

**(a) AN AUCTION AND (b) A HEARING TO CONSIDER APPROVING
THE HIGHEST AND BEST OFFER; AND (4) GRANTING RELATED RELIEF**

Upon the motion, dated February 2, 2011 (Docket No. 489) (the "Motion"),² of the above-captioned debtors and debtors-in-possession (collectively, the "Debtors"), pursuant to sections 105(a), 363, and 365 of Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 6004, 6006, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Local Rule 6004-1, for entry of (I) a procedures order (the "Sale Procedures Order"), inter alia, (a) approving certain sale procedures (collectively, the "Sale Procedures") and scheduling a competitive auction (the "Auction") in connection with the sale (the "Sale") of the Debtors' assets (collectively, the "Assets") comprising the Bugaboo Creek Steak House business (the "Business") and the assumption and assignment of certain related executory contracts and unexpired leases (the "Assumed Agreements"); (b) authorizing the Debtors to enter into a Purchase Agreement (the "Agreement") with an affiliate of Landry's Restaurants, Inc., Landry's Seafood House - North Carolina, Inc., and/or any such additional entity or entities formed thereby to acquire the Assets (collectively, "Landry" or the "Stalking Horse Bidder") in connection therewith; (c) authorizing the Debtors to offer certain bid protections to the Stalking Horse Bidder; (d) scheduling a sale hearing (the "Sale Hearing") to consider entry of an order approving the Sale; and (e) approving the form and manner of notice of the Sale Hearing (the "Sale Notice"), all as more fully set forth in the Motion; and this Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided, and it appearing that no other or further notice need be provided; and a hearing on the procedural relief requested in the Motion having been held before the Court on February 23,

² All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

2011 (the "Bid Procedures Hearing"); and upon the record of the Bid Procedures Hearing; and such relief being in the best interest of the Debtors, their estates, and creditors and a sound and prudent exercise of the Debtors' business judgment; and any objections to the procedural relief requested in the Motion having been resolved, withdrawn, or otherwise overruled by this Court; and after due deliberation, and sufficient cause appearing therefor,

IT IS HEREBY FOUND AND DETERMINED THAT:

A. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157(b)(1) and 1334(a), and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (N) and (O). Venue of these cases and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

B. The Debtors have articulated good and sufficient reasons for, and the best interests of their estates will be served by, this Court's granting the procedural relief requested in the Motion, including approval of: (i) the Sale Procedures; (ii) the Debtors' offer to the Stalking Horse Bidder of an expense reimbursement and break-up fee of \$125,000 (the "Expense Reimbursement Fee") under the terms and conditions of the Agreement; (iii) scheduling the Auction and the Sale Hearing; and (iv) the form and manner of notice of the Auction and Sale.

C. The proposed notice of the Sale of the Assets, the Sale Hearing, the Auction, the Objection Deadline, the Proposed Cure Amounts, and the Sale Procedures, as set forth in the Motion, is good, appropriate, adequate, and sufficient and is reasonably calculated to provide all interested parties with timely and proper notice of the Sale and the Sale Procedures, and no other or further notice is required for the Sale of the Assets to the Successful Bidder.

D. The Debtors have articulated good and sufficient reasons for, and the best interests of their estates will be served by, this Court's scheduling a subsequent Sale Hearing to consider granting the other or remaining relief requested in the Motion, including approval of the Sale of the Assets to the Successful Bidder free and clear of all liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code.

E. Authorizing the Debtors to offer the Expense Reimbursement Fee to induce Landry to serve as the Stalking Horse Bidder represents a sound and prudent exercise of the Debtors' business judgment and will allow the Debtors to maximize the value of the Assets and seek to maximize the value of their other assets and remaining businesses.

