

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

In re:

HRI HOLDING CORP., *et al.*,¹

Debtors.

Chapter 11

Case No. 19-12415 (MFW)

(Jointly Administered)

Re: Docket Nos. 14, 89, 164

**OBJECTION OF CAPITOL DISTRICT HOTEL, LLC TO
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**

COMES NOW, CAPITOL DISTRICT HOTEL, LLC ("Landlord"), by and through its undersigned counsel, and hereby files this Objection (the "Objection") to the Debtors' *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* [Docket No. 89] (the "Notice"). As more fully set forth in this Objection, Landlord objects to (a) the cure amount relating to its Lease (as hereinafter defined), as stated in the Notice, and (b) any potential assumption or assumption and assignment of its Lease without providing for both (i) a full and

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. (3419), 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.



complete cure; and (ii) adequate assurance of future performance. In support of this Objection, Landlord respectfully states the following:

BACKGROUND

1. On or about November 14, 2019, HRI Holding Corp. and 38 of its affiliates (collectively, “Debtors”), including JGIL Omaha, LLC, also known as J Gil Omaha, LLC (“JGIL”), and Houlihan’s Restaurants, Inc. (“HRI”) each filed their respective voluntary petitions for relief under chapter 11 of 11 U.S.C. § 101 *et seq.* Each of the Debtors have continued to operate their respective businesses and manage their respective properties as debtors-in-possession pursuant to 11 U.S.C. §§ 1107(a) and 1108.

2. Landlord owns that certain nonresidential real property, including the building and improvements located thereon, at 1010 Capitol Avenue, Omaha, Nebraska 68102 (the “Property”).

3. Landlord leases the Property to JGIL pursuant to that certain Lease Agreement dated November 6, 2017 by and between Landlord and JGIL, as amended pursuant to that certain First Amendment to Lease Agreement dated April 5, 2019 by and between Landlord and JGIL (as amended and collectively with all other amendments, addenda, attachments and exhibits thereto, the “Lease Agreement”). The Lease Agreement is currently effective, has not been terminated, rejected, assigned or otherwise rendered unenforceable or ineffective. Upon information and belief, the Debtors identify the Property as Store No. 829.

4. As additional consideration for, and to induce Landlord to enter into, the Lease Agreement, HRI executed and delivered to Landlord that certain Lease Guaranty dated November 6, 2017 (the “Guaranty”). Pursuant to the Guaranty, HRI absolutely and unconditionally guaranteed to Landlord the full and prompt payment of all liabilities, obligations, charges and dues owing by JGIL under the Lease Agreement during the initial term thereof and further guaranteed

the full and timely performance and observance of all the covenants, terms, conditions, obligations and agreements to be performed and observed by JGIL under the Lease Agreement.

5. Pursuant to the Notice, the Debtors seek permission to, among other actions, fix the cure amounts due with respect to certain executory contracts and unexpired leases, including the Lease Agreement. The Notice states that according to the Debtors' books and records, the cure amount for the unpaid monetary obligations under the Lease Agreement is \$18,111.07. *Notice*, Exhibit A, p. 4.

OBJECTION

A. Cure Amounts.

6. According to Landlord's books and records, as of the date hereof, the accrued past due amounts under the Lease Agreement are **\$92,309.46**, which consists of (i) minimum base rent in the amount of \$14,407.67, (ii) common area maintenance impounds in the amount of \$1,508.27, (iii) insurance impounds in the amount of \$857.37, (iv) parking fees in the amount of \$200.00, (v) prior year insurance reconciliations in the amount of \$369.62, (vi) prior year property tax reconciliation credits in the amount \$(1,731.97), (vii) additional charges in the amount of \$740.00, (viii) real estate tax impounds in the amount of \$3,948.76, (ix) water and energy charges in the amount of \$73,204.20, and (x) credits in the amount of \$(1,194.46) (collectively, the "Current Outstanding Obligations"). The foregoing amounts were not paid when due by JGIL, as required under the Lease Agreement, and remain outstanding as of the date hereof.

7. Under the terms of the Lease Agreement, JGIL is responsible for the payment of, *inter alia*, all minimum base rent, percentage rent, utilities, common area maintenance costs, insurance, real estate taxes, interest and late fee amounts attributable or related to the Property. Specifically,

(a) Section 3.1 of the Lease Agreement requires that all minimum base rent be paid to Landlord on or before the first (1st) day of each calendar month;

(b) Section 3.2 requires that percentage rent (as calculated pursuant to the terms thereof) be paid to Landlord on or before the thirtieth (30th) day after the last day of each lease year of the Lease Agreement;

