

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

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In re:	: Chapter 11
	:
	: Case No. 19-12415 (MFW)
HRI HOLDING CORP., <i>et al.</i> , <sup>1</sup>	:
	: (Jointly Administered)
Debtors.	
	: <b>Re: Docket No. 9, 14, 15</b>

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**1200 HARBOR BOULEVARD, LLC’S LIMITED OBJECTION TO THE DEBTORS’  
MOTION REGARDING CERTAIN PREPETITION TAX AND FEE OBLIGATIONS  
[Docket No. 9] AND RESERVATION OF RIGHTS REGARDING THE DEBTORS’ BID  
PROCEDURES AND SALE MOTION [Docket Nos. 14, 15]**

1200 Harbor Boulevard, LLC (“1200 Harbor”), a creditor in the above-referenced proceeding, hereby submits this objection (“Objection”) to the *Motion of the Debtors for Entry of an Order (I) Authorizing the Debtors to Pay Certain Prepetition Tax and Fee Obligations and (II) Authorizing Financial Institutions to Honor and Process Related Checks and Transfers* [Docket No. 9] (the “Tax Motion”).

1200 Harbor also submits this reservation of rights (“Reservation of Rights”) to the (I) *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;*

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: HRI Holding Corp. (4611), Houlihan’s Restaurants, Inc. (8489), HDJG Corp. (3419), Red Steer, Inc. (2214), Sam Wilson’s/Kansas, Inc. (5139), Darryl’s of St. Louis County, Inc. (7177), Danyl’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. (3 156), 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 Cory. (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.



*and (E) Granting Related Relief* [Docket No. 14] (the “Bid Procedures Motion”) and (II) *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 Claims and Liens, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief* [Docket No. 15] (the “Sale Motion”).

### **FACTUAL AND PROCEDURAL BACKGROUND**

1. 1200 Harbor and Debtor, HOP Weehawken, LLC (“HOP”) were parties to that certain lease agreement dated February 1, 1988 between Hartz Mountain Industries, Inc. (“Hartz Mountain” predecessor-in-interest to 1200 Harbor), as landlord, and Gilbert/Robinson, Inc. d/b/a Houlihan’s Old Place Restaurant and Bar (“Original Tenant”), as tenant, as amended, modified and extended (the “Lease”) related to certain premises located at 1200 Harbor Boulevard, Weehawken, NJ. (the “Premises” identified by Debtors as location #234).

2. The Original Tenant subsequently changed its name to Houlihan’s Restaurants Inc. and, in 2004, assigned the Lease to Weehawken Restaurant, LLC (“Weehawken”) with the consent of Hartz Mountain.

3. In May 2018, Hartz Mountain consented to the assignment of the entire Lease from Weehawken to HOP, now a debtor in these cases. Hartz’s consent did not include the removal or modification of any Lease provisions.

4. The specific consented-to transaction was never fully consummated because the liquor license associated with the Lease (the “1200 Harbor Liquor License”) was never transferred from Weehawken to HOP. On October 29, 2018, the New Jersey Division of Alcohol Beverage Control (“ABC”) issued a letter (the “Advisory Letter”) stating that it could not

“recommend to the Township of Weehawken that the [Weehawken to HOP] transfer of [the 1200 Harbor Liquor License] should be approved.” Upon information and belief, neither Weehawken nor HOP ever actually sought approval from the Township of Weehawken. Instead, HOP and Weehawken entered into agreements to occupy and operate the Premises through an Interim Lease and an Interim Beverage Management Agreement (with Weehawken as Licensee and HOP as Management Company).

5. On or about August 26, 2019 1200 Harbor (as successor-in-interest to Hartz Mountain) sent a lease termination letter (“Termination Letter”) to HOP due to its failure to pay certain past due amounts. The Termination Letter noted that pursuant to the Lease, the termination would be effective as of September 2, 2019 absent payment in the interim.

6. On October 1, 2019, 1200 Harbor obtained a Judgment for Possession with respect to the Premises and on October 11, 2019, 1200 Harbor took over exclusive possession of the Premises.

7. On November 14, 2019, the same date the Debtors commenced the above-captioned chapter 11 cases, the Debtors filed their Tax Motion, Bid Procedures Motion, and Sale Motion.

#### **LIMITED OBJECTION TO TAX MOTION**

8. The Tax Motion seeks, *inter alia*, authority to pay certain prepetition tax and fee obligations including “fees for various liquor licenses and permits[.]” 1200 Harbor does not take a position on the appropriateness of Debtors’ proposed relief other than to the extent the Debtors seek authority to pay any amounts associated with the 1200 Harbor Liquor License. The relevant Exhibit to the Tax Motion contains at least one line item seeking authority to pay an unspecified amount or amounts to the Township of Weehawken. *See* Tax Motion at Exhibit 1, page 7 of 16.

It is unclear if this line item relates to the 1200 Harbor Liquor License but, to the extent it does, 1200 Harbor objects as further set forth herein and as set forth in 1200 Harbor's objection to the Debtors' Rejection Motion, which is filed concurrently herewith and incorporated herein by reference.

9. The law is clear. The Debtors hold no rights under the Lease. *See In re Great Feeling Spas, Inc.*, 275 B.R. 476 (Bankr. N.J. 2002) (finding that, pursuant to NJ law, the debtor's nonresidential lease was terminated pre-petition by the entry of a judgment for possession and could no longer be assumed.). This specifically includes a lack of any property interest in the 1200 Harbor Liquor License.

10. The 1200 Harbor Liquor License, as admitted by the Debtors, is currently titled in the name of Weehawken Restaurant, LLC and there is no basis for the Debtors to pay any related fees or taxes.

#### **RESERVATION OF RIGHTS TO BID PROCEDURES MOTION AND SALE MOTION**

11. The Debtors' Bid Procedures Motion and Sale Motion include or otherwise incorporate various references to the Lease and, specifically, the 1200 Harbor Liquor License. *See generally*, Exhibit A to Sale Motion ("Proposed APA"). Although the Proposed APA lists the 1200 Harbor Liquor License as an excluded asset (see Schedule 2.2(r) "Other Excluded Assets"), the fact that it is listed at all gives rise to the need for this reservation of rights. As noted above, the Debtor holds no rights under the Lease and, therefore the Lease (and the associated 1200 Harbor Liquor License) are not assets of the Debtors' estates.

12. 1200 Harbor reserves its rights to further object to the Sale Motion prior to the December 13<sup>th</sup> deadline or at any other appropriate time.

**WHEREFORE**, 1200 Harbor, LLC respectfully requests that this Honorable Court deny the Tax Motion to the extent the Debtors seek authority to pay any amounts in connection with the 1200 Harbor Liquor License.

Dated: December 2, 2019  
Wilmington, Delaware

**McCARTER & ENGLISH, LLP**

*/s/ Kate Roggio Buck* \_\_\_\_\_

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*Attorneys for 1200 Harbor Boulevard, LLC and  
Hartz Mountain Industries, Inc.*

**CERTIFICATE OF SERVICE**

I, Kate Roggio Buck, certify that on December 2, 2019, I caused a true and correct copy of the *1200 Harbor Boulevard, LLC's Limited Objection to the Motion of the Debtors for Entry of an Order (I) Authorizing the Debtors to Pay Certain Prepetition Tax and Fee Obligations and (II) Authorizing Financial Institutions to Honor and Process Related Checks and Transfers* to be served upon the below listed parties via First Class Mail, postage pre-paid.

/s/ Kate Roggio Buck  
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