

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

In re:	Chapter 11
HRI HOLDING CORP., <i>et al.</i> , ¹	Case No. 19-12415 (MFW)
Debtors.	(Jointly Administered)
	Obj. Deadline: December 13, 2019 at 4:00 p.m. (prevailing Eastern Time)
	Related Docs: 14, 89, 164

**OBJECTION AND RESERVATION OF RIGHTS OF
WASHINGTON PRIME GROUP INC. 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 THE SALE OF DEBTORS' ASSETS**

Washington Prime Group Inc. ("WPG"), as managing agent for the owners of the properties identified herein, by its undersigned counsel, files this objection and reservation of rights (this "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 the Sale of Debtors' Assets* (Docket No. 89) (the "Notice"). In support of this Objection, WPG respectfully states:

BACKGROUND

1. On November 13, 2019, the above-captioned debtors (the "Debtors") filed voluntary

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, as applicable, are: Destination Maternity Corporation (5573); DM Urban Renewal, LLC (N/A); and Mothers Work Canada, Inc. (4780). The Debtors' principal place of business is 232 Strawbridge Drive, Moorestown, New Jersey 08057.



petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (this “Court”).

2. Upon information and belief, the Debtors are operating their businesses and managing their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. WPG is the managing agent for the owners of certain real properties in which the Debtors lease retail space (the “Leased Premises”) pursuant to those certain unexpired leases (collectively, the “WPG Leases” and each a “WPG Lease”).

4. The Leased Premises are located in a “shopping center” as that term is used in section 365(b)(3) of the Bankruptcy Code. *See In re Joshua Slocum, Ltd.*, 922 F.2d 1081, 1086-87 (3d Cir. 1990).

5. On November 14, 2019, the Debtors filed their *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* (Docket No. 14) (the “Bid Procedures Motion”) seeking, among other things, procedures to market, auction, and sell the Debtors’ assets (the “Proposed Sale”).

6. On November 14, 2019, this Court entered its *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* (Docket No. 164) (the “Bid Procedures Order”) which, among other things, approved the Bid Procedures Motion.

7. Consistent with the Bid Procedures Order, on November 27, 2019, the Debtors filed the Notice. The Notice identifies certain executory contracts and unexpired leases that the Debtors may assume and assign as part of the Proposed Sale, including the WPG Leases identified in the chart below (the “Potentially Assigned WPG Leases”). The Notice proposes \$87,913.00 as the aggregate amount necessary to cure all monetary defaults under the Potentially Assigned WPG Leases (the “Proposed Cure Amount”).

<i>“Potentially Assigned Leases”</i>			
WPG Landlord	Mall Name	Location	Proposed Cure Amount
Leawood TCP, LLC	Town Center Plaza	Bristol Seafood	\$21,603.57
Leawood TCP, LLC	Town Center Plaza	Houlihan’s	\$2,710.49
<i>“Proposed Cure Amount”</i>			\$24,314.06

8. As provided in the Notice, objections to, among other things, the Proposed Cure Amount, are due on or before December 13, 2019 at 4:00 p.m. (prevailing Eastern Time).

OBJECTION

9. Any assumption and assignment of the Potentially Assigned WPG Leases must be conditioned on the Debtors’ compliance with the requirements of section 365 of the Bankruptcy Code including, but not limited to, paying all amounts due and owing under each of the Potentially Assigned WPG Leases through the effective date of the assumption and assignment of the Potentially Assigned WPG Leases.

10. As of the date of this Objection, the aggregate cure amount owing under the Potentially Assigned WPG Leases is \$30,668.20 (the “Cure Amount”).² Attached hereto and incorporated herein as **Exhibit A** are schedules containing itemizations of the amounts due and owing

² The Cure Amount includes \$500.00 in attorneys’ fees per each Potentially Assigned WPG Lease, as noted below.

under each of the Potentially Assigned WPG Leases.

<i>“Potentially Assigned Leases”</i>				
WPG Landlord	Mall Name	Location	Proposed Cure Amount	Cure Amount
Leawood TCP, LLC	Town Center Plaza	Bristol Seafood	\$21,603.57	\$27,957.71
Leawood TCP, LLC	Town Center Plaza	Houlihan’s	\$2,710.49	Not Disputed
<i>“Proposed Cure Amount”</i>			\$24,314.06	\$30,668.20

11. The Cure Amount represents the amounts currently due and owing to WPG under the Potentially Assigned WPG Leases. The Cure Amount may increase prior to any actual date of assumption and assignment of the Potentially Assigned WPG Leases if the Debtors do not pay all amounts that accrue after the date of this Objection, and any taxes, common area maintenance and other amounts that may come due, pursuant to the terms of the Potentially Assigned WPG Leases, and regardless of when those amounts accrued.

12. Accordingly, WPG expressly reserves its right to amend or supplement the Cure Amount from time to time and at any time, and requests that the Debtors remain liable for, among other things: (a) post-petition rent and other charges under the Potentially Assigned WPG Leases; (b) certain amounts due and owing under the Potentially Assigned WPG Leases, but which may be unbilled as of the date hereof, including but not limited to year-end adjustments for common area maintenance, taxes and similar charges; (c) any regular or periodic adjustment of charges under the Potentially Assigned WPG Leases, which were not due or had not been determined as of the date of this Objection; (d) any percentage rent that may be due under the Potentially Assigned WPG Leases; (e) any non-monetary defaults; and/or (f) insurance and indemnification obligations under the Potentially Assigned WPG Leases.

13. WPG is also entitled to attorneys' fees as part of the Cure Amount for the Potentially Assigned WPG Leases. *In re Westview 74th Street Drug Corp.*, 59 B.R. 747, 757 (Bankr. S.D.N.Y. 1986) (payment of attorneys' fees required as condition to lease assumption). The Cure Amount includes \$500.00 in attorneys' fees per Potentially Assigned WPG Lease.

14. In addition, WPG requests that any order approving the assumption and assignment of the Potentially Assigned WPG Leases provides, among other things, that any assignee of the Potentially Assigned WPG Leases will be responsible for all accrued, but unbilled charges under the Potentially Assigned WPG Leases, including unpaid year-end adjustments and reconciliations, whether accruing prior to or after the effective date of assumption and/or assignment of the Potentially Assigned WPG Leases, when such charges become due in accordance with the terms of the Potentially Assigned WPG Leases. This result is mandated by the requirement that the Debtors cure all arrears and that the Debtors provide adequate assurance of future performance under the terms of the Potentially Assigned WPG Leases. *See* 11 U.S.C. § 365(b)(1).

15. Any assumption and/or assignment of the Potentially Assigned WPG Leases should be conditioned upon, among other things, full compliance with section 365 of the Bankruptcy Code, including, but not limited to, the payment to WPG of all amounts due and owing under the Potentially Assigned WPG Leases through the effective date of assumption and assignment of the Potentially Assigned WPG Leases, *i.e.*, the Cure Amount, and the provision by the Debtors and/or the proposed assignee of sufficient adequate assurance of future performance information.

16. To the extent that rent, attorneys' fees, interest, and/or other charges continue to accrue, and/or WPG suffers other pecuniary losses with respect to the Potentially Assigned WPG Leases, WPG further reserves the right to amend the Cure Amount to: (i) reflect such additional

amounts; and (ii) to account for year-end adjustments, including, without limitation, adjustments for calendar years 2017, 2018 and 2019 (collectively, the “Adjustment Amounts”), which have not yet been billed or have not yet become due under the terms of the Potentially Assigned WPG Leases. The Debtors or any assignee of the Potentially Assigned WPG Leases must be responsible for satisfying the Adjustment Amounts when due in accordance with the terms of the Potentially Assigned WPG Leases regardless of when such Adjustment Amounts were incurred. To the extent that the Debtors are to remain responsible for any Adjustment Amounts, WPG requests that at the closing of the Proposed Sale, such funds be placed into a separate and segregated escrow account outside of the Debtors’ chapter 11 bankruptcy estates so that there is no question that sufficient, earmarked, unencumbered funds will be available to pay WPG when said Adjustment Amounts become due and owing to WPG in accordance with the terms of the Potentially Assigned WPG Leases.

17. WPG also requests that any assignee of the Potentially Assigned WPG Leases be required to comply with all contractual obligations in the Potentially Assigned WPG Leases to indemnify and hold WPG harmless with regard to events which may have occurred before assumption and assignment of the Potentially Assigned WPG Leases (in addition to events which occur on or after the assignment) but which were not known to either WPG or the Debtors as of the date of the assumption and assignment of the Potentially Assigned WPG Leases including, but not limited to, claims for personal injury that occurred at the Leased Premises, damage and destruction to the Leased Premises or property by the Debtors or its agents, and environmental damage or environmental clean-up.

