupted in these Chapter 11 Cases is necessary to prevent immediate and irreparable harm to the Debtors’ estates and business operations because if the Debtors fail to so perform, they will lose customers, their brand will suffer and the going concern value of

their assets will deteriorate rapidly. Accordingly, the Debtors respectfully submit that they have satisfied the “immediate and irreparable harm” standard of Bankruptcy Rule 6003 and seek authority to honor their Customer Obligations under the Customer Programs in the ordinary course of business.

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

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

NOTICE AND NO PRIOR REQUEST

34. Notice of this Motion has been given to the following parties or, in lieu thereof, to their counsel, if known: (a) the Office of the United States Trustee for the District of Delaware; (b) each of the Debtors’ creditors holding the thirty (30) largest unsecured claims as set forth in the consolidated list filed with the Debtors’ petitions; (c) the Lenders; (d) the United States Department of Justice; and (e) 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.

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

WHEREFORE, for the reasons set forth herein and in the First Day Declaration, the Debtors respectfully request that this Court enter an order, substantially in the form of the proposed order attached hereto, (a) authorizing the Debtors to honor their Customer Obligations under the Customer Programs and (b) granting such other and further relief as is just and proper.

Dated: November 14, 2019
Wilmington, Delaware

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FOR THE DISTRICT OF DELAWARE**

In re:

HRI HOLDING CORP., *et al.*¹

Debtors.

Chapter 11

Case No. 19-12415 (____)

(Joint Administration Requested)

Ref. No. _____

**ORDER AUTHORIZING THE DEBTORS TO HONOR CERTAIN
PREPETITION OBLIGATIONS TO CUSTOMERS AND TO OTHERWISE
CONTINUE CERTAIN CUSTOMER PRACTICES AND PROGRAMS
IN THE ORDINARY COURSE OF BUSINESS**

Upon the *Motion for Entry of an Order Authorizing the Debtors to Honor Certain Prepetition Obligations to Customers and to Otherwise Continue Certain Customer Practices and Programs in the Ordinary Course of Business* (the "Motion")² and upon the First Day Declaration; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated February 29, 2012; and the Court having found that the Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and the Court may enter an order consistent with Article III of the United States Constitution; and the Court having found that venue of this

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 Capitalized terms not defined herein shall have the same meaning as ascribed to them in the Motion.

proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that sufficient notice of the Motion has been given under the circumstances; and it appearing that the relief requested by the Motion is in the best interests of the Debtors' estates; and good and sufficient cause appearing therefor; it is hereby

ORDERED that the Motion is GRANTED as set forth herein; and it is further

ORDERED that the Debtors are authorized, but not directed, in their sole discretion, to maintain and administer the Customer Programs and to honor any prepetition Customer Obligations related to the Customer Programs; and it is further

ORDERED that the relief granted herein shall not constitute or be deemed to be an assumption or an authorization to assume, pursuant to Bankruptcy Code section 365, any executory contract or unexpired lease to which the Debtors are a party including, but not limited to, any Customer Program, and all such rights are hereby reserved; and it is further

ORDERED that the Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion; and it is further

ORDERED that notwithstanding the relief granted herein or any actions taken pursuant thereto, nothing herein shall be deemed: (a) an admission as to the validity or classification of any claim against the Debtors; (b) a waiver of the Debtors' rights to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined hereunder; (e) a request or authorization to assume any agreement, contract or lease pursuant to Bankruptcy Code section 365 or (f) a waiver of the rights of the Debtors under the Bankruptcy Code or any other applicable law; and it is further

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

ORDERED that notwithstanding the possible applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry; and it is further

ORDERED that the Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: November __, 2019
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE