

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

In re	)	Chapter 11
	)	
CB HOLDING CORP., et al., <sup>1</sup>	)	Case No. 10-13683 (MFW)
	)	
Debtors.	)	Jointly Administered
	)	
		<b>Obj. Deadline: November 15, 2011 at 4:00 p.m. (EST)</b>
		<b>Hearing Date: November 22, 2011 at 2:00 p.m. (EST)</b>

**DEBTORS' MOTION FOR ORDER APPROVING SALE OF  
LIQUOR LICENSE NUMBER 1329-33-016-009 FREE AND CLEAR OF  
ALL LIENS, CLAIMS, ENCUMBRANCES, ATTACHMENTS, AND OTHER INTERESTS**

The above-captioned debtors and debtors-in-possession (collectively, the “Debtors”),  
by and through their undersigned attorneys, hereby file this motion (the “Motion”) for entry of an

<sup>1</sup> The other Debtors, and the last four digits of each of their tax identification numbers, are: 1820 Central Park Avenue Restaurant Corp. (5151); Bugaboo Creek Acquisition, LLC (4629); Bugaboo Creek Holdings, Inc. (0966); Bugaboo Creek of Seekonk, Inc. (1669); CB Holding Corp. (8640); CB VII, Inc. (9120); CB VIII, Inc. (1468); Charlie Brown North (6721); Charlie Brown’s Acquisition Corp. (8367); Charlie Brown’s at Clifton, Inc. (7309); Charlie Brown’s Mark Corp. (3569); Charlie Brown’s Montclair, Inc. (4223); Charlie Brown’s 1981, Inc. (7781); Charlie Brown’s of Allentown, L.L.C. (8420); Charlie Brown’s of Alpha, Inc. (9083); Charlie Brown’s of Berwyn, LLC (3347); Charlie Brown’s of Blackwood, L.L.C. (5698); Charlie Brown’s of Bloomsburg, LLC (3326); Charlie Brown’s of Brielle, Inc. (8115); Charlie Brown’s of Carlstadt, Inc. (6936); Charlie Brown’s of Chatham, Inc. (2452); Charlie Brown’s of Commack LLC (4851); Charlie Brown’s of Denville, Inc. (1422); Charlie Brown’s of East Windsor, LLC (2747); Charlie Brown’s of Edison, Inc. (8519); Charlie Brown’s of Egg Harbor Twp, LLC (none); Charlie Brown’s of Franklin, LLC (5232); Charlie Brown’s of Garden City, LLC (7440); Charlie Brown’s of Hackettstown, L.L.C. (7493); Charlie Brown’s of Harrisburg, LLC (1085); Charlie Brown’s of Hillsborough, Inc. (0344); Charlie Brown’s of Holtsville, LLC (0138); Charlie Brown’s of Jackson, LLC (3478); Charlie Brown’s of Lacey, L.L.C. (6282); Charlie Brown’s of Lakewood, Inc. (0156); Charlie Brown’s of Langhorne, LLC (3392); Charlie Brown’s of Lynbrook LLC (2772); Charlie Brown’s of Maple Shade, Inc. (0404); Charlie Brown’s of Matawan, Inc. (8337); Charlie Brown’s of Middletown LLC (7565); Charlie Brown’s of Oradell, Inc. (0348); Charlie Brown’s of Pennsylvania, Inc. (6918); Charlie Brown’s of Piscataway, LLC (8285); Charlie Brown’s of Reading, LLC (1214); Charlie Brown’s of Scranton, LLC (9817); Charlie Brown’s of Selinsgrove, LLC (6492); Charlie Brown’s of Springfield, LLC (9892); Charlie Brown’s of Staten Island, LLC (1936); Charlie Brown’s of Tinton Falls, Inc. (6981); Charlie Brown’s of Toms River, LLC (5492); Charlie Brown’s of Union Township, Inc. (8910); Charlie Brown’s of Trexlertown, LLC (6582); Charlie Brown’s of Wayne, Inc. (4757); Charlie Brown’s of West Windsor, Inc. (0159); Charlie Brown’s of Williamsport LLC (8218); Charlie Brown’s of Woodbury, Inc. (0601); Charlie Brown’s of York, LLC (0980); Charlie Brown’s of Yorktown, LLC (7855); Charlie Brown’s Restaurant Corp. (7782); Charlie Brown’s Steakhouse Fishkill, Inc. (9139); Charlie Brown’s Steakhouse Woodbridge, Inc. (1906); Charlie Brown’s, Inc. (4776); Jonathan Seagull Property Corp. (7248); Jonathan Seagull, Inc. (9160); The Office at Bridgewater, Inc. (3132); The Office at Cranford, Inc. (3131); The Office at Keyport, Inc. (1507); The Office at Montclair, Inc. (3128); The Office at Morristown, Inc. (3127); The Office at Ridgewood, Inc. (2949); The Office at Summit, Inc. (3126); and What’s Your Beef V, Inc. (4719). The Debtors’ address is 1450 Route 22 West, Mountainside, NJ 07092.

