

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

In re:

HRI HOLDING CORP., *et al.*<sup>1</sup>

Debtors.

Chapter 11

Case No. 19-12415 (MFW)

(Jointly Administered)

Hearing Date: February 27, 2020 at 10:30 a.m. (ET)

Objection Deadline: February 20, 2020 at 4:00 p.m. (ET)

**DEBTORS’ MOTION FOR AN ORDER APPROVING PROCEDURES PURSUANT TO BANKRUPTCY CODE SECTIONS 105(A), 363 AND 554(A) AND FEDERAL RULES OF BANKRUPTCY PROCEDURE 6004, FOR THE SALE OF CERTAIN MISCELLANEOUS ASSETS FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES AND TO APPROVE THE SALE OR ABANDONMENT OF CERTAIN MISCELLANEOUS ASSETS AND GRANTING RELATED RELIEF**

The above-captioned debtors and debtors-in-possession (the “Debtors”), by and through their undersigned counsel, hereby submit this *Debtors’ Motion for an Order Approving Procedures Pursuant to Bankruptcy Code Sections 105(a), 363 and 554(a) and Federal Rules of Bankruptcy Procedure 6004, for the Sale of Certain Miscellaneous Assets Free and Clear of Liens, Claims and Encumbrances and to Approve the Sale or Abandonment of Certain Miscellaneous Assets and Granting Related Relief* (the “Motion”). In support of the Motion, the Debtors respectfully represent as follows:

<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. (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 (8058), 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.



## JURISDICTION

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. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and the Court may enter a final order consistent with Article III of the United States Constitution.<sup>2</sup>

2. The statutory bases for relief sought herein are sections 105(a), 363 and 554(a) of title 11 of Chapter 11 of the United States Code, 11 U.S.C. § 101 *et seq.* (as amended or modified, the “Bankruptcy Code”) together with rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

## BACKGROUND

3. On November 14, 2019 (the “Petition Date”), the Debtors commenced the above-captioned chapter 11 cases (the “Chapter 11 Cases”) by each filing with the Court a voluntary petition for relief under Chapter 11 of the Bankruptcy Code.

4. 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 or examiner has been appointed in these Chapter 11 Cases.

5. On November 22, 2019, the Office of the United States Trustee (the “U.S. Trustee”) appointed the Official Committee of Unsecured Creditors in the Chapter 11 Cases (the “Committee”) [D.I. 78].

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<sup>2</sup> Pursuant to Local Rule 9013-1(f), 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.

***The Sale***

6. On the Petition Date, the Debtors filed the *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* [D.I. 14] (the “Bidding Procedures Motion”) and the *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* [D.I. 15] (the “Sale Motion”). Through the Bidding Procedures Motion and the Sale Motion, the Debtors, among other things, sought to sell substantially all of their assets (the “Sale”) through a court-approved process to the entity determined to have submitted the highest or otherwise best bid in accordance with the bidding procedures.

7. On December 21, 2019, the Court entered the *Order (A) Approving the Asset Purchase Agreement and Authorizing the Sale of Certain Assets of 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 for the Lenders, and (E) Granting Related Relief* [D.I. 322] (the “Sale Order”)<sup>3</sup> approving, among other things, the Sale between the Debtors and Landry’s LLC (the “Purchaser”) pursuant to their asset purchase agreement (the “Agreement”). The Sale closed on December 30, 2019 (the “Closing Date”).

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<sup>3</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Sale Order.

8. Pursuant to the Agreement, certain assets were deemed excluded (each, a “Miscellaneous Asset” and, together, the “Miscellaneous Assets”) including, but not limited to, miscellaneous equipment, certain liquor licenses and various types of other personal property that the Debtors no longer require following the Closing Date and cessation of their operations. The Debtors believe they may sell certain of the Miscellaneous Assets, such as liquor licenses, in the ordinary course of business; however, to avoid doubt and to maximize value to the Debtors’ estates during the wind-down process, the Debtors seek Court approval to sell the Miscellaneous Assets.

9. Requiring the Debtors to obtain Court approval for every sale or abandonment of Miscellaneous Assets would unnecessarily burden the Court and increase costs for the Debtors’ estates. Indeed, given the modest amounts involved in these transactions, the costs and delays associated with seeking Court approval of an individual transaction could, in some cases, eliminate, or substantially undermine, the economic benefits of a transaction. Additionally, although the Debtors intend to monetize Miscellaneous Assets if at all possible, circumstances may arise where (a) the cost of continuing to maintain, relocate and/or store a given Miscellaneous Asset outweighs any potential recovery from a future sale or transfer thereof or (b) the Debtors are simply unable to find purchasers for, or reach acceptable terms for the sale of, a Miscellaneous Asset. In such circumstances, the Debtors may seek to abandon such property pursuant to Bankruptcy Code section 554. Thus, to minimize burden and cost, the Debtors seek approval of procedures, detailed below, permitting them to sell or abandon the Miscellaneous Assets.

#### **RELIEF REQUESTED**

10. The Debtors seek entry of an order authorizing the implementation of comprehensive procedures (the “Procedures”) pursuant to Bankruptcy Code sections 105(a), 363 and 554(a) for the sale or abandonment of Miscellaneous Assets free and clear of liens, claims and

encumbrances, including, among other things, the payment of fees and expenses (collectively, the “Commissions”) to third party brokers and sales agents engaged by the Debtors in connection with the sale of Miscellaneous Assets.

11. The Debtors believe that employing the Procedures proposed in this Motion would be the most efficient and economical means by which to dispose of the Miscellaneous Assets.

### **PROPOSED PROCEDURES**

12. The Debtors request that the following Procedures be implemented with regard to the sale or abandonment of Miscellaneous Assets.

#### **A. De Minimis Dispositions.**

13. If (a) the aggregate consideration for a Miscellaneous Asset proposed to be sold or (b) the book value of a Miscellaneous Asset proposed to be abandoned is less than \$25,000 (a “De Minimis Disposition”), the Debtors request that no notice or hearing be required for the Debtors to consummate such a sale, transfer or abandonment, provided that the Debtors will provide the Agent and the Committee with three (3) business days advance notice of such proposed sale, transfer or abandonment (which notice may be by email to counsel to the Agent and the Committee) and the Agent and Committee consent or do not object by providing written notice to the Debtors (which notice may be by email to counsel to the Debtors) prior to expiration of such notice period.<sup>4</sup> The Debtors will maintain records of all De Minimis Dispositions and such transactions will be reported in the Monthly Report (defined below).

