

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)
	Ref. Nos. 12, 63, 163 & 352

ORDER SUPPLEMENTING THE FINAL ORDER (I) AUTHORIZING THE DEBTORS TO (A) OBTAIN POST-PETITION FINANCING, (B) GRANT LIENS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS TO POST-PETITION LENDERS AND (C) UTILIZE CASH COLLATERAL, (II) PROVIDING ADEQUATE PROTECTION TO THE PRE-PETITION SECURED PARTIES, (III) MODIFYING THE AUTOMATIC STAY, AND (IV) GRANTING RELATED RELIEF, PURSUANT TO 11 U.S.C. SECTIONS 105, 361, 362, 363, 364 AND 507

WHEREAS, on December 5, 2019, this Court entered an order [D.I. 163] (the “**Final DIP Order**”),² which authorized and approved on a final basis, the Debtors’ entry into and borrowing under the DIP Facility and the Debtors’ usage of the Cash Collateral pledged to the DIP Agent, on behalf of the DIP Lenders, and to the Pre-Petition Agent, on behalf of the Pre-Petition Secured Parties;

WHEREAS, on December 20, 2019, this Court held a hearing and entered that certain *Order (A) Approving Asset Purchase Agreement and Authorizing the Sale of Certain Assets of*

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 used herein but not otherwise defined shall have the meanings ascribed to them in the Final DIP Order.

{1247.002-W0059547.9}



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*the Debtors Outside the Ordinary Course of Business, (B) Authorizing the Sale of Assets Free and Clear of All Liens and Claims, (C) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (D) Authorizing Distribution to the Lenders, and (E) Granting Related Relief [D.I. 322] (the “**Sale Order**”) approving the sale of certain assets to Landry’s, LLC (or its permitted successors, designees and assigns, the “**Purchaser**”) (the “**Landry’s Sale**”) in accordance with the terms of the Agreement attached to the Sale Order as Exhibit A (the “**Purchase Agreement**”);*

WHEREAS, attached as Exhibit C to the Sale Order is the Term Sheet (as defined in the Sale Order) relating to the global settlement among Debtors, the Committee, and the Lenders (as defined in the Sale Order).

WHEREAS, on December 30, 2019, the Landry’s Sale closed;

WHEREAS, upon closing of the Landry’s Sale, in accordance with and subject to the terms of the Final DIP Order and the Sale Order, the Net Sale Proceeds (as defined in the Sale Order) were used to satisfy in full the Post-Petition Obligations owed to the DIP Lenders under the DIP Facility and then were applied to the Pre-Petition Obligations;

WHEREAS, the Debtors have requested that the Pre-Petition Agent consent to the Debtors’ continued use of Cash Collateral to allow the Debtors to continue to administer their estates, subject to the limitations set forth in the Approved Budget (attached hereto as **Exhibit A**) and the terms of this order (the “**Supplemental Order**”);

WHEREAS, following the closing of the Landry’s Sale, the Pre-Petition Agent granted the Debtors transitional authority to use Cash Collateral pending entry of the Supplemental Order; and

WHEREAS, the Pre-Petition Agent has consented to the Debtors’ use of Cash Collateral on the terms and conditions of the Final DIP Order, as modified by this Supplemental Order.

NOW THEREFORE, with the consent of the Pre-Petition Secured Parties, and upon the certification of counsel related hereto,

IT IS HEREBY ORDERED THAT:

1. Except as set forth herein, nothing in this Supplemental Order shall be deemed to modify or amend in any way the rights, interests and obligations of any party in interest as set forth in the Final DIP Order (including, but not limited to, the Debtors' acknowledgements and agreements set forth in paragraph D of the findings of facts and conclusions of law in the Final DIP Order), *provided, however*, that upon the funding of amounts set forth in paragraphs 2(a) and (b) below, the DIP Facility shall be deemed terminated and the DIP Lenders shall have no further obligation to advance any funds under the DIP Facility, including the Carve-Out.