ACCORDINGLY, IT IS HEREBY ORDERED EFFECTIVE IMMEDIATELY THAT:

1. The procedural relief requested in the Motion is approved to the extent provided herein.
2. The Debtors are authorized to enter into the Agreement with the Stalking Horse Bidder, subject to the terms and conditions thereof.
3. The Sale Procedures, in a form substantially similar to the procedures attached hereto as **Exhibit 1**, are approved in all respects. Except as otherwise set forth therein, any competing bid must conform to, and comply with, the Sale Procedures. The Debtors are authorized to take any and all actions necessary or appropriate to implement the Sale Procedures.
4. Allowance and payment of the Expense Reimbursement Fee under the terms and conditions set forth and in accordance with the terms of the Agreement is approved, and the Stalking Horse Bidder shall be entitled to the Expense Reimbursement Fee to the extent set forth in the Agreement and this Order.
5. If payment of the Expense Reimbursement Fee, or the Stalking Horse Bidder's entitlement to the return of the Deposit, is triggered under the terms of the Agreement, the Debtors are authorized, without further order of this Court, to (i) pay to the Stalking Horse Bidder the Expense Reimbursement Fee in the manner and upon the terms set forth in the Agreement from the proceeds of the Sale to the Successful Bidder and/or (ii) cause the release of the Deposit to the Stalking Horse Bidder (as applicable). If actually due and owing under the terms of the Agreement, the Expense Reimbursement Fee shall constitute an allowed administrative expense claim arising in these Chapter 11 cases under sections 503(b) and

507(a)(2) of the Bankruptcy Code.

6. The Sale Notice, in a form substantially similar to the notice attached hereto as Exhibit 2, is approved, and the Debtors shall cause the Sale Notice to be mailed to all known creditors in these cases as soon as practicable following the date hereof. In addition, the Debtors shall cause this Order and the Sale Notice to be served (via overnight delivery, facsimile, or email) to (a) the United States Trustee, (b) the respective counsel to the Lenders, (c) the counsel to the Committee, (e) all other known secured creditors of the Debtors, (f) all parties that have requested notice in these cases pursuant to Bankruptcy Rule 2002, (g) the United States Attorney General, (h) the United States Attorney's Office, (i) the Internal Revenue Service, (j) all parties to the known executory contracts and unexpired leases that would potentially be assumed and assigned in connection with the Sale, (k) all known state and local taxing authorities for each jurisdiction within which the Sellers' restaurants operate, and (l) the Stalking Horse Bidder and all other parties that have been identified by the Debtors and their advisors as being potentially interested in making an offer to purchase the Assets and participating in the Auction. Service of the Sale Notice and this Order in accordance with the Motion and as set forth herein shall be deemed appropriate, adequate, and sufficient and reasonably calculated to provide all interested parties with timely and proper notice of the Agreement and all transactions contemplated thereby, the Sale of the Assets, the Auction, the Bid Procedures, the Objection Deadline, the Sale Hearing, the assumption and assignment of the Assumed Agreements, and the Proposed Cure Amounts, and no other or further notice shall be required therefor. For the avoidance of doubt, the Debtors will serve upon all counterparties to the Assumed Contracts a notice of proposed cure amounts at the same time they serve the Sale Notice.

7. If bids are submitted in accordance with the Sale Procedures, the Auction shall be held at **10:00 a.m. (Eastern Time) on March 7, 2011**, at the offices of Cahill Gordon & Reindel LLP, 80 Pine Street, New York, New York 10005. Parties may appear telephonically upon the consent of the Debtors. In accordance with Local Rule 6004-1(c)(ii)(C), the Auction

shall be conducted openly, and all creditors of the Debtors will be permitted to attend.

8. Each Qualified Bidder and Landry shall be required at or prior to the Auction to confirm that they have not engaged in any collusion with any other party respect to its bidding on the Assets.

9. The Sale Hearing to consider approval of the Debtors' entry into and consummation of a transaction with the Stalking Horse Bidder or a Successful Bidder (as applicable) shall be held on **March 11, 2011 at 9:30 a.m. (Eastern Time)** at the United States Bankruptcy Court, 824 Market Street, 5th Fl., Courtroom #4, Wilmington, Delaware, unless rescheduled to another date in accordance with the Sale Procedures.