14. To the extent the De Minimis Disposition involves the sale of Miscellaneous Assets, the Debtors shall submit a proposed order authorizing such De Minimis Disposition free

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<sup>4</sup> Although notice will not be required for the Debtors to consummate a sale or transfer of no more than \$25,000, the Debtors may elect to use any of the Procedures described in this Motion for such sale or transfer in their discretion or if the buyer or transferee requires the protections afforded by such Procedures.

and clear of all liens, claims and encumbrances under certification of counsel. Upon entry of such order, the Debtors may immediately consummate the sale of the Miscellaneous Assets and take any actions that are reasonable and necessary to close the transaction and obtain the sale proceeds, including, but not limited to, paying Commissions to any third party sales agents or brokers. If the De Minimis Disposition involves the abandonment of Miscellaneous Assets, the Debtors may abandon the Miscellaneous Assets without further notice, hearing or order.

**B. Sales of Non-De Minimis Miscellaneous Assets**

15. The following Procedures will apply to the sale of a Miscellaneous Asset that has a purchase price of \$25,000 or greater but less than \$625,000:

a. The Debtors will file and serve a notice (the “Sale Notice”) of the proposed sale (the “Proposed Sale”) by e-mail, if possible, and hand delivery or overnight mail on the following parties or their counsel, if known: (a) the United States Trustee; (b) the Committee; (c) the Lenders; (d) all known parties holding or asserting liens on or other interests in the Miscellaneous Assets that are the subject of the Proposed Sale; and (e) all parties that have advised the Debtors’ professionals of having an interest in acquiring the Miscellaneous Asset(s) that are proposed to be sold (collectively the “Interested Parties”).

b. The Sale Notice will include the following information with respect to the Proposed Sale:

- i. a description of the Miscellaneous Assets that are the subject of the Proposed Sale and their location(s);
- ii. the identity of the non-debtor party or parties to the Proposed Sale and any relationships of the non-debtor party or parties with the Debtors;
- iii. the identity of any parties known to the Debtors to hold liens on or other interests in the assets and a statement indicating that all such liens or interests are capable of monetary satisfaction;
- iv. the principal economic terms and conditions of the Proposed Sale; and
- v. instructions consistent with the terms described below regarding the procedures to assert objections to the Proposed Sale.

c. The deadline for filing an objection to the Proposed Sale (a “Sale Objection”) shall be seven (7) days after service of the Sale Notice at 4:00 p.m. (prevailing Eastern Time) (the “Sale Objection Deadline”). A Sale Objection will be considered timely

only if it is filed with the Court and actually received by the following parties (collectively, the “Objection Notice Parties”) on or before the Sale Objection Deadline: (i) counsel to the Debtors, Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, Delaware 19801 (Attn: Kimberly A. Brown and Matthew R. Pierce); (ii) counsel to the Lenders, (a) Katten Muchin Rosenman LLP, 515 South Flower Street, Suite 1000, Los Angeles, California 90071-2212 (Attn: William B. Freeman), and 575 Madison Avenue, New York, New York 10022-2585 (Attn: Karen B. Dine) and (b) Young Conaway Stargatt & Taylor, LLP, 1000 North King Street, Wilmington Delaware 19801 (Attn: Sean M. Beach and Jaime Luton Chapman); (iii) the Office of the United States Trustee, United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801 (Attn: Jane Leamy); and (iv) counsel to the Committee, Kelley Drye & Warren LLP, 101 Park Avenue, New York, New York 10178 (Attn: Jason R. Adams, Esq. and Maeghan J. McLoughlin, Esq.) and Klehr Harrison Harvey Branzburg LLP, 919 N. Market Street, Suite 1000, Wilmington, Delaware 19801 (Attn: Domenic Pacitti, Esq. and Richard M. Beck, Esq.).

d. To the extent that a competing bid is received for the purchase of a Miscellaneous Asset in a particular Proposed Sale after service of the Sale Notice that, in the Debtors’ business judgment and discretion, materially exceeds the value of the consideration described in the Sale Notice for such asset, then the Debtors may file and serve an amended Sale Notice for the Proposed Sale of the applicable asset to the subsequent bidder, even if the proposed purchase price exceeds the Sale Cap. Additionally, if any other material term(s) of a Proposed Sale are amended after transmittal of the Sale Notice, the Debtors shall file a revised Sale Notice and serve it on all Interested Parties describing the Proposed Sale, as amended. If an amended or revised Sale Notice is required (an “Amended Sale Notice”), the Sale Objection Deadline will be extended for an additional five (5) days, the specific date of which will be set forth in the Amended Sale Notice (the “Extended Sale Objection Deadline”).

e. If no Sale Objection is received prior to the expiration of the Sale Objection Deadline or, if applicable, the Extended Sale Objection Deadline, the Debtors shall submit a proposed order approving the Proposed Sale under certification of counsel (the “Proposed Order”). The Proposed Sale will be deemed final and fully authorized by the Court upon the entry of the Proposed Order without further notice or a hearing. Upon entry of the Proposed Order, the Debtors may immediately consummate the sale of the Miscellaneous Assets identified in the Sale Notice and take any actions that are reasonable and necessary to close the transaction and obtain the sale proceeds, including, but not limited to, paying Commissions to third-party sales agents or brokers.

f. If a Sale Objection is timely filed and received and cannot be resolved consensually, then the Miscellaneous Asset(s) that is the subject of the Sale Objection will not be sold or transferred except upon order of the Court, after notice and a hearing, or resolution of the Sale Objection; provided, however, that any Miscellaneous Asset(s) set forth in the Sale Notice that is not the subject of the Sale Objection may be immediately sold in accordance with the Procedures set forth herein.

g. Sales of Miscellaneous Assets shall be free and clear of all liens, claims and encumbrances (collectively, “Interests”) pursuant to Bankruptcy Code section 363(f), with any such Interests attaching to the net sale proceeds (to the extent the underlying security agreement provides for the continuation of such Interests and the holder of the Interest has not agreed otherwise) with the same force, validity, priority, perfection, and effect as such Interests had on the asset immediately prior to the sale. If a holder of an Interest receives a Sale Notice and does not object within the prescribed time period, such holder will be deemed to have consented to the Proposed Sale.