2. Upon the occurrence of the closing of the Landry's Sale and the Termination Date:

a. the Reserved Proceeds (as defined in the Sale Order) shall be placed in a segregated account maintained by the Debtors, free and clear of the Pre-Petition Secured Parties' liens and claims; *provided, further*, if the Term Sheet is terminated (i) the liens and claims of the Pre-Petition Secured Parties shall immediately attach to the Reserved Proceeds at such time as the Term Sheet terminates, and the Reserved Proceeds shall be placed immediately in an account subject to the liens and claims of the Pre-Petition Secured Parties, and (ii) the Committee shall have thirty (30) days from the Termination Effective Date (as defined in the Term Sheet) to commence a challenge or otherwise object to the amount, validity, enforceability, priority or extent of the Pre-Petition Obligations or the liens of the Pre-Petition Secured Parties on the Pre-Petition Collateral securing the Pre-Petition Obligations.

b. the amount of \$5,415,165.07 of Net Sale Proceeds, as agreed upon in the Approved Budget, shall be placed in an account maintained by the Debtors and consented to by

the Pre-Petition Secured Parties, which account is subject to a control agreement for the benefit of the Pre-Petition Agent and the Pre-Petition Secured Parties and subject in all respects to their liens and claims, including all First Lien Adequate Protection Obligations (inclusive of unused Carve-Out Reserve Account funds, the “**Post-Closing Cash Collateral**”). Debtors shall continue to be authorized to use the Post-Closing Cash Collateral in accordance with the Approved Budget and are authorized to make disbursements solely in accordance therewith; *provided, however*, that the Pre-Petition Agent, the Pre-Petition Secured Parties, and the Committee shall have the same oversight of the Approved Budget as had been provided to the DIP Secured Parties and the Committee under the Final DIP Order;

c. With respect to any Net Sale Proceeds relating to the sale of any of the Debtors’ assets located in the state of Texas, (i) the amount of \$11,909.21 shall be set aside by the Debtors in a segregated account as adequate protection for the asserted secured claims of Denton County, Texas (“**Denton County**”) and (ii) the amount of \$ 132,600.98 shall be set aside by the Debtors in a segregated account as adequate protection for the asserted secured claims of Dallas County, Bexar County, Harris County and Tarrant County (together with Denton County, the “**Texas Tax Authorities**”) prior to the distribution of any proceeds to any other creditor. The liens of the Texas Tax Authorities shall attach to these proceeds to the same extent and with the same priority as the liens they now hold against the property of the Debtors. These funds shall constitute neither the allowance of the claims of the Texas Tax Authorities nor a cap on the amounts that they may be entitled to receive. Furthermore, the claims and liens of the Texas Tax Authorities shall remain subject to any objections any party would otherwise be entitled to raise. These funds may be distributed only upon agreement between the Texas Tax Authorities and the Debtors or by subsequent order of the Court, duly noticed to the Texas Tax Authorities. The Lenders’ liens and claims, including adequate protection liens and claims, on such funds shall

remain in full force and effect. Any balance remaining in the segregated account for the Texas Tax Authorities following the reconciliation and payment of all their liens, if any, that are not liabilities assumed by Purchaser shall be turned over and indefeasibly paid to the Lenders within three (3) business days following such reconciliation and payment;

d. Other than amounts that may be paid pursuant to and consistent with the Term Sheet or further order of the Bankruptcy Court out of Reserved Proceeds, notwithstanding anything to the contrary in the Final DIP Order, the Debtors shall not pay any expenses or any other operating disbursements, including Permitted Variances (as defined in the DIP Credit Agreement), other than as set forth in the Approved Budget; *provided, further*, that no administrative claim or other postpetition claim in excess of \$50,000, or in excess of \$250,000 in the aggregate of such claims, shall be paid using the Reserved Proceeds outside of a confirmed Plan (defined below) except (i) as otherwise agreed to by the Pre-Petition Agent and the Committee, or (ii) pursuant to an order of the Bankruptcy Court; *provided, however*, that the Debtors shall provide the Pre-Petition Agent and the Committee with written notice (e-mail notice shall suffice) of their intent to pay any administrative claim or other postpetition claim using the Reserved Proceeds and such parties shall have three (3) Business Days from the date of such notice to object in writing (e-mail shall suffice) and, to the extent any such objection is not consensually resolved, the Debtors may seek relief from the Bankruptcy Court to make any such payment; and

