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*Proposed Counsel to the Debtor and
Debtor-in-Possession*

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

In re:

**HOLLISTER CONSTRUCTION
SERVICES, LLC,¹**

Debtor.

Chapter 11

Case No. 19-27439 (MBK)

Hearing Date: October 8, 2019 at 11:30 a.m.

Objection Deadline: October 1, 2019 at 4:00 p.m.

**NOTICE OF DEBTOR’S MOTION FOR ENTRY OF AN ADMINISTRATIVE FEE
ORDER ESTABLISHING CERTAIN PROCEDURES FOR ALLOWANCE AND
PAYMENT OF INTERIM COMPENSATION AND REIMBURSEMENT OF EXPENSES
OF PROFESSIONALS RETAINED BY ORDER OF THIS COURT AND
REIMBURSEMENT OF EXPENSES BY COMMITTEE MEMBERS**

PLEASE TAKE NOTICE that on **October 8, 2019 at 11:30 a.m. (ET)**, or as soon thereafter as counsel may be heard, the above-captioned debtor and debtor-in-possession (the “Debtor”), by and through its undersigned proposed counsel, shall move (the “Motion”) before the Honorable Michael B. Kaplan, United States Bankruptcy Judge, in Courtroom #8 of the United States Bankruptcy Court for the District of New Jersey, 402 East State Street, Trenton,

¹ The Debtor in this chapter 11 case and the last four digits of its taxpayer identification number is: Hollister Construction Services, LLC (5404).

New Jersey 08608, for entry of an order, substantially in the form submitted herewith, Establishing Certain Procedures for Allowance and Payment of Interim Compensation and Reimbursement of Expenses of Professionals Retained by Order of this Court and Reimbursement of Expenses by Committee Members.

PLEASE TAKE FURTHER NOTICE that the Debtor shall rely upon the Motion. No brief is necessary as no novel issues of fact or law are presented by the Motion. A proposed form of order was also submitted therewith. Oral argument is requested in the event an objection is timely filed.

PLEASE TAKE FURTHER NOTICE that any objections to the Motion must be filed with the Clerk of the Court together with proof of service thereof, and served so as to be actually received no later than October 1, 2019 at 4:00 p.m. (ET) by proposed counsel to the Debtors, Lowenstein Sandler LLP, One Lowenstein Drive, Roseland, New Jersey 07068, Attn.: Kenneth A. Rosen, Esq.

PLEASE TAKE FURTHER NOTICE that objections, if any, must: (a) be in writing; (b) comply with the Bankruptcy Rules and the Local Rules; and (c) state with particularity the legal and factual basis for the objection.

PLEASE TAKE FURTHER NOTICE that unless an objection is timely filed and served in accordance with this notice, it may not be considered by the Bankruptcy Court. In the event no objections are filed, the relief requested in the Motion may be granted without a hearing.

Dated: September 18, 2019

Respectfully submitted,

LOWENSTEIN SANDLER LLP

/s/ Kenneth A. Rosen

Kenneth A. Rosen, Esq.

Bruce Buechler, Esq.

Joseph J. DiPasquale, Esq.

Mary E. Seymour, Esq.

Jennifer B. Kimble, Esq. (*pro hac vice* pending)

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In re:

HOLLISTER CONSTRUCTION
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Debtor.

Chapter 11

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**DEBTOR’S MOTION FOR ENTRY OF AN ADMINISTRATIVE FEE ORDER
ESTABLISHING CERTAIN PROCEDURES FOR ALLOWANCE AND PAYMENT OF
INTERIM COMPENSATION AND REIMBURSEMENT OF EXPENSES OF
PROFESSIONALS RETAINED BY ORDER OF THIS COURT AND
REIMBURSEMENT OF EXPENSES BY COMMITTEE MEMBERS**

The above-captioned debtor and debtor-in-possession (the “Debtor”), by and through its undersigned proposed counsel, submits this motion (the “Motion”) for entry of an order, substantially in the form submitted herewith, establishing procedures for (i) the allowance and payment of interim compensation and reimbursement of expenses of professionals retained by order of the Court and (ii) the reimbursement of expenses incurred by members of any official

¹ The Debtor in this chapter 11 case and the last four digits of its taxpayer identification number is: Hollister Construction Services, LLC (5404).

committee appointed in this chapter 11 case. In support of this Motion, the Debtor incorporates herein the *Declaration of Brendan Murray in Support of First Day Relief* (the “First Day Declaration”) [Docket No. 15], and states as follows:

JURISDICTION, VENUE AND STATUTORY PREDICATES

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference to the Bankruptcy Court Under Title 11* of the United States District Court for the District of New Jersey, entered on July 23, 1984, and amended on September 18, 2012 (Simandle, C.J.).

