IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
HRI HOLDING CORP., *et al.*[1]	Case No. 19-12415 (MFW)
Debtors.	(Jointly Administered)

DECLARATION OF MATTHEW R. MANNING IN SUPPORT OF CONFIRMATION OF THE JOINT CHAPTER 11 PLAN OF HRI HOLDING CORP. AND ITS DEBTOR AFFILIATES

I, Matthew R. Manning, hereby submit this declaration (the "Declaration") and declare under the penalty of perjury that the following information is true and correct to the best of my knowledge, information and belief:

1. I am a Managing Director at M-III Advisory Partners, LP ("M-III") and the Chief Restructuring Officer ("CRO") of the above-captioned debtors and debtors-in-possession (the "Debtors"). I am duly authorized to make this Declaration on behalf of the Debtors.

2. I submit this Declaration in support of confirmation of the *Joint Chapter 11 Plan of HRI Holding Corp. and Its Debtor Affiliates* [D.I. 734] (together with all exhibits and as

[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.

1912415201103000000000002

amended, modified and supplemented, the "Plan")[2] and final approval of the *Disclosure Statement for the Joint Plan of HRI Holding Corp. and Its Debtor Affiliates* [D.I. 735] (the "Disclosure Statement"). Except as otherwise indicated, all facts set forth in this Declaration are based on my personal knowledge, information provided by and discussions with professionals or consultants retained by the Debtors, or information I obtained by reviewing relevant documents.

3. I am not being compensated specifically for this testimony other than through payments received as the CRO for the Debtors in these Chapter 11 Cases. If called upon to testify, I could and would testify competently as to the facts set forth herein.

4. M-III's personnel, including myself, specialize in providing financial consulting in distressed scenarios, including in large and complex chapter 11 cases. M-III's expertise includes significant experience assisting distressed companies with day-to-day management activities, including development of pro forma financials and business plans, cash flow management, and implementation of liquidity-enhancing and cost-saving strategies. M-III's debtor-advisory services and its personnel's experiences have included a wide range of activities targeted at stabilizing and improving a company's financial position in both in-court and out-of-court engagements similar to the Debtors' in the State of Delaware and elsewhere. M-III's professionals have experience working on cases with similar fact scenarios, including in those relating to restaurant and other food related operations, in which they were presented with issues and performed analyses similar to the work at hand in these Chapter 11 Cases.

5. I have served as the Debtors' CRO since November 2019, prior to which I, along with certain of my colleagues at M-III, provided financial advisory services to the company since

[2] Capitalized terms used but not defined herein shall have the meanings ascribed to them in the *Declaration of Matthew R. Manning in Support of the Debtors' Chapter 11 Petitions and First Day Pleadings* [D.I. 2] (the "First Day Declaration"), the Plan or the Disclosure Statement (as defined herein), as applicable.

June 2019. During the course of my engagement with the Debtors, including in my capacity as CRO, I, along with additional M-III personnel, have assisted the Debtors with financial advisory and management services. During this time, I gained a comprehensive understanding of the Debtors' business and corporate governance structure, as well as the Debtors' businesses, day-to-day operations and financial affairs. I, or others under my supervision, have participated directly in discussions, due diligence and negotiations with the Debtors' outside counsel, other advisors and parties in interest and their representatives regarding the Disclosure Statement, the Plan and the Global Settlement contained therein.

6. In making the statements and arriving at the conclusions set forth herein, I have relied upon and/or considered, among other things, the following: (a) my knowledge of the Debtors' businesses, operations, assets and liabilities; (b) my experience in chapter 11 cases generally, including the restructuring of businesses and liquidation of assets through chapter 11; (c) the Plan; (d) the Disclosure Statement; (e) my discussions with the Debtors and their other professionals; and (f) my discussions with the Debtors' creditors and other interested parties.

The Disclosure Statement Satisfies the Requirements Under Bankruptcy Code Section 1125

7. Based on the foregoing I believe that the Disclosure Statement satisfies all applicable provisions of the Bankruptcy Code and should be approved on a final basis.

8. **The Disclosure Statement Complies with Bankruptcy Code Section 1125.** I understand that the Disclosure Statement must provide "adequate information" to permit holders of Claims and Interests entitled to vote on the Plan to make an informed decision thereon. It is my belief that the Disclosure Statement contains ample information to satisfy the requirements under Bankruptcy Code Section 1125. Specifically, the Disclosure Statement is the product of the Debtors' extensive review and analysis of their business, assets and liabilities, and circumstances

leading to these Chapter 11 Cases. Additionally, the Disclosure Statement contains detailed information regarding: (i) the terms of the Plan; (ii) the classification and treatment of holders of all Classes of Claims and Interests; (iii) the effect of the Plan on holders of Claims and Interests and other parties in interest thereunder; (iv) certain risk factors to consider that may affect the Plan; (v) certain tax issues related to the Plan and distributions; and (vi) the means for implementation of the Plan. Additionally, Exhibit B to the Disclosure Statement provides the Debtors' liquidation analysis, which illustrates that creditors are estimated to receive more under the proposed Plan than if the Debtors' Chapter 11 Cases were converted to cases under chapter 7 of the Bankruptcy Code. Accordingly, I believe that the Disclosure Statement contains information more than sufficient for a hypothetical reasonable investor to make an informed judgment about the Plan. Thus, it is my belief that the Disclosure Statement contains adequate information within the meaning of Bankruptcy Code section 1125(a) and should be approved on a final basis.

The Plan Satisfies the Plan Confirmation Requirements Under Bankruptcy Code Section 1129

9. Based on the foregoing I believe that the Plan satisfies all applicable provisions of the Bankruptcy Code and should be confirmed.

10. **The Plan Complies with Bankruptcy Code Section 1129(a)(1).** I understand that a plan may be confirmed only if "[t]he plan complies with the applicable provisions of [the Bankruptcy Code]." I further understand that the primary focus of this requirement is to ensure that a plan complies with Bankruptcy Code sections 1122 and 1123, which govern classification of claims and interests and the contents of a plan, respectively.

11. I understand that, under Bankruptcy Code section 1122, a plan may classify various claims and interests into different classes, so long as all the claims and interests in a particular class are substantially similar. It is my understanding that valid business, factual and legal reasons

exist for classifying the Claims and Interests into separate classes under the Plan and that the Claims or Interests in each particular class are substantially similar in that they share the same priority status, contractual rights and enforcement rights against the Debtors' estates. Similar Claims and Interests have not been placed into different classes in order to affect the outcome of the vote on the Plan. Accordingly, I believe that the Plan satisfies Bankruptcy Code section 1122.

12. Furthermore, I understand that Bankruptcy Code section 1123(a) requires that a chapter 11 plan: (a) designate classes of claims and interests; (b) specify unimpaired classes of claims and interests; (c) specify treatment of impaired classes of claims and interests; (d) provide for equality of treatment within each class; (e) provide adequate means for the plan's implementation; (f) provide for the prohibition of nonvoting equity securities and provide an appropriate distribution of voting power among the classes of securities; and (g) contain only provisions that are consistent with the interests of the creditors and equity security holders and with public policy with respect to the manner of selection of the reorganized company's officers and directors. I understand that the Plan satisfies each of these requirements, to the extent applicable. Article III of the Plan designates nine (9) separate Classes of Claims and Interests, as required by Bankruptcy Code section 1123(a)(1). Article III.B of the Plan specifies that the Claims in Classes 1, 2 and 3 are unimpaired under the Plan, as required by Bankruptcy Code section 1123(a)(2). Article III.B further specifies that the Claims or Interests in Classes 4 through 9 are impaired and describes the treatment of each such Class in accordance with Bankruptcy Code section 1123(a)(3). Further, as required by Bankruptcy Code section 1123(a)(4), the treatment of each Claim or Interest within a Class is either (i) the same as the treatment of each other Claim or Interest in such class or (ii) otherwise consistent with the legal rights of such claimant. In accordance with the requirements of Bankruptcy Code section 1123(a)(5), the Plan provides

adequate means for its implementation through Article IV and various other provisions. Specifically, the Plan provides for, among other things: (a) the cancellation of all existing securities and related documents of the Debtors; (b) the dissolution of the existing board of directors or managers, as applicable, of the Debtors; (c) the appointment of the Plan Administrator; and (d) the exemption from certain transfer taxes. Finally, the Plan complies with Bankruptcy Code section 1123(a)(7) in that it appoints a Plan Administrator who will serve as the Debtors' sole officer, director and manager, as applicable, following the Effective Date. This appointment is consistent with the interests of creditors as the Debtors are liquidating and the remaining matters for the post-Effective Date Debtors will involve monetizing any remaining Miscellaneous Assets, implementing the Plan transactions and winding down the Debtors' affairs and closing the Chapter 11 Cases.

13. I believe that the discretionary contents of the Plan are appropriate under Bankruptcy Code section 1123(b). The Plan includes various provisions that fall under the broad spectrum of Bankruptcy Code section 1123(b). For instance, the Plan impairs Classes 4 through 9, leaving Classes 1, 2 and 3 unimpaired. *See* Plan Art. III. The Plan further provides for the treatment of executory contracts and unexpired leases to which the Debtors are a party. *See* Plan Art. V. I understand that the Plan includes other provisions designed to ensure its implementation that are consistent with the Bankruptcy Code, including the provisions of: (a) Article VI, regarding distributions from the Debtors' estates, (b) Article VIII.A, regarding the Global Settlement and (c) Article XI, regarding retention of jurisdiction by the Court over certain matters after the Effective Date. I understand that each of these provisions is appropriate under applicable law, including sections 1123(b)(1), (3) and (6), and Bankruptcy Rule 9019.

14. **The Plan Complies with Bankruptcy Code Section 1129(a)(2).** I believe that the Debtors have complied with the applicable provisions of the Bankruptcy Code and the Bankruptcy Rules, as modified by the Court's *Order (I) Approving the Disclosure Statement on an Interim Basis; (II) Scheduling a Combined Hearing on Final Approval of the Disclosure Statement and Plan Confirmation and Deadlines Related Thereto; (III) Approving the Solicitation, Notice and Tabulation Procedures and the Forms Related Thereto; and (IV) Granting Related Relief* [D.I. 731] (the "Interim Approval/Procedures Order") governing notice, disclosure and solicitation in connection with the Plan and the Disclosure Statement. The certificates of service [D.I. 753 and 794] filed reflecting compliance with the notice and solicitation requirements of the Interim Approval/Procedures Order shows that the Debtors have complied with such solicitation and disclosure requirements. I also understand that the Debtors caused the Plan, the Disclosure Statement, the Interim Approval and Procedures Order, the Combined Hearing Notice, the Solicitation Procedures, the Plan Supplement, and other information pertinent to voting on the Plan and responding to final approval of the Disclosure Statement and confirmation of the Plan to appear conspicuously on the main page of the website maintained by the Debtors' noticing, claims and administrative agent, Kurtzman Carson Consultants LLC, in these Chapter 11 Cases. Accordingly, to the best of my knowledge, the Debtors have complied with all applicable disclosure and solicitation requirements set forth in the Bankruptcy Code and the Bankruptcy Rules, as modified by the Interim Approval/Procedures Order.

15. **The Plan is Proposed in Good Faith Pursuant to Bankruptcy Code Section 1129(a)(3).** I understand that, under Bankruptcy Code section 1129(a)(3), a plan must be "proposed in good faith and not by any means forbidden by law." The Debtors structured and proposed the Plan in a manner that effectuates the objectives and purposes of the Bankruptcy Code.

I believe the Plan is the product of consensus among the Debtors, the Creditors' Committee and the Prepetition Secured Lenders after extensive arm's length and good faith negotiations. I believe that the Plan contains no provisions that are contrary to state or other laws nor is there any indication the Debtors lack the ability to consummate the Plan. I also understand that the holders of Claims or Interests in the Voting Classes overwhelmingly accepted the Plan, which itself provides independent evidence of good faith. For these reasons, I believe the Plan was filed in good faith to further the purposes of the Bankruptcy Code, and I therefore believe that it satisfies the requirements of Bankruptcy Code section 1129(a)(3).

16. **The Plan Complies with Bankruptcy Code Section 1129(a)(4).** I understand that Bankruptcy Code section 1129(a)(4) requires: "Any payment made . . . by the debtor . . . for services or for costs and expenses in or in connection with the case . . . has been approved by, or is subject to the approval of, the court as reasonable." Pursuant to the Plan and other orders of the Court, all Professional Fee Claims are subject to Court approval. Accordingly, I believe that the Plan complies with the requirements of Bankruptcy Code section 1129(a)(4).

17. **The Plan is in the Best Interests of Creditors and Interest Holders under Bankruptcy Code Section 1129(a)(7).** I understand that, to satisfy Bankruptcy Code section 1129(a)(7), the Debtors must demonstrate that with respect to each impaired class of claims or interests, each individual holder of a claim or interest has either accepted the plan or will receive or retain property having a present value, as of the effective date of the plan, of not less than what such holder would receive if the debtor were liquidated under chapter 7 of the Bankruptcy Code at that time.

18. I also understand that the "best interests" test applies to individual dissenting creditors or interest holders, rather than classes of claims and interests, and is generally satisfied

through a comparison of the estimated recoveries for a debtor's stakeholders in a hypothetical liquidation of that debtor's estate under chapter 7 of the Bankruptcy Code against the estimated recoveries under that debtor's chapter 11 plan.

19. To satisfy the best interests test, I first analyzed the Debtors' unrestricted cash as of May 29, 2020. That amount would have to be reduced by the amount of any claims secured by the Debtors' assets, the costs and expenses of the liquidation and any additional administrative expenses and priority claims that may result from the termination of the Debtors' businesses and the use of chapter 7 of the Bankruptcy Code. Any remaining net cash would be allocated to creditors in strict priority in accordance with Bankruptcy Code section 726.

20. For the reasons that follow, and based on the hypothetical liquidation analysis attached to the Disclosure Statement as Exhibit B (the "Liquidation Analysis"), I believe that liquidation under chapter 7 of the Bankruptcy Code would result in smaller distributions to holders of Claims and Interests than those provided for in the Plan because of (a) the likelihood that the Debtors' assets would have to be sold or otherwise disposed of in a less orderly fashion, (b) additional administrative expenses required to be satisfied in chapter 7 prior to the payment of any chapter 11 administrative expenses or claims (including, without limitation, the fees and expenses of a Chapter 7 Trustee and his or her professionals) and (c) the inability of a chapter 7 trustee to maximize the return to the Debtors' estates to the same degree, or as efficiently, as provided by the Global Settlement as set forth in the Plan.

21. The Liquidation Analysis was prepared by the Debtors and individuals at M-III working directly under my supervision. I am familiar with the Liquidation Analysis and the underlying financial data and assumptions upon which the Liquidation Analysis is based, which are accurately described in the Liquidation Analysis and notes thereto. I believe that the estimated

liquidation values set forth in the Liquidation Analysis are fair and reasonable estimates of the value of the Debtors' assets based on the assumptions set forth therein. I believe that the estimates as to the ultimate amount of allowed claims against, and expenses of, the hypothetical chapter 7 estates are fair and reasonable and, based on those estimates, combined with the estimated liquidation values of assets, that each Class of Claims under the Plan will receive at least as much as that Class would receive in a hypothetical chapter 7 liquidation.

22. In addition, I have recently reviewed the Liquidation Analysis in light of all current information since its filing and continue to believe that the conclusions set forth therein remain unchanged as of the date hereof. In light of all the information I have reviewed, I continue to believe that recoveries under the Plan for each Class of Claims under the Plan are more favorable to creditors than under a hypothetical chapter 7 liquidation.

23. With respect to the Liquidation Analysis, we assumed that any liquidation of the Debtors' remaining assets would be accomplished through conversion of the chapter 11 cases to cases under chapter 7 of the Bankruptcy Code on or about August 31, 2020. We also assumed that the Bankruptcy Court would appoint a chapter 7 trustee on that hypothetical conversion date to oversee the liquidation of the Debtors' estates, during which time any of the Debtors' remaining assets would be sold, distributed or surrendered to the respective lien holders, and the cash proceeds, net of liquidation related costs, would then be distributed to creditors in accordance with relevant law. I believe there can be no assurance that the liquidation would be completed in a limited or expeditious time frame owing to, for example, the need for a chapter 7 trustee to become familiar with the Debtors' assets, liabilities, books, and records. I further believe that there can be no assurances that the recoveries assigned to the Debtors' assets would in fact be realized.

24. Additionally, we assumed that the costs of liquidation under chapter 7 of the Bankruptcy Code would include the fees payable to a chapter 7 trustee, as well as those fees that might be payable to attorneys and other professionals that such trustee would engage. The foregoing types of claims and other claims that might arise in a chapter 7 liquidation case (including claims from potentially redundant activities that could be engaged in by a chapter 7 trustee) or result from the pending Chapter 11 Cases, including any unpaid expenses incurred by the Debtors during the Chapter 11 Cases such as compensation for attorneys, brokers and financial advisors, would be paid in full from the liquidation proceeds before the balance of those proceeds would be made available for distributions to other creditors.

25. After considering the effects that a liquidation under chapter 7 of the Bankruptcy Code would have on the ultimate proceeds available for distribution to the holders of Claims and Interests in these Chapter 11 Cases, including the decrease in value caused by a chapter 7 liquidation, the increased costs and expenses of a liquidation under chapter 7 of the Bankruptcy Code arising from fees payable to a trustee in bankruptcy and professional advisors to such trustee and the costs of a corporate wind-down of operations, it is my conclusion that confirmation of the Plan will provide each holder of a Claim with a recovery that is not less than what such holder would receive pursuant to a liquidation of the Debtors under chapter 7 of the Bankruptcy Code. I further understand that no party has objected to confirmation of the Plan under the "best interests" test. As such, I believe that the Debtors have satisfied the requirements of Bankruptcy Code section 1129(a)(7).

26. **The Plan Complies with Bankruptcy Code Sections 1129(a)(8) and 1129(b).** I understand that Bankruptcy Code section 1129(a)(8) requires that "with respect to each class of claims or interests — (A) such class has accepted the plan or (B) such class is not impaired under

the Plan." As set forth in the *Declaration of Leanne V. Rehder Scott Regarding the Solicitation and Tabulation of Votes on the Joint Chapter 11 Plan of HRI Holding Corp. and Its Debtor Affiliates* [D.I. 803] (the "Voting Declaration"), the holders of Claims in Class 1 (Secured Tax Claims), Class 2 (Other Secured Claims) and Class 3 (Other Priority Claims) are unimpaired under the Plan and, pursuant to Bankruptcy Code section 1126(f), are conclusively presumed to have voted to accept the Plan. Thus, the requirements of section 1129(a)(8) have been satisfied as to each of Classes 1, 2 and 3.

27. As set forth in the Voting Declaration, the holders of Claims in Class 4 (Prepetition Secured Obligations Claims) and Class 6 (Prepetition Secured Obligations Deficiency Claims) voted to accept the Plan in each of the Debtors' Chapter 11 Cases and Class 5 (General Unsecured Claims) overwhelming voted to accept the Plan in twenty-seven (27) of the Debtors' thirty-nine (39) Chapter 11 Cases (the "Dissenting Classes").[3] Thus, as to the impaired and accepting Classes 4, 5 and 6, I believe that the requirements of section 1129(a)(8) likewise have been satisfied.

28. Holders of Claims in Classes 7 (Subordinated Claims), 8 (Intercompany Interests) and 9 (Interests in Holdco) are not entitled to receive or retain any property from the Debtors' estates under the Plan on account of their Claims and Interests and, therefore, are deemed to reject the Plan pursuant to Bankruptcy Code section 1126(g).

[3] Based on my review of the Voting Declaration, I understand that a single vote to reject the Plan on account of a claim valued at less than $500 was cast in Class 5 (General Unsecured Claims) in each of the following Chapter 11 Cases: HOP Bridgewater LLC, HOP Cherry Hill LLC, HOP Fairfield LLC, HOP Farmingdale LLC, HOP Heights LLC, HOP Holmdel LLC, HOP New Brunswick LLC, HOP Paramus LLC, HOP Ramsey LLC, HOP Secaucus LLC, HOP Westbury LLC, and HOP Woodbridge LLC. I further understand that with the exception of two of these Chapter 11 Cases (HOP Fairfield LLC and HOP Heights LLC), no other ballots were submitted on account of a claim in Class 5 for such Debtors. With respect to Debtor, HOP Fairfield LLC, one additional ballot was received in the amount of $85.00 resulting in 50% in number and 26.81% in amount in Class 5 voting to accept the Plan. With regard to Debtor, HOP Heights LLC, one additional ballot was received in the amount of $440,267.47 resulting in 50% in number and 99.95% in amount in Class 5 voting to accept the Plan.

29. Despite the deemed rejection by Classes 7 through 9 and rejection by the Dissenting Classes, I understand that the Plan nonetheless may be confirmed under the "cram down" provisions of section 1129(b) of the Bankruptcy Code. I understand that a plan may be confirmed notwithstanding the rejection by a class of claims or interests if the plan does not discriminate unfairly and is fair and equitable. It is my further understanding that (a) the "fair and equitable" requirement is satisfied if the holders of claims and equity interests in classes junior to the rejecting classes are not receiving any property under the plan, and (b) a plan does not discriminate unfairly if the legal rights of a dissenting class are treated in a manner that is consistent with the treatment of other classes whose legal rights are substantially similar to those of that class. I believe that the Plan is fair and equitable and does not discriminate unfairly with respect to any holders of Claims or Interests in the rejecting Classes, including those in the Dissenting Classes. Accordingly, I believe the Plan satisfies the "cram-down" requirements of Bankruptcy Code section 1129(b).

30. **The Plan Complies with Bankruptcy Code Section 1129(a)(9).** I understand that all administrative and priority claims against the Debtors will be satisfied in the manner required by section 1129(a)(9) of the Bankruptcy Code, unless such holder of a particular claim has agreed to different treatment of such claim.

31. **The Plan Complies with Bankruptcy Code Section 1129(a)(10).** The Voting Declaration shows that at least one Class of Claims that is impaired under the Plan voted to accept the Plan. Specifically, Class 4 (Prepetition Secured Obligations Claims), Class 6 (Prepetition Secured Obligations Deficiency Claims) voted to accept the Plan as well as the overwhelming majority of Class 5 (General Unsecured Claims). Accordingly, I believe that the Plan complies with section 1129(a)(10) of the Bankruptcy Code.

32. **The Plan Complies with Bankruptcy Code Section 1129(a)(11).** Based on my knowledge of the Debtors and the terms of the Plan, I believe that the Plan is feasible. I understand that Bankruptcy Code section 1129(a)(11) provides that a court may confirm a plan only if "[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan." Because the Plan expressly provides for the liquidation of the Debtors' assets and the proposed distribution of those assets to creditors holding Allowed Claims, I believe that the Plan satisfies Bankruptcy Code section 1129(a)(11).

33. **The Plan Complies with Bankruptcy Code Section 1129(a)(12).** The Plan and the proposed Confirmation Order provide that all fees required to be paid under 28 U.S.C. § 1930 will be paid on or prior to the Effective Date. Based on my review of the Debtors' books and records, the Debtors have adequate means to make such payments, and therefore the Plan satisfies section 1129(a)(12) of the Bankruptcy Code.

34. **The Plan Complies with Bankruptcy Code Section 1129(c).** The Plan is the sole plan that has been proposed, and thus I believe that the requirement of section 1129(c) has been met.

35. **The Plan Complies with Bankruptcy Code Section 1129(d).** The Plan does not have as one of its principal purposes the avoidance of taxes or avoidance of requirements of section 5 of the Securities Act of 1933, and I am not aware of any filing by any governmental agency asserting such avoidance. Thus, I believe that the requirements of Bankruptcy Code section 1129(d) have been met.

Other Plan Provisions Are Necessary and Appropriate

36. **The Plan's Releases and Exculpation Provisions Should Be Approved.** Article VIII.D of the Plan provides for the releases by the Debtors of the Released Parties (the "Debtors' Releases") and Article VIII.E of the Plan provides for consensual releases by each holder of a Claim or Interest that votes on the Plan and does not opt out of such release and each holder of a Claim or Interest that submits an opt-in form indicating that such holder opts-in to such release in accordance with the terms of the Plan (the "Consensual Third-Party Releases," together with the Debtors' Releases, the "Releases")). The Plan also includes in Article VIII.F a customary exculpation and limitation of liability provision (the "Exculpation Provision").

37. I believe that the Debtors' Releases are appropriately tailored under the facts and circumstances of these Chapter 11 Cases and are supported by ample consideration. The Debtors' directors, officers, and employees each have substantially contributed to these Chapter 11 Cases by assisting with the Sale and Plan processes to maximize value for the estates. Moreover, the Debtors' directors and officers are entitled to indemnification from the Debtors in the event that they are required to defend against or are found liable for a released claim. Further, the Creditors' Committee, the Prepetition Secured Lenders and the Administrative Agent have similarly each substantially contributed to these Chapter 11 Cases. Specifically, in connection with the Global Settlement, the non-Debtor Released Parties each provided significant consideration including providing consideration regarding their claims and the release of liens on assets that will enable the Debtors' estates to provide a meaningful recovery to creditors who would otherwise receive little, if any distribution on account of their claims. Notably, the claims subject to the Debtors' Releases specifically exclude claims based on or arising out of gross negligence, fraud or willful misconduct.

38. The Debtors' Releases are an integral part of the Plan and provide appropriate levels of protection to the Released Parties. Accordingly, I believe that approval of the Debtors' Releases represents the sound and valid exercise of the Debtors' business judgment and is permissible under Bankruptcy Code section 1123(b)(6) and applicable law. The Released Parties made important contributions in these Chapter 11 Cases, including negotiating and formulating the Global Settlement, the Plan and otherwise navigating the Debtors and their constituencies toward a successful exit from chapter 11. The Debtors' Releases are of an integral nature to the Plan as a whole, as well as to the compromises under the Global Settlement and their implementation by the Plan has facilitated the Debtors' Chapter 11 Cases, which ultimately will result in distributions to the Debtors' general unsecured creditors. Furthermore, I do not have any reason to believe that the Debtors are releasing any material claims. As such, retaining and potentially pursuing any unknown or speculative claims against the Released Parties is not in the best interests of the Debtors' various constituencies as the costs involved likely would outweigh any potential benefits from pursuing such claims. Finally, the Debtors' directors and management reviewed, considered, and approved the Debtors' Releases in the sound exercise of their business judgement.

39. The Consensual Third-Party Releases are fair and reasonable and should be approved. The holders of Claims and Interests have been provided sufficient information to determine whether to grant the Consensual Third-Party Releases, Those holders of Claims and Interests entitled to vote on the Plan have been given the opportunity to opt-out of the Consensual Third-Party Releases and holders of Claims and Interests also have been given the opportunity to opt-in to the Consensual Third-Party Releases. Accordingly, the Consensual Third-Party Releases are entirely voluntary and optional, and I believe they should be approved.

40. I believe that the proposed Exculpation Provision is appropriate based on the limitation of liability provided in Bankruptcy Code section 1125(e). The Exculpation Provision expressly and narrowly applies to the Exculpated Parties and only in connection with the Chapter 11 Cases. Accordingly, I believe that the Exculpation Provision should be approved as appropriate under Bankruptcy Code section 1125(e).

41. **The Global Settlement.** The Debtors have incorporated the terms of the Global Settlement into the Plan. The Global Settlement is a critical component of the Plan. The Global Settlement (a) was negotiated at arms' length and in good faith and (b) represents compromises of claims, controversies and positions that, as economic matters, fall well above the lowest point in the range of reasonableness. The Global Settlement effectuates a good faith compromise of Claims and Causes of Action asserted or that could have been asserted by the Creditors' Committee, and by and against the Debtors, and the Prepetition Secured Lenders. As part of the Global Settlement, the Prepetition Secured Lenders agreed to, among other things, (a) release their respective liens, claims and rights to any Retained Sale Proceeds and Identified Liquor License Proceeds with such amounts to be held and utilized for the benefit of the Debtors' estates and creditors without any distributions therefrom in favor of the Prepetition Secured Lenders and (b) release their respective liens on the Excluded Liquor License Proceeds and have such proceeds be shared on a Pro Rata basis between (i) the Prepetition Secured Lenders on account of their Allowed Prepetition Secured Obligations Deficiency Claims and (ii) the holders of Allowed General Unsecured Claims. In return, notwithstanding anything in the Final DIP Order to the contrary, upon the closing of the sale to the Purchaser, the "Challenge Period" in the Final DIP Order terminated and the Creditors' Committee was barred from seeking to challenge or otherwise object to the amount, validity, enforceability, priority, or extent of the Prepetition Secured Obligations or the liens of the

Prepetition Secured Lenders on the Pre-Petition Collateral (as defined in the Final DIP Order) securing the Prepetition Secured Obligations Claims; *provided*, *however*, the Creditors' Committee reserved the right to reconcile the final amount of the Prepetition Secured Obligations Deficiency Claims. In addition to providing a meaningful recovery to general unsecured creditors where such recovery was otherwise unlikely, the Global Settlement provided the framework for the Plan, ending the prospect of potentially expensive, extensive and time-consuming litigation over the respective parties' rights and interests in the Debtors' assets, and providing for an expedited and efficient wind down of the Debtors' Estates for the benefit of all stakeholders. As a result, I believe that the Global Settlement is fair and reasonable and in the best interest of the Debtors, their creditors and estates, and I believe that the Global Settlement meets the criteria necessary for approval under the Bankruptcy Code.

42. **Substantive Consolidation of the Debtors' Estates for Distribution Purposes Should Be Approved.** I understand that the Plan serves as a motion by the Debtors to partially substantively consolidate all of the estates of the Debtors into a single consolidated estate for distribution purposes only. *See* Plan Article IV.A. The Plan groups the Debtors together solely for purposes of making distributions via the Plan in respect of Claims against and/or Interests in the Debtors.

43. I believe that substantive consolidation of the Debtors' estates for distribution purposes only is appropriate in these Chapter 11 Cases. Such consolidation shall not affect any Debtor's status as a separate legal entity, change the organizational structure of the Debtors' business enterprise, constitute a change of control of any Debtor for any purpose, cause a merger or consolidation of any legal entities, nor cause the transfer of any assets or the assumption of any liabilities; and, except as otherwise provided by or permitted in the Plan, all of the Debtor entities

shall continue to exist as separate legal entities. Moreover, no creditor has objected to the substantive consolidation of the Debtors' estates for distribution purposes.

44. I believe that substantive consolidation of the Debtors' estates for distribution purposes under the terms of the Plan will not adversely impact the treatment of the Debtors' creditors, but rather will allow for greater efficiencies and simplification in administration, and thus, will reduce expenses by decreasing the administrative difficulties and costs related to the administration of and distributions from the Debtors' estates. Accordingly, I believe substantive consolidation of the Debtors' estates for distribution purposes should be approved through confirmation of the Plan.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: November 3, 2020

/s/ Matthew R. Manning
MATTHEW R. MANNING
CHIEF RESTRUCTURING OFFICER