18. Finally, because the Leased Premises are located in shopping centers, any adequate

assurance of future performance information provided to WPG in connection with the Proposed Sale must demonstrate that the heightened standards for adequate assurance of future performance in a shopping center will be satisfied by the proposed assignee, including, but not limited to, compliance with the use clause, radius and tenant mix provisions in the Potentially Assigned WPG Leases, all in accordance with section 365 of the Bankruptcy Code. Accordingly, WPG reserves all of its rights to assert objections on adequate assurance grounds.

WHEREFORE, WPG respectfully requests that this Court: (a) sustain this Objection; (b) affirmatively require the Debtors to pay all amounts owing to WPG under the Potentially Assigned WPG Leases through the effective date of any assumption of the Potentially Assigned WPG Leases plus attorneys' fees; (c) affirmatively require the Debtors to comply with each and every term, condition and obligation set forth in the Potentially Assigned WPG Leases; and (d) grant WPG such other and further relief as this Court deems just and appropriate under the circumstances.

Dated: December 13, 2019
Wilmington, Delaware

Respectfully submitted,

LAW OFFICE OF SUSAN E. KAUFMAN, LLC

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**Collection Workout for Legal
BRISTOL SEAFOOD - TOWN CENTER PLAZA
8/1/2014 - 12/1/2019**

Lease Information: If payment not received when due:

Late Fee: > 10%

Monthly Charges									Late Charges		
Date	BRT	CAM	CPY	OPT	ORT	PRF	TAX	TPY	Total Charges	Late Fee	Total Amount Due
Aug-14	0.50	0.00	0.00	0.00	0.00	31.37	0.00	0.00	31.87	3.19	35.06
Sep-14	(19.26)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	(19.26)	0.00	15.80
Oct-14	(19.26)	(16.18)	0.00	0.00	0.00	0.00	0.00	0.00	(35.44)	0.00	(19.64)
Dec-14	(38.52)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	(38.52)	0.00	(58.16)
Feb-15	(19.26)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	(19.26)	0.00	(77.42)
Mar-15	(38.52)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	(38.52)	0.00	(115.94)
Apr-15	(19.26)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	(19.26)	0.00	(135.20)
Jun-15	(38.52)	0.00	0.00	0.00	0.00	346.42	0.00	0.00	307.90	30.79	203.49
Jul-15	0.00	0.00	0.00	0.00	0.00	19.25	0.00	0.00	19.25	1.93	224.66
Mar-18	0.00	0.00	0.00	0.00	41,896.72	0.00	0.00	0.00	41,896.72	4,189.67	46,311.05
Apr-18	0.00	0.00	0.00	0.00	24,718.33	0.00	0.00	0.00	24,718.33	2,471.83	73,501.22
May-18	0.00	0.00	0.00	0.00	(66,615.05)	0.00	0.00	0.00	(66,615.05)	0.00	6,886.17
May-19	0.00	0.00	95.45	0.00	0.00	0.00	0.00	(1,545.80)	(1,450.35)	0.00	5,435.82
Jul-19	0.00	0.00	0.00	0.00	0.00	657.32	0.00	0.00	657.32	65.73	6,158.87
Aug-19	0.00	0.00	0.00	0.00	0.00	93.90	0.00	0.00	93.90	9.39	6,262.16
Sep-19	0.00	0.00	0.00	0.00	0.00	93.90	0.00	0.00	93.90	9.39	6,365.45
Oct-19	0.00	0.00	0.00	0.00	0.00	93.90	0.00	0.00	93.90	9.39	6,468.74
Nov-19	0.00	1,158.08	0.00	16,032.58	0.00	1,312.77	483.55	0.00	18,986.98	1,898.70	27,354.42
Dec-19	0.00	0.00	0.00	0.00	0.00	93.90	0.00	0.00	93.90	9.39	27,457.71
Total	(192.10)	\$1,141.90	\$95.45	\$16,032.58	\$0.00	\$2,742.73	\$483.55	(\$1,545.80)	\$18,758.31	\$8,699.40	\$27,457.71

Total Charges: \$18,758.31
 Interest & Late Fee: \$8,699.40
 Total Due: \$27,457.71

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

In Re:)	
)	CHAPTER 11
HRI HOLDING CORP., <i>et al.</i>)	
)	Case No. 19-12415 (MFW)
)	
)	(Jointly Administered)
Debtors.)	

CERTIFICATE OF SERVICE

I, Susan E. Kaufman, Esquire certify that I caused one true and correct copy of the within *OBJECTION AND RESERVATION OF RIGHTS OF WASHINGTON PRIME GROUP INC. 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 THE SALE OF DEBTORS' ASSETS* to be sent on December 13, 2019 in the manner indicated to the following:

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Date: December 13, 2019