(c) Section 3.7 of the Lease Agreement provides that if (i) any amount due thereunder—including, without limitation, base minimum rent and percentage rent—is not paid within five (5) days of the due date thereunder and, after the requisite notice from Landlord has been given and the two (2) day cure period therefor shall have lapsed without a cure, the unpaid amounts shall bear interest at the rate of eight percent (8.00%) per annum from the due date; and (ii) any monthly installment of base minimum rent is not paid by JGIL by the fifth (5th) day of the month for the applicable month, a late charge equal to \$500.00 will be due and owing by JGIL to Landlord within five (5) days after Landlord's notice thereof;

(d) Section 6.1 of the Lease Agreement requires JGIL to pay for all gas, water, electricity, telephone and other utility services used or consumed in or furnished to the Property during the lease term;

(e) Section 7.2 of the Lease Agreement requires JGIL to remit to Landlord, in equal monthly installments on or before the first (1st) day of each calendar month, JGIL's proportionate share of the (i) operating costs relating to the Common Areas (as defined in the Lease Agreement); and (ii) premiums for liability, property damage, fire and workmen's compensation insurance relating to the Property and Common Areas (*see, also*, Section 8.2 of the Lease Agreement); and

(f) Section 8.1 of the Lease Agreement requires JGIL to remit to Landlord the real estate taxes and assessments of any kind or nature levied and assessed against the Property in equal monthly installments on or before the first (1st) day of each calendar month.

8. In addition to the outstanding Current Outstanding Obligations, base rent, percentage rent, utility charges, monthly impounds for common area costs, insurance and taxes, and other monetary obligation will become due and owing pursuant to the Lease Agreement from and after the date of the Notice—November 27, 2019—and must similarly be paid by JGIL or any assignee when due or paid in connection with any assumption or assumption and assignment (as the case may be) of the Lease Agreement. Landlord objects to any assumption or assumption and assignment of the Lease Agreement unless all rent (including base rent and percentage rent), utility charges, monthly impounds for common area costs, insurance and taxes, interest, late fee amounts and other monetary obligations that become due pursuant to the terms of the Lease Agreement from and after November 27, 2019 (a) are paid as and when due or (b) are paid in full in connection with an assumption or assumption and assignment of Lease Agreement, as the case may be.

9. Further, percentage rent under the Lease Agreement may have accrued, be accruing and will continue to accrue but have not yet become due and owing pursuant to the terms of the Lease Agreement. JGIL, and any proposed assignee, must acknowledge, and any order approving cure amounts and the assumption or assumption and assignment of the Lease Agreement must provide, that JGIL or any proposed assignee shall be liable for all percentage rent amounts that have accrued but have not become due, without regard to whether such amounts are attributable to a prepetition or postpetition period. Landlord objects to any assumption or assumption and assignment of the Lease Agreement to the extent that the order approving any assumption or

assumption and assignment thereof does not obligate JGIL or any assignee to pay all percentage rent obligations that have accrued thereunder but have not yet become due and payable prior to the date an order is entered approving such assumption or assumption and assignment of the Lease Agreement.

10. In addition to any accrued and accruing percentage rent obligations, further monetary obligations may have accrued pursuant to the Lease Agreement but have not yet become the subject of an invoice or statement and may not become due prior to the entry of an order approving the assumption or assumption and assignment of the Lease Agreement. Non-exclusive examples of these accrued, but not yet due, obligations are amounts owing on account of annual reconciliations of the real property taxes and insurance costs, all of which must be paid by JGIL pursuant to the terms of the Lease Agreement. JGIL, and any proposed assignee, must acknowledge, and any order approving cure amounts and the assumption or assumption and assignment of the Lease Agreement must provide, (a) that JGIL or any proposed assignee shall be liable for all amounts that have accrued but have not become the subject of a statement or other invoice without regard to whether such amounts are attributable to a pre-petition or post-petition period, and (b) that payment of year-end reconciliations and adjustments, if any, will be made by JGIL or any assignee as and when due pursuant to the terms of the Lease Agreement. Landlord objects to any assignment of the Lease Agreement to the extent that the order approving any assumption or assumption and assignment of the Lease Agreement does not obligate JGIL or any assignee to pay all obligations that have accrued under the Lease Agreement but have not yet become due and payable prior to the date an order is entered approving such assumption or assumption and assignment of the Lease Agreement.

11. As set forth in the Lease Agreement, Landlord additionally asserts its right to be reimbursed as part of the cure payment for all of its actual pecuniary losses including, but not limited to, attorneys' fees and costs expended with regard to enforcing its rights under the Lease Agreement in connection with JGIL's bankruptcy proceedings. Landlord further objects to the extent that all cure amounts are not immediately paid in full upon any assumption or assignment and assignment of the Lease Agreement, including all of its actual pecuniary losses including, but not limited to, attorneys' fees and costs expended with regard to enforcing its rights under the Lease Agreement as part of these proceedings.