2. This matter is a core proceeding within the meaning of 29 U.S.C. §157(b)(2).

3. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

4. The statutory predicates for the relief requested herein are sections 105(a) and 331 of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 2016-3 of the Local Bankruptcy Rules for the United States Bankruptcy Court for the District of New Jersey (the “Local Rules”).

5. The Debtor consents to the entry of a final order on the Motion by this Court if it is determined that the Court, absent consent of the parties, cannot enter a final order or judgment consistent with Article III of the United States Constitution.

BACKGROUND

6. On September 11, 2019 (the “Petition Date”), the above-captioned Debtor filed a voluntary petitions for relief under chapter 11 of the Bankruptcy Code, thereby initiating the above-captioned chapter 11 case (the “Chapter 11 Case”).

7. The Debtor continues to operate its businesses as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

8. No party has requested the appointment of a trustee or examiner and no committee has been appointed in this Chapter 11 Case.

9. Additional details regarding the Debtor's businesses and the facts and circumstances supporting the relief requested herein are set forth in the First Day Declaration, which is incorporated by reference.

RETENTION OF PROFESSIONALS

10. The Debtor has and intends to file applications for authority to retain and employ attorneys and other professionals pursuant to the Bankruptcy Code. Additionally, assuming an official committee is appointed, such committee may also file applications for authority to retain and employ counsel and additional professionals to assist it in this Chapter 11 Case.

RELIEF REQUESTED AND BASIS THEREFORE

11. By this Motion, the Debtor seeks entry of an administrative fee order pursuant to sections 105(a) and 331 of the Bankruptcy Code and D.N.J. Local Rule 2016-3 authorizing (i) an orderly, regular process for allowance and payment of compensation and reimbursement of expenses for attorneys and other professionals (each, a "Professional," and collectively, the "Professionals") retained by the Debtor and any official committee appointed, whose services are authorized by this Court and who are required to file applications for the allowance of compensation and the reimbursement of expenses pursuant to sections 330 and 331 of the Bankruptcy Code and D.N.J. Local Rule 2016-1, and (ii) for the reimbursement of expenses incurred by the members of any official committee appointed in this Chapter 11 Case.

12. Section 331 of the Bankruptcy Code authorizes professionals to submit applications for interim compensation and reimbursement of expenses every 120 days or more often, if the court permits. 11 U.S.C. § 331. In addition, section 105(a) of the Bankruptcy Code authorizes the court to issue any order "that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(a).

13. The Debtor requests that procedures for compensating and reimbursing the Professionals retained under section 327 of the Bankruptcy Code and, to the extent applicable, sections 328(a) and 1103 of the Bankruptcy Code, be established comparable to those approved

in other chapter 11 cases in this District and in accordance with the guidelines set forth in D.N.J. Local Rule 2016-3.

14. The requested procedures would require the presentation of a monthly fee statement to the parties described below for interim approval and allowance of compensation for professional services rendered and reimbursement of expenses incurred by each such Professional during the immediately preceding month. The Debtor submits that the proposed procedures for compensating and reimbursing the Professionals will enable the Court and all parties-in-interest to monitor professional fees and costs incurred more effectively and on a more current basis. In accordance with D.N.J. Local Rule 2016-3, the proposed procedures are as follows:

(a) Monthly fee statement.

(1) By on or about the 25th day of the month (or if such date falls on a weekend or federal holiday, on the next business day thereafter) following the month for which compensation is sought (including, for the avoidance of doubt, by October 25, 2019 for services rendered by Professionals for the period from the Petition Date through and including September 30, 2019), each Professional seeking compensation under the administrative fee order may file and serve, by electronic transmission, hand delivery, or overnight delivery, or by any means directed by the Court, a monthly fee and expense statement on the following parties (collectively, the "Notice Parties"):

- (A) Lowenstein Sandler LLP, as Debtor's counsel;
- (B) counsel for any official committee appointed in the Chapter 11 Case;
- (C) the United States Trustee;
- (D) counsel for PNC Bank, the Debtor's secured lender, Duane Morris LLP, 30 South 17th Street, Philadelphia, PA 19103-4196, Attention: James J. Holman;
- (E) any party requesting notice of all proceedings; and
- (F) any other party designated by the Court.