10. Any objections to the Sale of the Assets to the Successful Bidder shall be in writing, state the basis of such objection with specificity, and be filed with the Court and served so as to be **received actually** on or before **March 7, 2011 at 4:00 p.m. (Eastern Time)** on: (i) counsel to the Debtors, Cahill Gordon & Reindel LLP, Eighty Pine Street, New York, New York 10005 (Attn: Joel H. Levitin, Richard A. Stieglitz Jr., and Maya Peleg), fax number: (212) 369-5420, and Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801 (Attn: Mark D. Collins and Christopher M. Samis), fax number: (302) 651-7701; (ii) counsel to Ally Commercial Finance LLC, Vedder Price P.C., 222 N. LaSalle Street, Suite 2600, Chicago, Illinois 60601 (Attn: Douglas J. Lipke), fax number: (312) 609-5005; (iii) counsel to Wells Fargo Capital Finance, Inc., Bingham McCutchen LLP, 399 Park Avenue, New York, New York, 10022-4689 (Attn: Katherine G. Weinstein), fax number: (212) 752-5378; (iv) counsel to Ableco Finance LLC, Schulte Roth & Zabel LLP, 919 Third Avenue, New York, New York 10022 (Attn: Eliot L. Relles), fax number: (212) 593-5955; (v) counsel to the Committee, Pachulski Stang Ziehl & Jones LLP, (a) 10100 Santa Monica Boulevard, 11th Floor, Los Angeles, California 90067 (Attn: Jeffrey N. Pomerantz), fax number: (310) 201-0760, and (b) 919 North Market Street, 17th Floor, Wilmington, Delaware 19899-8705 (courier 19801) (Attn.: Bradford J. Sandler), fax number: (302) 625-

4400; (vi) the Office of the United States Trustee, J. Caleb Boggs Federal Building, 844 King Street, Suite 2313 Lockbox 35, Wilmington, Delaware 19801 (Attn: Juliet Sarkessian), fax number: (302) 573-6497; and (vii) the Stalking Horse Bidder, c/o Landry's Restaurants, Inc., 1510 West Loop South, Houston, Texas 77027 (Attn: Steven Scheinthal), fax number: (713) 386-7070, and counsel to the Stalking Horse Bidder, Young Conaway Stargatt & Taylor, LLP, The Brandywine Building, 1000 West Street, 17th Floor, Wilmington, Delaware 19801 (Attn: Michael R. Nestor and Craig D. Grear), fax number: (302) 571-1253.

11. Any objections to the Debtors' Cure Amount Schedule attached as **Exhibit 3** hereto (which Schedule identifies the Assumed Agreements) (a "**Cure Objection**") or otherwise with respect to the proposed assumption and assignment of an Assumed Agreement to the Stalking Horse Bidder shall: (a) be in writing; (b) be filed with the Court, and served so as to be **actually received** on or before **March 7, 2011 at 4:00 p.m. (Eastern Time)** on: (i) counsel to the Debtors, Cahill Gordon & Reindel LLP, Eighty Pine Street, New York, New York 10005 (Attn: Joel H. Levitin, Richard A. Stieglitz Jr., and Maya Peleg), fax number: (212) 369-5420, and Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801 (Attn: Mark D. Collins and Christopher M. Samis), fax number: (302) 651-7701; (ii) counsel to Ally Commercial Finance LLC, Vedder Price P.C., 222 N. LaSalle Street, Suite 2600, Chicago, Illinois 60601 (Attn: Douglas J. Lipke), fax number: (312) 609-5005; (iii) counsel to Wells Fargo Capital Finance, Inc., Bingham McCutchen LLP, 399 Park Avenue, New York, New York, 10022-4689 (Attn: Katherine G. Weinstein), fax number: (212) 752-5378; (iv) counsel to Ableco Finance LLC, Schulte Roth & Zabel LLP, 919 Third Avenue, New York, New York 10022 (Attn: Eliot L. Relles), fax number: (212) 593-5955; (v) counsel to the Committee, Pachulski Stang Ziehl & Jones LLP, (a) 10100 Santa Monica Boulevard, 11th Floor, Los Angeles, California 90067 (Attn: Jeffrey N. Pomerantz), fax number: (310) 201-0760, and (b) 919 North Market Street, 17th Floor, Wilmington, Delaware 19899-8705 (courier 19801) (Attn.: Bradford J. Sandler), fax number: (302) 625-4400; (vi) the Office of the United States