16. Sales of Miscellaneous Assets made in accordance with the Procedures above may be by private sale or by public auction, as determined by the Debtors to be most efficient under the facts and circumstances applicable to each sale.

**C. Abandonment of Miscellaneous Assets**

17. The Debtors likewise request authority to abandon any Miscellaneous Asset with a book value of \$25,000 or more but less than \$50,000 pursuant to the following procedures:

a. After determining to abandon any such Miscellaneous Asset (a “Proposed Abandonment”), the Debtors will file and serve a notice (an “Abandonment Notice”) by e-mail, if known, and hand delivery or overnight mail on the Interested Parties.

b. The Abandonment Notice will specify: (a) the Miscellaneous Asset(s) being abandoned; (b) a summary of the justifications for the abandonment; (c) the identities of any known parties holding or asserting liens in the relevant Miscellaneous Asset(s); (d) if applicable, the identity of the entity to which the Miscellaneous Asset(s) will be abandoned; and (e) the Abandonment Objection Deadline (as defined below).

c. The deadline for filing an objection to the Proposed Abandonment (an “Abandonment Objection”) shall be seven (7) days after service of the Abandonment Notice at 4:00 p.m. (prevailing Eastern Time) (the “Abandonment Objection Deadline”). An Abandonment Objection will be considered timely only if it is filed with the Court and actually received by the Objection Notice Parties on or before the Abandonment Objection Deadline.

d. If no Abandonment Objection is received prior to the expiration of the Abandonment Objection Deadline, the Debtors shall submit a proposed order approving the Proposed Abandonment under certification of counsel (the “Proposed Abandonment Order”). The Proposed Abandonment will be deemed final and fully authorized by the Court upon the entry of the Proposed Abandonment Order without further notice or a hearing. Upon entry of the Proposed Abandonment Order, the Debtors may immediately abandon the Miscellaneous Asset(s) identified in the Abandonment Notice and take any actions that are reasonable and necessary to effectuate the same.

e. If an Abandonment Objection is timely filed and received and cannot be resolved consensually, then the Miscellaneous Asset that is the subject of the Abandonment Objection will not be abandoned except upon order of the Court, after notice and a hearing, or resolution of the Abandonment Objection, provided, however, that any Miscellaneous Asset(s) set forth in the Abandonment Notice that is not the subject of the Abandonment Objection may be immediately abandoned in accordance with the Procedures set forth herein.

**D. Reporting Requirements.**

18. The Debtors will provide a written report (each, a “Monthly Report”) within twenty (20) days after the end of each calendar month concerning any sales, transfers or abandonments made pursuant to the Procedures (including the names of the purchasing parties and the types and amounts of the sales or abandonments) to counsel to the Lenders, the Committee and the U.S. Trustee. No such reports will be provided, however, for any month where there are no such sales, transfers or abandonments.

**BASIS FOR RELIEF**

***Approval of Sales under Bankruptcy Code Section 363(b)***

19. Generally, the Debtors seek approval to sell Miscellaneous Assets in the ordinary course. Courts generally have interpreted “ordinary course of business” in section 363(b) to “embrace the reasonable expectations of interested parties of the nature of transactions that the debtor would likely enter in the course of its normal, daily business.” *Medical Malpractice Ins. Ass’n v. Hirsch (In re Lavigne)*, 114 F.3d 379, 384 (2d Cir. 1997). To that end, in determining whether a transaction is “ordinary,” courts have applied two tests, both of which must be satisfied. *See In re Roth American, Inc.*, 975 F.2d 949, 953 (3d Cir. 1992); *In re Nellson Nutraceutical, Inc.*, 369 B.R. 787, 797 (Bankr. D. Del. 2007). The horizontal test asks whether the transaction is of the sort commonly undertaken by companies in that industry. *Roth*, 975 F.2d at 953 (citation omitted). The vertical test, on the other hand, focuses on the “debtor’s pre-petition business practices and

conduct, although the court must also ‘consider the changing circumstances inherent in the hypothetical creditor’s expectations.’” *Id.* (internal citations omitted). Prior to the Petition Date, the Debtors routinely sold Miscellaneous Assets in the ordinary course of business when closing restaurants. Nonetheless, the Debtors seek court approval to continue this ordinary course practice postpetition.

20. Bankruptcy Code section 363(b)(1) also supports the sale of Miscellaneous Assets as requested herein. 11 U.S.C. § 363(b)(1); *see also* Fed. R. Bankr. P. 6004(f)(1) (“All sales not in the ordinary course of business may be by private sale or by public auction.”). Although Bankruptcy Code section 363 does not specify a standard for determining when it is appropriate for a court to authorize the use, sale or lease of property of the estate, bankruptcy courts routinely authorize sales of a debtor’s assets if the sale is based upon the sound business judgment of the debtor. *See In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143 (3d Cir. 1986); *see also, Meyers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3rd Cir. 1996); *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999); *In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991); *In re Elpida Memory, Inc.*, 2012 Bankr. LEXIS 5367, \*18 (Bankr. D. Del. Nov. 16, 2012) (explaining that the “section 363(b) standard is well-settled . . . [a] debtor may sell assets outside the ordinary course of business when it has demonstrated that the sale of such assets represented the sound exercise of business judgment”).

21. The Court has the authority to grant the relief requested herein. The Debtors maintain Bankruptcy Code section 363(b)(1) provides, in relevant part, that “the trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” The debtor’s decisions to use, sell, or lease assets outside the ordinary course of business must be based upon the sound business judgment of the debtor. *See In re Chateaugay*

*Corp.*, 973 F.2d 141, 143 (2d Cir. 1992) (holding that a judge determining a section 363(b) application must find from the evidence presented before him a good business reason to grant such application); *Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999) (explaining that “[i]n determining whether to authorize the use, sale or lease of property of the estate under [section 363(b)], courts require the debtor to show that a sound business purpose justifies such actions”); *In re Del. & Hudson Ry. Co.*, 124 B.R. 169 (D. Del. 1991) (affirming decision permitting debtor to sell assets where sound business reasons supported the sale).

22. The business judgment rule is satisfied where “the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992), *appeal dismissed*, 3 F.3d 49 (2d Cir. 1993) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)). In fact, courts presume that in making a business decision the directors of a corporation act in such a manner. *In re Dura Auto. Sys.*, 2007 Bankr. LEXIS 2764, \*260 (Bankr. D. Del. Aug. 15, 2007) (“There is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company”) (internal quotations and citation omitted). Courts generally will not entertain objections to the debtor’s conduct where “the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously) ...” *Id.* at \*259-60 (quoting *Committee of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986)). Accordingly, “if a debtor’s actions satisfy the

business judgment rule, then the transaction in question should be approved under section 363(b)(1).” *Id.* at \*260.