(2) A monthly fee statement must comply with Local Bankruptcy Rule 2016-1(a).

(b) Objection.

(1) An objection to a monthly fee statement must be filed and served on the Professional and the Notice Parties listed in subdivision (a)(1) not later than 14 days after service of the statement. The objection must set forth the nature of the objection and the amount of fees and expenses at issue. Grounds for objection include: (i) the Debtor's failure to timely file monthly operating reports; and (ii) the Debtor's failure to remain current with administrative expenses and fees under 28 U.S.C. § 1930.

(2) A decision by any party not to object to a monthly fee statement shall not be a waiver of any kind or prejudice that party's right to object to any fee application subsequently made to the Court in accordance with the Bankruptcy Code and applicable rules.

(c) Payment.

(1) On the expiration of the objection deadline under subdivision (b), a Professional may file and serve on the Notice Parties *Local Form Certification of No Objection or Certification of Partial Objection*, and then receive 80% of the fees and 100% of the expenses not subject to an objection. The Professional may seek authorization as part of its next interim or final fee application to receive the remaining 20% of fees not subject to an objection.

(2) If the parties resolve an objection and if the Professional files and serves on the Notice Parties a statement indicating that the objection is withdrawn and describing the terms of the resolution, the Debtor may pay in accordance with subdivision (c)(1) that portion of the monthly fee statement which is no longer subject to an objection.

(3) If the parties are unable to reach a resolution of the objection not later than 14 days after the deadline for filing an objection under subdivision (b), the Professional may either (i) file a response to the objection together with a request for payment of the fees and expenses to which the objection applies; or (ii) forgo payment of those fees and expenses until the next interim or final fee application or another date directed by the court.

(d) Fee application.

- (1) A Professional who has received monthly payments under the administrative fee order may, at three month intervals (beginning with the period from the Petition Date through and including November 30, 2019 and every three months thereafter), file and serve on the Notice Parties within approximately forty-five (45) days of the conclusion of each three month interval² an interim application under § 331 of the Bankruptcy Code for allowance of the compensation and reimbursement of the expenses sought in the monthly statements issued by Professionals during the applicable period.
- (2) The interim fee application must include a summary of the monthly fee statements that are the subject of the request and any other information requested by the Court.
- (3) The pendency of a fee application or a Court order that payment of compensation or reimbursement of expenses was improper as to a particular monthly fee statement shall not disqualify a Professional from the further payment of compensation or reimbursement of expenses as set forth above, unless otherwise ordered by the Court. Additionally, the pendency of an objection to payment of compensation or reimbursement of expenses will not disqualify a Professional from future payment of compensation or reimbursement of expenses, unless the Court orders otherwise.
- (4) Neither the payment of, nor the failure to pay, in whole or in part, monthly compensation and reimbursement as provided herein shall have any effect on this Court's interim or final allowance of compensation and reimbursement of expenses of any Professionals.

(e) Reimbursement of Committee Member Expenses.

- (1) Counsel for each official committee appointed may, in accordance with the foregoing procedure for monthly compensation and reimbursement to Professionals, collect and submit statements of expenses, with supporting vouchers, from members of the committee he or she represents; provided, however, that such committee counsel ensures that these reimbursement requests comply with the applicable rules and guidelines.

² For the avoidance of doubt, an interim fee application for the period September 11, 2019 through November 30, 2019 would be filed by on or about January 14, 2020. Thereafter, an interim fee application for the period December 1, 2019 through February 28, 2020 would be filed by on or about April 13, 2020, and the same would apply for each three-month period thereafter.

15. The Debtor respectfully submits that the procedures proposed herein will enable the Debtor to closely monitor the costs of administration of this Chapter 11 Case, maintain a level cash flow, and implement efficient cash management procedures. Moreover, the procedures proposed herein will also enable the Court and key parties-in-interest to ensure the reasonableness of the compensation and reimbursement sought by Professionals on a more regular basis.