12. Lastly, the Lease Agreement also provides that JGIL must indemnify and hold Landlord harmless from any and all claims or demands arising from, or based upon, any act, omission, or negligence of JGIL or JGIL's contractors, agents, invitees, customers, employees or anyone else for whom JGIL may be responsible. JGIL, and any assignee of the Lease Agreement, must assume all indemnification liabilities set forth in the Lease Agreement or JGIL must be required to evidence, or obtain, adequate insurance in order to guaranty that its indemnity responsibilities will be met. Claims for indemnity may include, but are not limited to, claims for personal injuries which occur at the Property where JGIL or Landlord is joined as a party defendant, damage and destruction to the property by JGIL or its agents, or claims for environmental damage or environmental cleanup. Landlord objects to any assumption or assignment and assignment of the Lease Agreement to the extent that it does not obligate JGIL or any assignee of the Lease Agreement to be responsible for all indemnification liabilities or obligate JGIL to otherwise provide assurance that such indemnification obligations will be satisfied.

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B. Adequate Assurances of Future Performance.

13. Debtors and Landry's, LLC ("Landry's"), the stalking horse bidder, provided certain information to Landlord with respect to adequate assurances of future performance by Landry's, and the proposed assignee of the Lease Agreement (the "Adequate Assurance Information"). As of the filing of this objection, Landlord has not had an opportunity to analyze the Adequate Assurance Information to determine if such information satisfies the requirements of section 365(b) of the Bankruptcy Code.

14. However, irrespective of whether the Adequate Assurance Information is sufficient under section 365(b) of the Bankruptcy Code, the Debtors cannot satisfy their adequate assurance obligations unless a new guaranty (the "Replacement Guaranty") on terms identical to the existing Guaranty, including the duration thereof, is executed and delivered by a creditworthy party to Landlord in connection with any assumption or assumption and assignment of the Lease Agreement. While the Adequate Assurance Information provided to Landlord addresses the guaranty issue, neither the Debtors nor Landry's have agreed to provide the Replacement Guaranty.

15. Accordingly, Landlord objects to any assumption or assumption and assignment of the Lease Agreement unless and until the Adequate Assurance Information has been deemed to comply with the requirements of section 365(b) of the Bankruptcy Code, and the Replacement Guaranty with respect to the obligations under the Lease Agreement is delivered to Landlord.

RESERVATION OF RIGHTS

16. Landlord reserves all rights to further object to any assumption and assignment of the Lease Agreement on the basis of adequate assurances of future performance, as required by section 365 of the Bankruptcy Code, including any heightened adequate assurance information

required by 11 U.S.C. § 365(b)(3), pending (a) its review and analysis of the Adequate Assurance Information, (b) a final determination of the prevailing bidder and proposed assignee of the Lease Agreement, and (c) the proposed terms of the Replacement Guaranty. Landlord further reserves its right to amend, supplement and modify this Objection at any time and in any manner.

CONCLUSION

17. The Debtors have failed to demonstrate that any assumption or assumption and assignment of the Lease Agreement will fully comply with all of the requirements of 11 U.S.C. § 365(b) including, but not limited to, (i) a cure of all defaults; and (ii) adequate assurance of future performance. Landlord objects to any assumption and assignment of Lease until such time as full compliance with section 365(b) of the Bankruptcy Code has been demonstrated.

WHEREFORE, Landlord (a) objects to the Notice as set forth herein and requests that the cure amounts for the Lease Agreement be set at the amounts identified for the Current Outstanding Obligations, together with attorneys' fees, any additional actual pecuniary losses and such additional amounts as may become due prior to any assumption or assumption and assignment of the Lease Agreement (collectively, the "Lease Cure Amounts"), including, without limitation accrued and accruing percentage rent, base rent and late fees; (b) objects to any assumption or assumption and assignment of the Lease Agreement unless (i) a complete and immediate payment of all Lease Cure Amounts with respect to the Lease Agreement is made prior to the assumption or assumption and assignment of the Lease Agreement and (ii) such assumption or assumption and assignment otherwise adequately resolves the objections set forth above; (c) reserves the right to further object to any assumption or assumption and assignment of the Lease Agreement on the grounds of adequate assurances of future performance as to any proposed assignee; and (d) requests such other and further relief as may be just and required under all of the circumstances.

Dated: December 13, 2019
Wilmington, Delaware

Respectfully submitted,

By /s/ Christopher D. Loizides
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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

HRI HOLDING CORP., *et al.*,¹

Debtors.

Chapter 11

Case No. 19-12415 (MFW)

(Jointly Administered)

CERTIFICATE OF SERVICE

I, Christopher D. Loizides, hereby certify that on December 13, 2019, I did cause to be served true and correct copies of the foregoing **OBJECTION OF CAPITOL DISTRICT HOTEL, LLC TO 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** to the parties listed on the attached service listed as indicated thereon.

Dated: December 13, 2019

/s/ Christopher D. Loizides

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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. (3419), 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.

SERVICE LIST

VIA ELECTRONIC MAIL AND FIRST-CLASS MAIL

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