23. The Debtors currently possess (and in the future may identify) certain Miscellaneous Assets that they may desire to sell or transfer during the wind-down of these Chapter 11 Cases because such Miscellaneous Assets are no longer necessary to the Debtors’ estates after the Closing Date. To defray any operational, carrying, storage, or other expenses associated with the Miscellaneous Assets, it is in the best interests of the estates for the Debtors to consummate sales or transfers of the Miscellaneous Assets in accordance with the Sales Procedures.

24. The Procedures will expedite the flow of cash into the estates and eliminate the need to prepare and prosecute motions to obtain express court approval of every individual sale (which will maximize the economic benefits to the estates). In addition, the Sales Procedures will protect the Debtors against the declining value of the Miscellaneous Assets, eliminate certain administrative costs, reduce professional fees and expedite the sale of the Miscellaneous Assets, while protecting the best interests of the Debtors’ estates.

25. Bankruptcy Code section 363(f) permits a debtor to sell property free and clear of Interests if one of the following conditions is satisfied: (i) applicable non-bankruptcy law permits the sale of the property free and clear of such interest, (ii) the entity holding the lien, claim or encumbrance consents to the proposed sale, (iii) the interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on the property, (iv) the interest is in bona fide dispute, or (v) the entity could be compelled, in a legal or equitable proceeding, to accept a monetary satisfaction of its interest. 11 U.S.C. § 363(f); *see also Folger Adam Sec., Inc. v. DeMatteis/MacGregor, J.V.*, 209 F.3d 252, 257 (3d Cir. 2000) (stating that Bankruptcy Code

section 363(f) authorizes the sale of a debtor's assets free and clear of any interest if any of the five prescribed conditions are met); *In re Kellstrom Indus., Inc.*, 282 B.R. 787, 793 (Bankr. D. Del. 2002) (explaining that Bankruptcy Code section 363(f) is written in the disjunctive and, as such, "if any one of the five conditions [of Bankruptcy Code section 363(f)] are met, the debtor has the authority to conduct the sale free and clear of all liens"); *Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (E.D. Pa. 1988) (same).

26. The Debtors propose to sell the Miscellaneous Assets in a commercially reasonable manner and expect that the value of the proceeds from such sales will fairly reflect the value of the property sold. The Debtors propose any Interest in any Miscellaneous Assets sold pursuant to the Procedures be transferred and attached to the net sale proceeds in the same order or priority that such Interests had on the Miscellaneous Assets sold; provided, however, that, in all events, such Interests shall attach to applicable net sale proceeds in accordance with, and be subject to, the terms and conditions of (i) 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* [D.I. 163], which was supplemented by order of the Court on January 14, 2020 [D.I. 353] (as supplemented or otherwise amended, the "Final DIP Order") and (ii) that certain term sheet dated December 19, 2019 attached as Exhibit C to the Sale Order (the "Term Sheet"), as applicable, with the net proceeds of any sale of Miscellaneous Assets being distributed in accordance with, and subject to, the terms and conditions of the Final DIP Order and the Term Sheet, as applicable. Furthermore, the Debtors propose that the failure to timely object to the relief requested in this Motion and, as applicable, to a proposed

sale of Miscellaneous Assets in accordance with the Procedures shall be deemed “consent” to any such sale within the meaning of Bankruptcy Code section 363(f)(2). As such, the Debtors submit that the requirements of Bankruptcy Code section 363(f) would be satisfied for any proposed sale or transfer of Miscellaneous Assets pursuant to the Procedures free and clear of Interests.

27. In approving the sales of Miscellaneous Assets free and clear of Interests, the Debtors request that the Court find that those who purchase Miscellaneous Assets in accordance with the Procedures are entitled to the protections afforded by Bankruptcy Code section 363(m). This relief is appropriate in light of the opportunity for review and objection provided herein.

***Approval of Abandonment Under Bankruptcy Code Section 554(a)***

28. Bankruptcy Code section 554(a) provides that “[a]fter notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.” 11 U.S.C. § 554(a). Bankruptcy Code section 554(a) thus requires two showings: first, the property to be abandoned must be property of the estate; second, the property to be abandoned must be burdensome or of inconsequential value or benefit to the debtor’s estate.

29. The debtor-in-possession is afforded significant discretion in determining the value and benefits of particular property for purposes of the decision to abandon it. See *In re Cont. Research Sols., Inc.*, No. 12-11004(KJC), 2013 Bankr. LEXIS 1784, at \*11 (Bankr. D. Del. May 1, 2013) (“[A debtor] need only demonstrate that [it] has exercised sound business judgment in making the determination to abandon.”); *In re Interpictures, Inc.*, 168 B.R. 526, 535 (Bankr. E.D.N.Y. 1994) (stating that “abandonment is in the discretion of the [debtor], bounded only by that of the court”).

30. This right to abandon exists so that “burdensome property” can be removed and the “best interests of the estate” will be furthered. *South Chicago Disposal, Inc. v. LTV Steel Co., Inc. (In re Chateaugay Corp.)*, 130 B.R. 162, 166 (S.D.N.Y. 1991) (citation and quotation marks omitted); see also *Medhigabayzadeh v. Shubert (In re Am. Tissue, Inc.)*, No. 01-10370-KG, 2015 U.S. Dist. LEXIS 41089, at \*10 (D. Del. Mar. 31, 2015) (“The purpose of abandonment under § 554 is to rid the bankruptcy estate of burdensome property, not to increase the estate’s burden.”).

31. The Debtors expect to take all reasonable steps to monetize or otherwise maximize the value of their Miscellaneous Assets for the benefit of their chapter 11 estates. The costs associated with sales of certain Miscellaneous Assets, however, may exceed any possible proceeds thereof. The inability to consummate a commercially reasonable sale of Miscellaneous Assets would indicate that such assets have no meaningful monetary value. Further, the costs of removing, maintaining and/or storing such assets may burden the Debtors’ estates. Accordingly, the abandonment of Miscellaneous Assets pursuant to the Procedures set forth herein is in the best interests of the Debtors’ estates and should be approved.