NOTICE

16. Notice of this Motion has been given to (i) the Office of the United States Trustee for the District of New Jersey, One Newark Center, Suite 2100, Newark, NJ 07102; (ii) counsel for PNC Bank, the Debtor's secured lender, Duane Morris LLP, 30 South 17th Street, Philadelphia, PA 19103-4196, Attention: James J. Holman; (iii) the Internal Revenue Service, 2970 Market Street, Mail Stop 5-Q30.133, Philadelphia, PA 19104-5016; (iv) the Office of the United States Attorney, Peter Rodino Federal Building, 970 Broad Street, Suite 700, Newark, NJ 07102; (v) the New Jersey Division of Taxation Compliance and Enforcement - Bankruptcy Unit, 50 Barrack Street, 9th Floor, Trenton, NJ 08695; (vi) the Office of the Attorney General of the State of New Jersey, Division of Law, Richard J. Hughes Justice Complex, 25 Market Street, Trenton, NJ 08625; (vii) the Pennsylvania Department of Revenue, Bankruptcy Division, P.O. Box 2809467, Harrisburg, PA 17128-0946; (viii) Commonwealth of Pennsylvania Office of Attorney General, 16th Floor, Strawberry Square, Harrisburg, PA 17120; (ix) New York State Department of Taxation and Finance, Attention: Office of Counsel, Building 9, W A Harriman Campus, Albany NY 12227; (x) New York State Office of Attorney General, The Capitol, Albany, NY 12224-0341; (xi) the Debtor's twenty largest unsecured creditors; and (xii) all parties that have requested to receive notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Debtor respectfully submits that no other or further notice is required.

WHEREFORE, the Debtor respectfully request that this Court: (i) enter an order, substantially in the form submitted herewith, granting the relief requested herein; and (ii) grant the Debtor such other and further relief as the Court deems just and proper.

Dated: September 18, 2019

Respectfully submitted,

LOWENSTEIN SANDLER LLP

/s/ Kenneth A. Rosen

Kenneth A. Rosen, Esq.

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*Proposed Counsel to the Debtor and
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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY
Caption in Compliance with D.N.J. LBR 9004-1

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*Proposed Counsel to the Debtor and
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In re:

HOLLISTER CONSTRUCTION SERVICES, LLC,¹

Debtor.

Chapter 11

Case No. 19-27439 (MBK)

**ADMINISTRATIVE FEE ORDER ESTABLISHING CERTAIN PROCEDURES
FOR ALLOWANCE AND PAYMENT OF INTERIM COMPENSATION
AND REIMBURSEMENT OF EXPENSES OF PROFESSIONALS RETAINED
BY ORDER OF THIS COURT AND REIMBURSEMENT
OF EXPENSES BY COMMITTEE MEMBERS**

The relief set forth on the following pages, numbered two (2) through and including six (6), is hereby **ORDERED**.

¹ The Debtor in this chapter 11 case and the last four digits of its taxpayer identification number is: Hollister Construction Services, LLC (5404).

Page 2

Debtor: Hollister Construction Services, LLC

Case No.: 19-27439 (MBK)

Caption: Administrative Fee Order Establishing Certain Procedures for Allowance and Payment of Interim Compensation and Reimbursement of Expenses of Professionals Retained by Order of this Court and Reimbursement of Expenses by Committee Members

Upon consideration of the motion (the "Motion")² of the above-captioned debtor and debtor-in-possession (the "Debtor") for entry of an administrative fee order pursuant to sections 105(a) and 331 of the Bankruptcy Code and District of New Jersey Local Bankruptcy Rule 2016-3; and the Court having jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference to the Bankruptcy Court Under Title 11* of the United States District Court for the District of New Jersey, dated September 18, 2012; and venue being proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409; and this matter being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and notice of the Motion being sufficient under the circumstances; and it appearing that no other or further notice need be provided; and the Court having determined that the relief sought in the Motion is in the best interests of the Debtor, its estate 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. Except as may otherwise be provided in Court orders authorizing the retention of specific Professionals, all Professionals retained in this case pursuant to section 327 and, to the extent applicable, sections 328(a) and 1103 of the Bankruptcy Code, may seek monthly compensation in accordance with the following procedures (the "Compensation Procedures"):

(a) Monthly fee statement.