e. the remaining Net Sale Proceeds and any (i) Adjustment Escrow Amount (as defined in the Purchase Agreement) paid to Debtors, (ii) any funds for disbursement under the Approved Budget that are, upon further reconciliation by the Debtors, not necessary for disbursement by Debtors and (iii) any proceeds of the liquidation of any additional Pre-Petition Collateral shall be immediately indefeasibly paid to the Pre-Petition Agent, except as expressly

provided for in the Term Sheet, *provided, further*, that with respect to items (i) through (iii) of this subparagraph (e) such amounts shall be indefeasibly paid to the Pre-Petition Agent within three (3) business days of the Debtors' receipt of such funds or such funds becoming available to the Debtors, in satisfaction of the Pre-Petition Obligations; *provided, however*, such payment shall be subject to disgorgement to the extent of any allowed Prior Permitted Liens as defined in the Final DIP Order that are not payable under the Approved Budget from the Post-Closing Cash Collateral.

3. Subject to the rights and remedies under the Final DIP Order, upon five (5) days' written notice from the Pre-Petition Agent to the Debtors, the Committee and the Office of the United States Trustee (e-mail notice shall suffice), the occurrence and continuation of any of the following (unless waived in writing by the Pre-Petition Agent) shall constitute an "Event of Default" under this Supplemental Order:

a. other than in connection with payment in full in cash of the Pre-Petition Obligations, the bringing of a motion, taking of any action or the filing of any chapter 11 plan or disclosure statement attendant thereto by or on behalf of the Debtors in these Chapter 11 Cases: (i) to obtain postpetition financing, absent the consent of the Pre-Petition Agent; (ii) to grant any lien other than any Prior Permitted Liens, absent the consent of the Pre-Petition Agent; or (iii) to use Cash Collateral, including Post-Closing Cash Collateral, in manner that is inconsistent with the terms of the Final Order, this Supplemental Order or the Approved Budget;

b. the Debtors' failure to comply with the Approved Budget;

c. except as expressly provided for in the Term Sheet, the Debtors' failure to use the Net Sale Proceeds, including any of the amounts required in paragraph 2(e) above, to indefeasibly pay the Pre-Petition Agent on account of the Pre-Petition Obligations;

d. any use of the Reserved Proceeds in violation of paragraph 2(d) above;

e. the entry of an order in these Chapter 11 Cases, other than the Final DIP Order, granting any other superpriority administrative claim or lien equal or superior to that granted to the Pre-Petition Agent without the prior written consent of the Pre-Petition Agent;

f. to the extent that any Letter of Credit relating to worker's compensation is drawn and such amounts are not reimbursed to the issuer of such Letter of Credit within three (3) business days by Purchaser;

g. if by April 30, 2020, a chapter 11 plan of liquidation for the Debtors (the "Plan"), in form and substance satisfactory to the Lenders and subject to the Term Sheet, is not filed;

h. if by July 15, 2020, the Bankruptcy Court has not entered an order confirming the Plan, unless the Pre-Petition Agent and the Debtors otherwise agree to a later date;

i. the Bankruptcy Court shall enter any order, that has not been consented to by the Pre-Petition Secured Parties (i) revoking, reversing, staying, vacating, rescinding, modifying, supplementing or amending the Final DIP Order or this Supplemental Order, the Sale Order, the Pre-Petition Loan Documents or any Loan Document, or (y) any other "first day" orders to the extent such revocation, reversal, stay, vacation, rescission, modification, supplement or amendment is materially adverse to the interests of the Pre-Petition Secured Parties, or (ii) permitting any administrative expense or any claim (now existing or hereafter arising, of any kind or nature whatsoever) to have administrative priority as to any Debtor equal or superior to the priority of the Pre-Petition Secured Parties in respect of the Obligations, or there shall arise any such Superpriority Claim, or (iii) to grant or permit the grant of a Lien on