***Approval of Proposed Sales or Proposed Abandonment on Limited Notice***

32. Generally, Bankruptcy Rules 2002(a)(2) and 2002(i) require that a minimum of twenty-one (21) days’ notice of proposed sales of property outside the ordinary course of business be provided by mail to “the debtor, the trustee, all creditors and indenture trustees” and any committee appointed under section 1102 of the Bankruptcy Code. Fed. R. Bankr. P. 2002(a), (i). Pursuant to Bankruptcy Rule 2002(i), however, courts may limit notice of asset sales outside of the ordinary course of a debtor’s business, even without a prior showing of cause, to the United States Trustee, any official committee appointed under section 1102 of the Bankruptcy Code and parties who have requested notice pursuant to Bankruptcy Rule 2002.

33. The “notice” required by Bankruptcy Code section 363(b)(1) is “such notice as is appropriate in the particular circumstances.” 11 U.S.C. § 102(1)(A). Bankruptcy courts have recognized that, when determining whether notice is appropriate under the circumstances for purposes of Bankruptcy Code section 102(1)(A), they are “guided by fundamental notions of procedural due process.” *In re Lomas Fin. Corp.*, 212 B.R. 46, 54 (Bankr. D. Del. 1997). Due process “requires that any notice is reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Id.* (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)); *In re Grand Union Co.*, 204 B.R. 864, 871 (Bankr. D. Del. 1997). In sum, if basic due process is afforded to interested parties and an appropriate cause for limited notice is established, a court may determine that limited notice of an asset sale is appropriate.

34. The Debtors seek the approval of the Procedures to maximize the net value realized from sales or abandonment of the Miscellaneous Assets. These Procedures will accommodate the smooth and timely consummation of such transactions. Under the circumstances, the usual process of obtaining Court approval of each Proposed Sale or Proposed Abandonment subject to the Procedures would: (a) impose unnecessary administrative burdens on the Court and use valuable time at omnibus hearings; (b) create costs to the Debtors’ estates that may undermine or eliminate the economic benefits of the underlying transactions; and (c) in some instances hinder the Debtors’ ability to take advantage of the sale opportunities that are available only for a limited time. Therefore, the Debtors propose to streamline the process as described herein.

35. For the foregoing reasons, the Debtors submit that (a) sufficient cause exists to implement the modified notice provisions proposed herein, and (b) these modified notice

procedures will make the sale and abandonment process as efficient as possible, while preserving fully the rights of the Interested Parties.

36. The Debtors also believe that limiting service of the Sale Notices and Abandonment Notices to the Interested Parties is justified under the circumstances. The Interested Parties represent the key parties in interest who should receive notice of any Proposed Sale or Proposed Abandonment. In particular, Sale Notices and Abandonment Notices are proposed to be served on the primary parties representing the interests of the unsecured creditors of the Debtors' estates – the the Committee and the U.S. Trustee. Under the circumstances, the Debtors believe that this manner of notice is appropriate and fully preserves the necessary due process rights.

***Approval of Transactions Without a Hearing***

37. The sale of property outside of the ordinary course of business or the abandonment of property may occur only “after notice and a hearing.” 11 U.S.C. §§ 363(b)(1) and 554(a). Such sales or abandonments are authorized without an actual hearing, however, if no party in interest timely requests such a hearing. 11 U.S.C. § 102(1)(B)(i) (notwithstanding any statutory requirement for “notice and a hearing,” the Bankruptcy Code “authorizes an act without an actual hearing if such notice is given properly and if such a hearing is not requested timely by a party in interest”). Moreover, as described above, due process is satisfied if parties in interest are given “an opportunity to present their objections.” *Mullane*, 339 U.S. at 314.

38. The Debtors believe that the Procedures comport with the hearing requirements of the Bankruptcy Code and due process by providing an opportunity for Interested Parties to present objections and request a hearing on each Proposed Sale and Proposed Abandonment. Under these circumstances, a Proposed Sale or Proposed Abandonment may be approved without a hearing if

no Interested Party, after being presented with the opportunity to object and seek a determination of the Court, requests a hearing on such sale or abandonment.

39. With respect to De Minimis Dispositions, the Debtors believe that the opportunity to object to this Motion and the hearing on this Motion are sufficient to satisfy the hearing requirements of the Bankruptcy Code and due process under the circumstances. The primary parties representing the interests of unsecured creditors of the Debtors' estates (*i.e.*, the Committee and U.S. Trustee), the Lenders and those parties who have requested notice pursuant to Bankruptcy Code section 2002 are being given the opportunity to object to this Motion. Following the notice procedures otherwise required under the Procedures for De Minimis Dispositions instead might eliminate the economic value generated by such sales or saved by such abandonments.

***Approval of Payment of Commissions to Third Party Brokers and Sales Agents***

40. The payment of Commissions to third party brokers and sales agents engaged by the Debtors in connection with the sale of Miscellaneous Assets is in the best interest of the Debtors' estates and their creditors. The Debtors believe that the use of third party brokers or sales agents in certain circumstances will significantly aid in the timely disposition and realization of the maximum possible value for the Miscellaneous Assets. Payment of the Commissions pursuant to the Procedures will save the Debtors' estates the expenses associated with the brokers and sales agents filing retention applications and will avoid the incurrence of additional fees for preparing and prosecuting interim fee applications. The Commissions will represent only a fraction of the value of any Miscellaneous Asset sold pursuant to the Procedures and are not significant relative to the aggregate size of the Debtors' estates. The Debtors believe that payment of the Commissions pursuant to the Procedures will provide an efficient means of compensating brokers and sales agents and avoid the incurrence of these unnecessary administrative and professional expenses.

Accordingly, approval of the payment of the Commissions is in the best interest of the Debtors' estates and their creditors.

***Approval of Similar Procedures in Other Cases***

41. In light of the demonstrable benefits of streamlined procedures to sell small assets and the legal justifications described above, procedures similar to the Sales Procedures have been approved in other chapter 11 cases in this District. *See, e.g., In re FTD Companies, Inc.*, No. 19-11240 (Bankr. D. Del. July 2, 2019) (authorizing sale of miscellaneous assets where the purchase price is no more than \$625,000 and the abandonment of miscellaneous assets that have a book value less than \$250,000 with limited and expedited advance notice) (Silverstein, J.); *In re MAC Acquisition LLC*, No. 17-12224 (Bankr. D. Del. Nov. 13, 2017) (authorizing sale of liquor licenses not to exceed \$1,100,000 in the aggregate pursuant to expedited notice procedures) (Walrath, J.); *In re Molycorp Minerals, LLC, et al.*, No. 15-11371 (Bankr. D. Del. Nov. 18, 2016) (Sontchi, J.) (authorizing sale of surplus assets with value less than or equal to \$250,000); *In re Fresh & Easy, LLC*, No. 15-12220 (authorizing the sale of miscellaneous assets up to \$100,000 at a single location and up to \$400,000 at multiple locations and the abandonment of miscellaneous assets with limited and expedited advance notice) (Shannon, J.); *In re Tri-Valley Corporation, et al.*, No. 12-12291 (Bankr. D. Del. Sept. 20, 2012) (Walrath, J.) (authorizing the sale of assets with value of \$250,000 or less on limited notice); *In re SP Newsprint Holdings LLC, et al.*, No. 11-13649 (Bankr. D. Del. Mar. 5, 2012) (Sontchi, J.) (authorizing the sale or abandonment of assets with an estimated book value of less than \$50,000 on limited advance notice and the sale to non-insiders or abandonment of assets under \$30,000 with no advance notice); *In re Harry & David Holdings, Inc., et al.*, No. 11-10884 (Bankr. D. Del. April 27, 2011) (Walrath, J.) (authorizing the sale of assets for \$250,000

or less in total consideration or the sale of assets with a book value of less than \$250,000 with limited notice).

**REQUEST FOR WAIVER OF STAY**

42. To implement the foregoing, the Debtors seek a waiver of any stay of the effectiveness of the order approving this Motion. Pursuant to Bankruptcy Rule 6004(h), any “order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” The Debtors submit that the imposition of the fourteen (14) day stay would be inconsistent with the streamlined Procedures for notice and approval of each individual sale and abandonment contemplated by this Motion. One of the primary benefits of the proposed Procedures, in fact, is the ability to take advantage of market opportunities to consummate sales of Miscellaneous Assets without delay. Accordingly, the Debtors submit that ample cause exists to justify a waiver of the fourteen (14) day stay imposed by Bankruptcy Rule 6004(h), to the extent applicable.

43. Further, to implement the foregoing immediately, the Debtors also request a waiver of the notice requirements of Bankruptcy Rule 6004(a) to the extent they are deemed applicable.

**NOTICE AND NO PRIOR REQUEST**

44. No trustee or examiner has been appointed in these Chapter 11 Cases. Notice of this Motion has been given to the following parties or, in lieu thereof, to their counsel, if known: (a) the U.S. Trustee; (b) the Committee; (c) the Lenders; (d) any parties known to the Debtors to hold Interests in the Miscellaneous Assets; and (e) all parties that have filed a request for notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Debtors submit that no further or other notice is required.

45. No previous request for the relief requested herein has been made to this or any other court.

WHEREFORE, the Debtors respectfully request that this Court enter an Order substantially in the form attached hereto (a) granting the relief requested herein and (b) granting such other and further relief as the Court deems just and proper.

Dated: February 6, 2020  
Wilmington, Delaware

**LANDIS RATH & COBB LLP**



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*Counsel for the Debtors  
and Debtors-In-Possession*

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

HRI HOLDING CORP., *et al.*<sup>1</sup>

Debtors.

Chapter 11

Case No. 19-12415 (MFW)

(Jointly Administered)

Hearing Date: February 27, 2020 at 10:30 a.m. (ET)

Objection Deadline: February 20, 2020 at 4:00 p.m. (ET)

**NOTICE OF MOTION**

TO: The following parties: (a) the U.S. Trustee; (b) the Committee; (c) the Lenders; (d) any parties known to the Debtors to hold Interests in the Miscellaneous Assets; and (e) all parties that have filed a request for notice pursuant to Bankruptcy Rule 2002.

**PLEASE TAKE NOTICE** that on February 6, 2020, the above-captioned debtors and debtors-in-possession (the “Debtors”) filed the *Debtors’ Motion for an Order Approving Procedures Pursuant to Bankruptcy Code Sections 105(a), 363 and 554(a) and Federal Rules of Bankruptcy Procedure 6004, for the Sale of Certain Miscellaneous Assets Free and Clear of Liens, Claims and Encumbrances and to Approve the Sale or Abandonment of Certain Miscellaneous Assets and Granting Related Relief* (the “Motion”).

Objections, if any, to the relief requested in the Motion must be filed with the United States Bankruptcy Court, 824 North Market Street, 3<sup>rd</sup> Floor, Wilmington, Delaware 19801, on or before **February 20, 2020 at 4:00 p.m. (ET)**.

At the same time, you must also serve a copy of the objection upon the undersigned counsel so as to be **received no later than 4:00 p.m. (ET) on February 20, 2020**.

A HEARING ON THE MOTION WILL BE HELD ON **FEBRUARY 27 AT 10:30 A.M. (ET)** BEFORE THE HONORABLE MARY F. WALRATH, UNITED STATES BANKRUPTCY COURT JUDGE, IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 NORTH MARKET STREET, 5<sup>th</sup> FLOOR, COURTROOM NO. 4, WILMINGTON, DELAWARE 19801.

<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. (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 (8058), 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.

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: February 6, 2020  
Wilmington, Delaware

**LANDIS RATH & COBB LLP**



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Kimberly A. Brown (No. 5138)  
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*Counsel for the Debtors and  
Debtors-In-Possession*

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

In re:

HRI HOLDING CORP., *et al.*<sup>1</sup>

Debtors.

Chapter 11

Case No. 19-12415 (MFW)

(Jointly Administered)

Ref. No. \_\_\_\_

**ORDER APPROVING PROCEDURES PURSUANT TO BANKRUPTCY CODE  
SECTIONS 105(A), 363 AND 554(A) AND FEDERAL RULES OF BANKRUPTCY  
PROCEDURE 6004, FOR THE SALE OF CERTAIN MISCELLANEOUS  
ASSETS FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES  
AND TO APPROVE THE SALE OR ABANDONMENT OF CERTAIN  
MISCELLANEOUS ASSETS AND GRANTING RELATED RELIEF**

Upon the Debtors' Motion for an Order Approving Procedures Pursuant to Bankruptcy Code Sections 105(a), 363 and 554(a) and Federal Rules of Bankruptcy Procedure 6004, for the Sale of Certain Miscellaneous Assets Free and Clear of Liens, Claims and Encumbrances and to Approve the Sale or Abandonment of Certain Miscellaneous Assets and Granting Related Relief (the "Motion");<sup>2</sup> and it appearing that this Court has jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and it appearing that this Motion is a core proceeding within the meaning of 28 U.S.C. § 157; and it appearing that venue of this proceeding and this Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and

<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. (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 (8058), 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.