- (1) By on or about the 25th day of the month (or if such date falls on a weekend or federal holiday, on the next business day thereafter)

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

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Debtor: Hollister Construction Services, LLC

Case No.: 19-27439 (MBK)

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following the month for which compensation is sought (including, for the avoidance of doubt, by October 25, 2019 for services rendered by Professionals for the period from the Petition Date through and including September 30, 2019), each Professional seeking compensation under this Order may file and serve, by electronic transmission, hand delivery, or overnight delivery, or by any means directed by the Court, a monthly fee and expense statement on the following parties (collectively, the “Notice Parties”):

- (A) Lowenstein Sandler LLP, as Debtor’s counsel;
 - (B) Counsel for any official committee appointed in the Chapter 11 Cases;
 - (C) the United States Trustee;
 - (D) Counsel for PNC Bank, the Debtor’s secured lender, Duane Morris LLP, 30 South 17th Street, Philadelphia, PA 19103-4196, Attention: James J. Holman;
 - (E) Any party requesting notice of all proceedings; and
 - (F) Any other party designated by the Court.
- (2) A monthly fee statement must comply with Local Bankruptcy Rule 2016-1(a).
- (b) Objection.
- (1) An objection to a monthly fee statement must be filed and served on the Professional and the Notice Parties listed in subdivision (a)(1) not later than 14 days after service of the statement. The objection must set forth the nature of the objection and the amount of fees and expenses at issue. Grounds for objection include: (i) the Debtor’s failure to timely file monthly operating reports; and (ii) the Debtor’s failure to remain current with administrative expenses and fees under 28 U.S.C. § 1930.
 - (2) A decision by any party not to object to a monthly fee statement shall not be a waiver of any kind or prejudice that party’s right to object to any fee application subsequently made to the Court in accordance with the Bankruptcy Code and applicable rules.

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(c) Payment.

- (1) On the expiration of the objection deadline under subdivision (b), a Professional may file and serve on the Notice Parties *Local Form Certification of No Objection or Certification of Partial Objection*, and then receive 80% of the fees and 100% of the expenses not subject to an objection. The Professional may seek authorization as part of its next interim or final fee application to receive the remaining 20% of fees not subject to an objection.
- (2) If the parties resolve an objection and if the Professional files and serves on the Notice Parties a statement indicating that the objection is withdrawn and describing the terms of the resolution, the Debtor may pay in accordance with subdivision (c)(1) that portion of the monthly fee statement which is no longer subject to an objection.
- (3) If the parties are unable to reach a resolution of the objection not later than 14 days after the deadline for filing an objection under subdivision (b), the Professional may either (i) file a response to the objection together with a request for payment of the fees and expenses to which the objection applies; or (ii) forgo payment of those fees and expenses until the next interim or final fee application or another date directed by the court.

(d) Fee application.

- (1) A Professional who has received monthly payments under the administrative fee order may, at three month intervals (beginning with the period from the Petition Date through and including November 30, 2019 and every three months thereafter), file and serve on the Notice Parties within approximately forty-five (45) days of the conclusion of each three month interval³ an interim application under § 331 of the Bankruptcy Code for allowance of the compensation and reimbursement of the expenses sought in the monthly statements issued by Professionals during the applicable period.

³ For the avoidance of doubt, an interim fee application for the period September 11, 2019 through November 30, 2019 would be filed by on or about January 14, 2020. Thereafter, an interim fee application for the period December 1, 2019 through February 28, 2020 would be filed by on or about April 13, 2020, and the same would apply for each three-month period thereafter.

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Case No.: 19-27439 (MBK)

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- (2) The interim fee application must include a summary of the monthly fee statements that are the subject of the request and any other information requested by the Court.
- (3) The pendency of a fee application or a Court order that payment of compensation or reimbursement of expenses was improper as to a particular monthly fee statement shall not disqualify a Professional from the further payment of compensation or reimbursement of expenses as set forth above, unless otherwise ordered by the Court. Additionally, the pendency of an objection to payment of compensation or reimbursement of expenses will not disqualify a Professional from future payment of compensation or reimbursement of expenses, unless the Court orders otherwise.
- (4) Neither the payment of, nor the failure to pay, in whole or in part, monthly compensation and reimbursement as provided herein shall have any effect on this Court's interim or final allowance of compensation and reimbursement of expenses of any Professionals.

(e) Reimbursement of Committee Member Expenses.

- (1) Counsel for each official committee appointed may, in accordance with the foregoing procedure for monthly compensation and reimbursement to Professionals, collect and submit statements of expenses, with supporting vouchers, from members of the committee he or she represents; provided, however, that such committee counsel ensures that these reimbursement requests comply with the applicable rules and guidelines.

3. The Debtor shall include all payments to Professionals on its monthly operating reports, detailed so as to state the amount paid to each Professional.

4. Time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

5. All fees and expenses paid to Professionals are subject to disgorgement until final allowance by the Court.

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Debtor: Hollister Construction Services, LLC

Case No.: 19-27439 (MBK)

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6. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.