the Collateral superior to, or pari passu with, the Liens of the Administrative Agent on the Pre-Petition Collateral or the Collateral (other than the Senior Liens and the Carve-Out);

j. the Bankruptcy Court shall enter any order (i) appointing a Chapter 11 trustee under Section 1104 of the Bankruptcy Code in the Cases, (ii) appointing an examiner with enlarged powers relating to the operation of the business (powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code) under Section 1106(b) of the Bankruptcy Code in the Cases, (iii) appointing a fiduciary or representative of the estate with decision-making or other management authority over some or all of any Debtor's senior management other than the Debtors' Chief Restructuring Officer, (iv) substantively consolidating the estate of any Debtor with the estate of any other Person, or (v) dismissing the Chapter 11 Cases or converting the Chapter 11 Cases to Chapter 7 cases;

k. any of the Loan Documents, the Interim Order, the Final Order or this Supplemental Order for any reason ceases to be in full force and effect or is declared to be null and void by a court of competent jurisdiction, or any of the Debtors shall seek to, or shall support (in any such case by way of any motion or other pleading filed with the Bankruptcy Court or any other writing to another party-in-interest executed by or on behalf of such Debtor) any other Person's motion to, disallow in whole or in part the Secured Parties' claim in respect of the Obligations or to challenge the validity and enforceability of the Liens in favor of any Secured Party;

l. the Bankruptcy Court shall enter any order granting relief from the automatic stay to any creditor holding or asserting a Lien, reclamation claim or other rights on the assets of any Debtor in excess of \$75,000;

m. the Bankruptcy Court shall grant any application for any of the orders described in paragraphs 3(e), (i), (j), (k) or (l) above, or any application for any of such orders shall be made and, if made by a Person other than a Debtor, such application is not being diligently contested by such Debtor in good faith;

n. except (i) as permitted by an Order of the Bankruptcy Court and set forth in the Approved Budget, or (ii) as otherwise agreed to by the Pre-Petition Agent in writing, and approved by all necessary Bankruptcy Court orders/approvals, any Debtor shall make any Pre-Petition Payment (including, without limitation, related to any reclamation claims) following the Closing Date (as defined in the DIP Credit Agreement);

o. any Debtor shall be unable to pay its post-petition debts as they become due, shall fail to comply with any order of the Bankruptcy Court in any material respect, or shall fail to make, as and when such payments become due or otherwise;

p. any Debtor shall file a motion in the Chapter 11 Cases (i) to use Cash Collateral under Section 363(c) of the Bankruptcy Code without the Pre-Petition Secured Parties' prior written consent except to the extent expressly permitted in the Final DIP Order or this Supplemental Order, (ii) to sell a material portion of the assets of any Debtor without the prior written consent Pre-Petition Secured Parties, (iii) except as otherwise set forth in the Final DIP Order, to recover from any portions of the Collateral any costs or expenses of preserving or disposing of such Collateral under Section 506(c) of the Bankruptcy Code, or to cut off rights in the Collateral under Section 552(b) of the Bankruptcy Code, (iv) to obtain additional financing under Sections 364(c) or (d) of the Bankruptcy Code not otherwise permitted under the Final Order as supplemented hereby, unless such motion and additional financing shall provide that upon initial closing and consummation of such financing, that upon consummation of such sale,

all of the Obligations shall be indefeasibly paid and satisfied in full and Secured Parties receive a release (on terms and conditions and in form and substance satisfactory to the Pre-Petition Secured Parties in their sole discretion) of Secured Parties in full from all claims of the Debtors and their estates, or (v) to take any other action or actions adverse to Secured Parties or their rights and remedies hereunder or under any of the Other Documents or Secured Parties' interest in any of the Collateral;

q. the expiration or termination of the "exclusive period" of the Debtors under Section 1121 of the Bankruptcy Code for the filing of a plan of reorganization;

r. any Debtor engages in or supports any (i) challenge to the validity, perfection, priority, extent or enforceability of the credit facility provided hereunder or the Pre-Petition Loan Documents or the liens on or security interest in the assets of the Debtors securing the Obligations, or (ii) investigation or asserts any claims or causes of action (or directly or indirectly support assertion of the same) against Secured Parties;

s. the termination or rejection of any contract of any Debtor which would reasonably be expected to result in a Material Adverse Effect (as defined in the DIP Credit Agreement);

t. a breach of the terms or provisions of the Interim Order, the Final DIP Order, the Supplemental Order, or the Approved Budget subject to Permitted Variances;

u. except as provided for in the Final DIP Order, any Person shall be permitted by a final order of the Bankruptcy Court to surcharge the Collateral or the Pre-Petition Collateral under Section 506(c) of the Bankruptcy Code, or any costs or expenses whatsoever shall be imposed against the Collateral or the Pre-Petition Collateral, other than the Carve-Out;
or

v. the Pre-Petition Secured Parties shall be made by final order of the Bankruptcy Court subject to any equitable remedy of marshalling or any similar doctrine with respect to the Collateral and the Pre-Petition Collateral.

4. Upon the funding of the amounts in paragraphs 2(a) and (b) above, all obligations of the DIP Secured Parties and the Pre-Petition Secured Parties with respect to the Carve-Out are terminated.

5. Subject to the terms of the Term Sheet, nothing herein shall alter or otherwise impair, in any way, the First Lien Adequate Protection Obligations or the First Lien Adequate Protection and the rights of the Pre-Petition Agent or the Pre-Petition Secured Parties granted in the Final DIP Order with respect to liens and claims for diminution in value or liens (including adequate protection liens and claims) on any Collateral not sold pursuant to the Sale Order, including, but not limited to, Cash Collateral; *provided, further*, that the First Lien Adequate Protection Obligations are subject to a final determination by the Court, and the rights of all parties in interest as to such determination are reserved as set forth in the Final DIP Order.

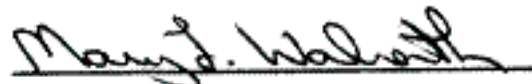
6. Subject to the Sale Order and the Term Sheet, the Committee's Challenge Period is terminated and the Committee shall be barred from seeking to challenge or otherwise object to the amount, validity, enforceability, priority or extent of the Pre-Petition Obligations or the liens of the Lenders on the Pre-Petition Collateral securing the Pre-Petition Obligations; *provided, however*, the Committee's rights to reconcile the final amount of the Pre-Petition Secured Parties' deficiency claims are reserved.

7. Notwithstanding the provisions of Bankruptcy Rule 6004(h), this Supplemental Order shall be immediately effective and enforceable upon its entry.

8. This Court retains jurisdiction over any and all matters arising from or related to the implementation of this Supplemental Order.

Dated: January 14th, 2020
Wilmington, Delaware

{1247.002-W0059547.9}



MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A

Closing Date Budget

Closing Date Budget - through April 30, 2020

(\$ in 000s)

Estimated cash on hand as of December 30, 2019	\$8,427
Estimated sale proceeds retained by Debtors ⁽¹⁾	9,217
Total estimated sources	<u>\$17,644</u>
Closing-related Transaction Fees	\$2,934
Reserved Proceeds - UCC Settlement	1,280
Sale Adjustment Escrow	1,000
Estimated post-closing operating expenses	1,115
Estimated other chapter 11 related expenses	3,768
Texas Taxing Authorities Reserve	145
Estimated other closing accruals/payments ⁽²⁾	7,402
Total estimated uses	<u>\$17,644</u>

(1) Estimate does not include potential sales of remnant assets including liquor licenses

(2) Includes estimated accruals through closing including payroll, payroll taxes, sales and uses taxes, accrued and unpaid property taxes, etc.