<sup>2</sup> Capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Motion.

1409; and due and proper notice of this Motion having been given; and it appearing that the relief requested in the Motion is in the best interests of the Debtors and their estates and creditors; and after due deliberation and sufficient cause appearing therefor:

**IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED as set forth herein.

2. The Debtors are authorized, but not required, under Bankruptcy Code section 363(b) to sell Miscellaneous Assets with a purchase price of \$25,000 or greater but less than \$625,000 in accordance with the following procedures:

a. The Debtors shall file and serve a notice (the “Sale Notice”) of the proposed sale (the “Proposed Sale”) by e-mail, if possible, and hand delivery or overnight mail on the following parties or their counsel, if known: (a) the United States Trustee; (b) the Committee; (c) the Lenders; (d) all known parties holding or asserting liens on or other interests in the Miscellaneous Assets that are the subject of the Proposed Sale; and (e) all parties that have advised the Debtors’ professionals of having an interest in acquiring the Miscellaneous Asset(s) that are proposed to be sold (collectively the “Interested Parties”);

b. The Sale Notice must include the following information with respect to the Proposed Sale:

- i. a description of the Miscellaneous Assets that are the subject of the Proposed Sale and their location(s);
- ii. the identity of the non-debtor party or parties to the Proposed Sale and any relationships of the non-debtor party or parties with the Debtors;
- iii. the identity of any parties known to the Debtors to hold liens on or other interests in the assets and a statement indicating that all such liens or interests are capable of monetary satisfaction;
- iv. the principal economic terms and conditions of the Proposed Sale; and
- v. instructions consistent with the terms described below regarding the procedures to assert objections to the Proposed Sale.

c. The deadline for filing an objection to the Proposed Sale (a “Sale Objection”) shall be seven (7) days after service of the Sale Notice at 4:00 p.m. (prevailing Eastern Time) (the “Sale Objection Deadline”). A Sale Objection will be considered timely only if it is filed with the Court and actually received by the following parties (collectively,

the “Objection Notice Parties”) on or before the Sale Objection Deadline: (i) counsel to the Debtors, Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, Delaware 19801 (Attn: Kimberly A. Brown and Matthew R. Pierce); (ii) counsel to the Lenders, (a) Katten Muchin Rosenman LLP, 515 South Flower Street, Suite 1000, Los Angeles, California 90071-2212 (Attn: William B. Freeman), and 575 Madison Avenue, New York, New York 10022-2585 (Attn: Karen B. Dine) and (b) Young Conaway Stargatt & Taylor, LLP, 1000 North King Street, Wilmington Delaware 19801 (Attn: Sean M. Beach and Jaime Luton Chapman); (iii) the Office of the United States Trustee, United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801 (Attn: Jane Leamy); and (iv) counsel to the Committee, Kelley Drye & Warren LLP, 101 Park Avenue, New York, New York 10178 (Attn: Jason R. Adams, Esq. and Maeghan J. McLoughlin, Esq.) and Klehr Harrison Harvey Branzburg LLP, 919 N. Market Street, Suite 1000, Wilmington, Delaware 19801 (Attn: Domenic Pacitti, Esq. and Richard M. Beck, Esq.);

d. To the extent that a competing bid is received for the purchase of a Miscellaneous Asset in a particular Proposed Sale after service of the Sale Notice that, in the Debtors’ business judgment and discretion, materially exceeds the value of the consideration described in the Sale Notice for such asset, then the Debtors may file and serve an amended Sale Notice for the Proposed Sale of the applicable asset to the subsequent bidder, even if the proposed purchase price exceeds the Sale Cap. Additionally, if any other material term(s) of a Proposed Sale are amended after transmittal of the Sale Notice, the Debtors shall file a revised Sale Notice and serve it on all Interested Parties describing the Proposed Sale, as amended. If an amended or revised Sale Notice is required (an “Amended Sale Notice”), the Sale Objection Deadline will be extended for an additional five (5) days, the specific date of which will be set forth in the Amended Sale Notice (the “Extended Sale Objection Deadline”);

e. If no Sale Objection is received prior to the expiration of the Sale Objection Deadline or, if applicable, the Extended Sale Objection Deadline, the Debtors shall submit a proposed order approving the Proposed Sale under certification of counsel (the “Proposed Order”). The Proposed Sale will be deemed final and fully authorized by the Court upon the entry of the Proposed Order without further notice or a hearing. Upon entry of the Proposed Order, the Debtors may immediately consummate the sale of the Miscellaneous Assets identified in the Sale Notice and take any actions that are reasonable and necessary to close the transaction and obtain the sale proceeds, including, but not limited to, paying Commissions to third-party sales agents or brokers; and

f. If a Sale Objection is timely filed and received and cannot be resolved consensually, then the Miscellaneous Asset(s) that is the subject of the Sale Objection will not be sold or transferred except upon order of the Court, after notice and a hearing, or resolution of the Sale Objection; provided, however, that any Miscellaneous Asset(s) set forth in the Sale Notice that is not the subject of the Sale Objection may be immediately sold in accordance with the Procedures set forth herein.

3. The Debtors are authorized, but not required, to abandon any Miscellaneous Asset

with a book value of \$25,000 or more but less than \$50,000 pursuant to the following procedures:

a. The Debtors shall file and serve a notice (an “Abandonment Notice”) of the Proposed Abandonment by e-mail, if known, and hand delivery or overnight mail on the Interested Parties;

b. The Abandonment Notice must specify: (a) the Miscellaneous Asset(s) being abandoned; (b) a summary of the justifications for the abandonment; (c) the identities of any known parties holding or asserting liens in the relevant Miscellaneous Asset(s); (d) if applicable, the identity of the entity to which the Miscellaneous Asset(s) will be abandoned; and (e) the Abandonment Objection Deadline;

c. The deadline for filing an objection to the Proposed Abandonment (an “Abandonment Objection”) shall be seven (7) days after service of the Abandonment Notice at 4:00 p.m. (prevailing Eastern Time) (the “Abandonment Objection Deadline”). An Abandonment Objection will be considered timely only if it is filed with the Court and actually received by the Objection Notice Parties on or before the Abandonment Objection Deadline;

d. If no Abandonment Objection is received prior to the expiration of the Abandonment Objection Deadline, the Debtors shall submit a proposed order approving the Proposed Abandonment under certification of counsel (the “Proposed Abandonment Order”). The Proposed Abandonment will be deemed final and fully authorized by the Court upon the entry of the Proposed Abandonment Order without further notice or a hearing. Upon entry of the Proposed Abandonment Order, the Debtors may immediately abandon the Miscellaneous Asset(s) identified in the Abandonment Notice and take any actions that are reasonable and necessary to effectuate the same; and

e. If an Abandonment Objection is timely filed and received and cannot be resolved consensually, then the Miscellaneous Asset that is the subject of the Abandonment Objection will not be abandoned except upon order of the Court, after notice and a hearing, or resolution of the Abandonment Objection, provided, however, that any Miscellaneous Asset(s) set forth in the Abandonment Notice that is not the subject of the Abandonment Objection may be immediately abandoned in accordance with the Procedures set forth herein.

4. Notwithstanding the Procedures set forth above, the Debtors are authorized, but not required, to sell, transfer or abandon Miscellaneous Assets without further notice or hearing if (a) the aggregate consideration for a Miscellaneous Asset proposed to be sold or (b) the book value of a Miscellaneous Asset proposed to be abandoned is less than \$25,000 (a “De Minimis Disposition”), provided that the Debtors shall provide the Agent and the Committee with three (3)

business days advance notice of such proposed sale, transfer or abandonment (which notice may be by email to counsel to the Agent and the Committee) and the Agent and Committee consent or do not object by providing written notice to the Debtors (which notice may be by email to counsel to the Debtors) prior to expiration of such notice period. To the extent the De Minimis Disposition involves the sale of Miscellaneous Assets, the Debtors shall submit a proposed order authorizing such De Minimis Disposition free and clear of all liens, claims and encumbrances (collectively, “Interests”) under certification of counsel. Upon entry of such order, the Debtors may immediately consummate the sale of the Miscellaneous Assets and take any actions that are reasonable and necessary to close the transaction and obtain the sale proceeds, including, but not limited to, paying Commissions to any third party sales agents or brokers. If the De Minimis Disposition involves the abandonment of Miscellaneous Assets, the Debtors may abandon the Miscellaneous Assets without further notice, hearing or order. Although notice (other than to the Agent and the Committee as set forth above) or hearings will not be required for the Debtors to consummate a De Minimis Disposition, the Debtors, at their discretion, may use the Procedures set forth in paragraphs 2 and 3 of this Order for any such sale or abandonment. The Debtors shall maintain records of all De Minimis Dispositions and such transactions will be reported in the Monthly Report (defined below).

5. The Debtors shall provide a written report (each a “Monthly Report”) within twenty (20) days after the end of each calendar month concerning any sales, transfers or abandonments made pursuant to the Procedures set forth herein (including the names of the purchasing parties and the types and amounts of the sales or abandonments) to counsel to the Lenders, the Committee and the U.S. Trustee; provided, however, that no such reports shall be required to be provided for any month where there are no such sales, transfers or abandonments.

6. Sales of Miscellaneous Assets made in accordance with the Procedures herein may be by private sale or by public auction, as determined by the Debtors to be most efficient under the facts and circumstances applicable to each sale.

7. Sales of Miscellaneous Assets pursuant to the Procedures and in accordance with this Order shall be free and clear of all Interests pursuant to Bankruptcy Code section 363(f), with any such Interests attaching to the net sale proceeds (to the extent the underlying security agreement provides for the continuation of such Interests and the holder of the Interest has not agreed otherwise) with the same force, validity, priority, perfection, and effect as such Interests had on the asset immediately prior to the sale; provided, however, that, in all events such Interests shall attach to applicable net sale proceeds in accordance with, and be subject to, the terms and conditions of (i) the Final DIP Order and (ii) the Term Sheet, as applicable, with the net proceeds of any sale of Miscellaneous Assets being distributed in accordance with, and subject to, the terms and conditions of the Final DIP Order and the Term Sheet, as applicable. If a holder of an Interest in a Miscellaneous Asset did not timely object to the relief requested in the Motion, and, as applicable, does not object to the proposed sale of such Miscellaneous Asset in accordance with the Procedures, such holder shall be deemed to have consented to any sale of the applicable Miscellaneous Asset pursuant to the Procedures.

8. Sales of Miscellaneous Assets in accordance with the Procedures shall be deemed to be arms' length transactions entitled to the protections of Bankruptcy Code section 363(m).

9. All purchasers or transferees shall take Miscellaneous Assets sold by the Debtors pursuant to the authority granted in this Order "as is" and "where is" without any representations or warranties from the Debtors as to quality or fitness for either their intended purposes or any particular purpose.

10. Each and every federal, state and local government agency or department is hereby authorized to accept any and all documents and instruments necessary or appropriate to consummate the disposition of Miscellaneous Assets, including, but not limited to, liquor licenses or similar permits. The register or recorder of deeds (or other similar recording agency) is hereby authorized to accept and include a certified copy of this Order along with any other appropriate conveyance documents used to record and index the transfer of any Miscellaneous Assets in the appropriate public records.

11. The Debtors are authorized to pay, without further Court approval, Commissions for third party sales agents and brokers utilized in connection with any sales of Miscellaneous Assets pursuant to this Order.

12. Nothing in this Order shall prevent the Debtors, in their discretion, from seeking Court approval of any Proposed Sale upon notice and a hearing or, if necessary to comply with a condition on a sale or transfer imposed by a purchaser, to submit a separate order to the Court under certification of counsel to be entered without need for a hearing on the matter.

13. The fourteen (14) day stay imposed by Bankruptcy Rule 6004(h) is hereby waived with respect to the relief granted pursuant to this Order and each Proposed Sale conducted in accordance with this Order, and the Debtors may close Proposed Sales as set forth herein without reference to such stay.

14. The Debtors and their respective officers, employees and agents are authorized and empowered to perform all obligations, take all actions and execute such documents as may be necessary or appropriate to carry out the relief granted herein or to effectuate any disposition of Miscellaneous Assets.

15. This Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

Date: \_\_\_\_\_, 2020  
Wilmington, Delaware

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THE HONORABLE MARY F. WALRATH  
UNITED STATES BANKRUPTCY JUDGE