Trustee, J. Caleb Boggs Federal Building, 844 King Street, Suite 2313 Lockbox 35, Wilmington, Delaware 19801 (Attn: Juliet Sarkessian), fax number: (302) 573-6497; and (vii) the Stalking Horse Bidder, c/o Landry's Restaurants, Inc., 1510 West Loop South, Houston, Texas 77027 (Attn: Steven Scheinthal), fax number: (713) 386-7070, and counsel to the Stalking Horse Bidder, Young Conaway Stargatt & Taylor, LLP, The Brandywine Building, 1000 West Street, 17th Floor, Wilmington, Delaware 19801 (Attn: Michael R. Nestor and Craig D. Grear), fax number: (302) 571-1253; (c) specify the objecting party's asserted cure amounts, if any; and (d) be accompanied by appropriate supporting documentation demonstrating the calculation of the cure amount, as claimed. Notwithstanding the foregoing, in the event that the Stalking Horse Bidder is not the Successful Bidder, any objections by a party to any Assumed Agreement regarding adequate assurance of future performance thereunder by such Successful Bidder may be raised at or prior to the Sale Hearing; **provided, however, that any Cure Objections must still be properly filed and served in the manner set forth herein so as to be actually received on or before March 7, 2011 at 4:00 p.m. (Eastern Time), regardless of whether or not the Stalking Horse Bidder is the Successful Bidder.**

12. Unless an objection to the proposed assumption and assignment of an Assumed Agreement (including, with respect to any adequate assurance of future performance thereunder) and/or a Cure Objection is timely and properly filed and served in the manner set forth in this Order, all non-debtor parties to the Assumed Agreements shall be deemed to have consented, as applicable, to the applicable provision of the Cure Amount Schedule and/or be forever otherwise barred from objecting thereto in the future or to the proposed assumption and assignment thereof to the Stalking Horse Bidder or the Successful Bidder (as applicable).

13. Pursuant to the Sale Procedures, all potential Qualified Bidders shall be required to include evidence of adequate assurance of future performance (the "Adequate Assurance Information") as part of their supporting bid materials, as well as the name of a

contact person (with relevant contact information) that counterparties to an Assumed Agreement may contact to discuss or request additional Adequate Assurance Information. The Debtors shall email or fax, provided that they have the relevant contact information, the Adequate Assurance Information they receive to all counterparties to the Assumed Agreements within 24 hours of such receipt. The rights of any counterparty to an Assumed Agreement to object to the adequacy of the Adequate Assurance Information provided (either by the Stalking Horse Bidder or any Successful Bidder) shall be as set forth in paragraph 11 hereof.

14. Notwithstanding any other provision hereof, copies of this Order and all pleadings submitted in support of the Motion and the Cure Amount Schedule shall (to the extent not previously served with the Motion) be served via first class mail (and/or telephonically or via e-mail in the case of subsection (g) below) as soon as practicable following the entry hereof upon the following parties: (a) the Office of the United States Trustee for the District of Delaware; (b) all parties known to have asserted an interest in the Assets (including, without limitation, secured creditors) or their known counsel; (c) counsel for the Committee; (d) all parties that have filed a notice of appearance; (e) all non-debtor parties to the Assumed Agreements; (f) the Internal Revenue Service and the Divisions of Taxation for each of New Jersey and Delaware; (g) the known state and local taxing authorities for each jurisdiction within which the Sellers' restaurants operate; and (h) all parties the Debtors reasonably believe may be interested in bidding on the Assets. Such service shall constitute good and sufficient notice of the Motion and the relief requested therein under applicable Federal and Local Rules of Bankruptcy Procedure and under the circumstances set forth in the Motion and the related documents and evidence presented at the hearing on the Sale Procedures Motion.

15. The Debtors shall provide all counterparties to the Assumed Agreements with notice of the identity of the Successful Bidder (to the extent it is not the Stalking Horse Bidder) within one (1) business day following the Auction via either (a) e-mail or fax or (b) overnight delivery service, in the event the Debtors do not have e-mail or fax information for

such counterparties to the Assumed Agreements. Any counterparties to the Assumed Agreements that want notice of the identity of the Successful Bidder to be sent to them by e-mail or fax shall provide the Debtors with necessary contact information at least one (1) business day prior to the Auction.

16. Notwithstanding the possible applicability of Federal Rules of Bankruptcy Procedure 6004(h) and 6006(d), this Order shall not be stayed for 14 days after the entry hereof and shall be effective immediately upon signature hereof.

17. The Debtors and Landry shall be authorized to take all actions necessary to implement the terms of this Order.

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

Dated: February 24, 2011
Wilmington, Delaware



THE HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE