

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

In re:

HRI HOLDING CORP., *et al.*¹

Debtors.

Chapter 11

Case No. 19-12415 (MFW)

(Jointly Administered)

Ref. No. 459

CERTIFICATION OF COUNSEL

I, Matthew R. Pierce, counsel to the above-captioned debtors and debtors in possession (the “Debtors”) hereby certify as follows to the best of my knowledge, information and belief:

1. On November 14, 2019 (the “Petition Date”), the Debtors filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* in the United States Bankruptcy Court for the District of Delaware (the “Court”).

2. On February 6, 2020, 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* [D.I. 458] (the “Motion”).

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 (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.



3. As of the date hereof, no formal objections or other responses to the Motion have been filed or served on the Debtors. However, the Debtors received informal comments on the Motion for the office of the United States Trustee (the “UST”) and Chubb Insurance Companies (“Chubb” and collectively, the “Parties”).

4. To resolve the informal comments of the Parties, the Debtors have revised the proposed form of order (the “Revised Order”), a copy of which is attached hereto as **Exhibit A**. A copy of the Revised Order compared against the proposed order attached to the Motion is attached hereto as **Exhibit B**. The Parties have no objection to the entry of the Revised Order. In accordance with the Court’s electronic order processing procedures, a clean copy of the Revised Order shall be uploaded to CM/ECF.

5. Accordingly, the Debtors respectfully request that the Court enter the Revised Order at its earliest convenience.

Dated: February 24, 2020
Wilmington, Delaware

LANDIS RATH & COBB LLP



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

EXHIBIT A

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

In re:

HRI HOLDING CORP., *et al.*¹

Debtors.

Chapter 11

Case No. 19-12415 (MFW)

(Jointly Administered)

Ref. No. 459

**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");² 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

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² 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. Notwithstanding anything to the contrary in this Order or the Procedures, none of the Debtors' insurance policies and/or any related agreements shall be sold, assigned, or otherwise transferred pursuant to the Procedures except with the express written consent of the applicable insurer.

13. 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.

14. 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.

15. 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.

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

Date: _____, 2020
Wilmington, Delaware

THE HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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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:

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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. Notwithstanding anything to the contrary in this Order or the Procedures, none of the Debtors' insurance policies and/or any related agreements shall be sold, assigned, or otherwise transferred pursuant to the Procedures except with the express written consent of the applicable insurer.

13. ~~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.

14. ~~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.

15. ~~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.

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

Date: _____, 2020
Wilmington, Delaware

THE HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE

Document comparison by Workshare 9.5 on Thursday, February 20, 2020 4:11:22 PM

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Document 2 ID	file://C:\Users\Matthew\AppData\Local\Temp\WBGX\5688.0\DRAGDROPHRI - Final PFO Misc Asset Sale (W0060151-2xBBE68).DOCX
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Rendering set	Standard

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Padding cell	

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