order, pursuant to Bankruptcy Code §§ 105(a) and 363(b)(1), Bankruptcy Rules 2002, 6004, and 9014, and Local Rule 6004-1, approving the sale of liquor license number 1329-33-016-009 (as described in greater detail below, the “Liquor License”) free and clear of all liens, claims, encumbrances, attachments, and other interests. In support of the relief requested in this Motion, the Debtors respectfully represent as follows:

### **JURISDICTION**

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are Bankruptcy Code §§ 105(a) and 363(b)(1), Bankruptcy Rules 2002, 6004, and 9014, and Local Rule 6004-1.

### **INTRODUCTION**<sup>2</sup>

2. On November 17, 2010 (the “Petition Date”), the Debtors filed with this Court separate, voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On November 19, 2010, this Court entered an order directing the joint administration of the Debtors’ separate Chapter 11 cases.

3. The Debtors continue to manage their remaining properties and operate their businesses as debtors-in-possession pursuant to Bankruptcy Code §§ 1107 and 1108. No trustee or examiner has been appointed in these cases.

<sup>2</sup> A more detailed description of the Debtors, their corporate and capital structure, and these cases is set forth in the various motions and other pleadings filed by the Debtors on or about the Petition Date, copies of which can be obtained by visiting [www.cbhinfo.com](http://www.cbhinfo.com).

4. On December 1, 2010, the United States Trustee appointed an official committee of unsecured creditors (the “Committee”) for these cases.

5. Prior to the Petition Date, and for some period of time thereafter, the Debtors owned and operated the restaurant brands known as Charlie Brown’s Steakhouse (“Charlie Brown’s”), Bugaboo Creek Steak House (“Bugaboo Creek”), and The Office Beer Bar & Grill (“The Office”).

6. A variety of external factors led to a decline in the Debtors’ revenue over the last several years, at the same time that costs increased, and the economy struggled, greatly impacting the Debtors’ customer base. Accordingly, in order to maximize value, the Debtors commenced these cases and entered into a DIP arrangement with one of their lenders (which incorporated a settlement of various issues with the Committee), and during these cases, the Debtors have marketed and sold substantially all of their assets.

7. The sale of Bugaboo Creek closed on April 21, 2011, and the final closing of the sales of The Office and Charlie Brown’s occurred on June 24, 2011, and July 28, 2011, respectively. The Debtors continue to work with key parties-in-interest to wind-down their estates and cases.

8. On August 1, 2011, the Debtors filed their *Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code* (ECF No. 944) and accompanying disclosure statement (the “Disclosure Statement”) (ECF No. 945). The hearing to consider approval of the Disclosure Statement is currently scheduled for November 22, 2011.

## **FACTUAL BACKGROUND**<sup>3</sup>

9. The Debtors closed 29 Charlie Brown's and 18 Bugaboo Creek restaurants (collectively, the "Closed Restaurants") in the week prior to the Petition Date. On December 13, 2010, this Court entered an omnibus order (ECF No. 176) authorizing the rejection, *nunc pro tunc* to the Petition Date, of the leases related to the Closed Restaurants.

10. The Debtors are not currently utilizing the liquor licenses for the Closed Restaurants and have returned certain liquor licenses that may not be transferable to the applicable state, county, town, or municipality control board or agency. The remaining liquor licenses for the Closed Restaurants are valuable assets of the Debtors, and in order to preserve the value thereof for their creditors and other parties-in-interest, the Debtors have retained Hilco Real Estate, LLC ("Hilco"), to market and sell the remaining liquor licenses for the Closed Restaurants, including the Liquor License.

11. Hilco has been actively marketing liquor licenses for the Debtors since November 2010. During this time, Hilco has used many different marketing venues in an effort to maximize exposure in the marketplace. Hilco began its marketing efforts by creating a baseline marketing flyer that displayed each license available along with the town or borough in which the license was held.

12. Hilco then directly reached out to liquor license brokers, known investors, and the landlords of the old locations to garner interest. Direct email marketing was then used through a number of outlets including DealMakers (a premium e-mail system reaching over 80,000 brokers, investors, and users), Hilco's proprietary email system (reaching over 15,000

<sup>3</sup> The description set forth herein is a summary and solely for convenience purposes; to the extent of any discrepancies between this description and the Liquor License, the terms of the Liquor License shall govern.

brokers, investors, and users), and FameCo's proprietary email system (reaching over 6,000 brokers, users, and investors).

13. As a result of such efforts, this Court has approved the sale of approximately 26 of the liquor licenses associated with the Closed Restaurants. In addition, on July 12, 2011, the Debtors held a public auction, pursuant to this Court's order, approving, among other things, the auction and procedures (ECF No. 854), which resulted in the sales of four liquor licenses.

14. The Debtors owned and maintained the Liquor License for use at their former Charlie Brown's restaurant (the "Matawan Restaurant") located at 27 Freneau Avenue, Route 79, Matawan, New Jersey. As a result of Hilco's marketing efforts, on or about November 1, 2011, the Debtors entered into an agreement (the "Sale Agreement") to sell the Liquor License to Jose Barreiro (the "Buyer").<sup>4</sup>

15. In accordance with the terms and conditions of the Sale Agreement, the Buyer has agreed to pay an aggregate purchase price of \$155,000 for the Liquor License.<sup>5</sup>

### **RELIEF REQUESTED**

16. By this Motion, the Debtors respectfully request that this Court enter an order approving the Sale Agreement, finding that the Debtors are authorized to enter into the

<sup>4</sup> A true and correct copy of the Sale Agreement is attached hereto as Exhibit A and is incorporated herein by reference. The summary of the Sale Agreement set forth herein is intended solely to provide a brief overview thereof and to highlight those material terms and provisions required under Bankruptcy Rule 6004 and Local Bankruptcy Rule 6004-1. In the event of any inconsistencies between this summary and the Sale Agreement, the terms of the Sale Agreement shall govern.

<sup>5</sup> Pursuant to the Sale Agreement, the Buyer has agreed to pay to the Debtors a deposit of 10% of the purchase price this week, and in the event they do not, the Debtors will withdraw this Motion.

Sale Agreement, and authorizing the sale of the Liquor License, free and clear of all liens, claims, attachments, and encumbrances, to the Buyer.

### **BASIS FOR RELIEF REQUESTED**

#### **The Sale of the Liquor License is a Valid Exercise of the Debtors' Business Judgment**

17. Bankruptcy Code § 363(b)(1) provides, in pertinent part, that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.”

18. Although Section 363 does not specify a standard for determining when it is appropriate for a court to authorize the use, sale, or lease of property of the estate, courts have required that such use, sale, or lease be based upon the sound business judgment of a debtor. See, e.g., In re Martin, 91 F.3d 389, 394-95 (3d Cir. 1996) (court may defer to debtor so long as there is “legitimate business justification” to approve the use, sale, or lease of property outside the ordinary course of business (citing In re Schipper, 933 F.2d 513, 515 (7th Cir. 1991)); In re Fed. Mogul Global, Inc., 293 B.R. 124, 126 (D. Del. 2003); In re Montgomery Ward Holdings Corp., 242 B.R. 147, 153 (Bankr. D. Del. 1999); In re Del. & Hudson Ry. Co., 124 B.R. 169, 178 (D. Del. 1991); In re Allegheny Int'l, 117 B.R. 171, 176 (W.D. Pa. 1990).

19. Moreover, Bankruptcy Code § 105(a) empowers a court to issue “any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].”

20. The purpose of Section 105(a) is to ensure a bankruptcy court’s power to take whatever action “is appropriate or necessary in aid of the exercise of [its] jurisdiction.” 2 Collier on Bankruptcy ¶ 105.01, at 105-5 (15th rev. ed. 1997) (footnote omitted), see also In re DeLorean Motor Co., 991 F.2d 1236, 1242 (6th Cir. 1993) (“The basic purpose of [Bankruptcy

Code § 105(a)] is to enable the court to do whatever is necessary to aid its jurisdiction, i.e., anything arising in or relating to a bankruptcy case.”) (citation omitted); In re Joint E. & S. Dist. Asbestos Litig., 129 B.R. 710, 843 (E.D.N.Y. & S.D.N.Y. 1991) (“[Section 105] has been construed to afford bankruptcy courts necessary flexibility to facilitate reorganizations.”); In re Cooper Props. Liquidating Trust, Inc., 61 B.R. 531, 537 (Bankr. W.D. Tenn. 1986); Mgmt. Tech. Corp. v. Pardo, 56 B.R. 337, 339 (Bankr. D.N.J. 1985).

21. The Debtors believe that the proposed sale of the Liquor License to the Buyer will maximize the value thereof for the benefit of the Debtors’ estates and creditors. Specifically, in the Debtors’ business judgment, and based upon Hilco’s marketing efforts to date, the Debtors believe that the Purchase Price of \$155,000 represents a fair sale price based upon the estimated value of the Liquor License.

22. In addition, the Debtors believe that the proposed sale to the Buyer will facilitate a quick and efficient disposition of the Liquor License. Because they are no longer operating the Matawan Restaurant, the Debtors submit that the Liquor License is not necessary and should be sold now to maximize its value.

23. Thus, the Debtors believe that there is a valid business justification for selling the Liquor License as provided for herein and consummating such sale as quickly as possible.

#### The Debtors Should Be Allowed to Sell the Liquor License by Private Sale

24. Bankruptcy Rule 6004(f)(1) provides that “sales not in the ordinary course of business may be by private sale or by public auction.”

25. Indeed, Courts often allow a Chapter 11 debtor to sell assets outside the ordinary course of business by private sale when the debtor demonstrates that the sale is

permissible under Bankruptcy Code § 363(b). See, e.g., Palermo v. Pritam Realty, Inc. (In re Pritam Realty, Inc.), 233 B.R. 619 (D.P.R. 1999) (upholding bankruptcy court's approval of private sale); In re Condere Corp., 228 B.R. 615 (Bankr. S.D. Miss. 1998) (approving private sale of debtor's assets where standards of Bankruptcy Code § 363(b) were met); In re Wieboldt Stores, Inc., 92 B.R. 309 (N.D. Ill. 1988) (affirming right of debtor to transfer assets by private sale). Cf. In re Embrace Systems Corp., 178 B.R. 112, 123 (Bankr. W.D. Mich. 1995) (holding that private sale of debtor's assets is appropriate if all provisions of Section 363 are followed, bid is fair, and sale is in best interests of debtor's estate and creditors).

26. The Debtors have determined that selling the Liquor License pursuant to the Sale Agreement by a consensual private sale to the Buyer is in the best interests of the Debtors' estates and their creditors. As noted above, the Debtors and Hilco have already engaged in a substantial and thorough marketing effort to sell the Liquor License for the highest and best price. Accordingly, the Debtors do not believe any higher or better offers will now (or in the future) surface.

27. Consequently, the Debtors believe that there would be no benefit to conducting any formal auction or a further bidding process for the Liquor License. Rather, the Debtors believe that any such auction or further bidding process (other than any informal process that could result upon service of this Motion on parties that the Debtors believe could be interested in the Liquor License) would only generate increased costs and cause unwarranted delays of the sale of the Liquor License, without yielding a significantly higher purchase price or any notable benefit to the Debtors' estates or their creditors.

28. Thus, the Debtors believe that selling the Liquor License by private sale is justified in this instance.



The Proposed Sale Satisfies the Requirements of Bankruptcy Code § 363(f)

29. The Debtors presently believe that all of the liquor licenses have been pledged to Ally and/or their other pre and post-petition lenders. Furthermore, various other creditors may hold or assert security interests or other rights in the Liquor License.

30. In order to facilitate the sale of the Liquor License, as contemplated and required by the Sale Agreement, the Debtors request authorization to sell the Liquor License free and clear of any and all liens, claims, encumbrances, attachments, and other interests which may be asserted (including any claims for successor liability).

31. In accordance with Bankruptcy Code § 363(f), a debtor-in-possession may sell property “free and clear of any interest in such property of an entity other than the estate” if any one of the following conditions is satisfied:

- (a) applicable nonbankruptcy law permits the sale of such property free and clear of such interest;
- (b) the [lienholder or claimholder] consents;
- (c) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (d) such interest is in bona fide dispute; or
- (e) [the lienholder or claimholder] could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

32. Because Section 363(f) is stated in the disjunctive, satisfaction of any one of its five requirements would suffice to warrant approval of the sale of the Liquor License free and clear of all liens, claims, encumbrances, attachments, and other interests. See Folger Adam

Sec. Inc. v. De Matties/McGregor JV, 209 F.3d 252, 257 (3d Cir. 2000) (discussing how Section 363(f) authorizes sale of debtor's assets free and clear of all liens, claims, and interests if "any one of [the] five prescribed claims is met"); In re Kellstrom Indus., Inc., 282 B.R. 787, 793 (Bankr. D. Del. 2002) (property may be sold "free and clear" if at least one of the subsections of Section 363(f) is met); In re DVI, Inc., 306 B.R. 496, 503 (Bankr. D. Del. 2004) (same); see also Michigan Employment Sec. Comm'n v. Wolverine Radio Co. (In re Wolverine Radio Co.), 930 F.2d 1132, 1147 n.24 (6th Cir. 1991), cert. dismissed, 503 U.S. 987 (1992) (same).

33. The Debtors believe that they have or will satisfy one or more of these requirements:

- (a) First, based on the parties' discussions, the Debtors believe that their pre- and post-petition lenders have consented to the sale of the Liquor License proposed herein.
- (b) Moreover, if a holder of a lien, claim, encumbrance, or other interest or purported right receives notice of this Motion and does not object within the prescribed time period, such holder would be deemed to have consented to the sale free and clear pursuant to the terms proposed herein on that basis alone. See, e.g., Veltman v. Whetzel, 93 F.3d 517 (8th Cir. 1996) (failure to object to notice of sale or attend hearing deemed consent to sale for purposes of Bankruptcy Code § 363); In re Elliot, 94 B.R. 343, 345 (E.D. Pa. 1988) ("implied consent" was sufficient to satisfy the consent requirement of Bankruptcy Code § 363(f)(2) "[b]ecause [the secured creditor] admit[ed] that it received notice of the proposed sale and also admit[ed] that it did not file any timely objection the sale was authorized by § 363(f)"); In re Enron Corp., 2004 WL 5361245, at \*2 (Bankr. S.D.N.Y. Feb. 5, 2004) (same); Hargrave v. Pemberton (In re Tabore, Inc.), 175 B.R. 855 (Bankr. D. N.J. 1994) (same).
- (c) Additionally, Bankruptcy Code § 363(f)(1) allows a sale to proceed free and clear of liens if the power to sell free and clear exists outside the bankruptcy context in another body of law. The existence of such ability is unquestionable here

under applicable state law, such as state law foreclosure statutes. See Precision Indus. Inc. v. Qualitech Steel SBQ, LLC, 327 F.3d 537, 545 (7th Cir. 2003), rev'g Precision Indus., Inc. v. Qualitech Steel SBQ, LLC, No 00-0247, 2001 WL 699881 (S.D. Ind. Apr. 24, 2001) (reversing district court and finding that property sold pursuant to Section 363(f)(1) on account of state foreclosure law was sold free and clear of lessee's possessory interest in property). Indeed, outside of bankruptcy, the Debtors' lenders could have foreclosed upon the Debtors' assets -- including the Liquor License -- and then sold it free and clear of junior liens.

- (d) Finally, because the Debtors' secured creditors may be required to accept money damages in exchange for their interests, Bankruptcy Code § 363(f)(5) is satisfied. See In re Trans World Airlines, 322 F.3d 283, 290-91 (3d Cir. 2003) (property sold free and clear of interests when claims were subject to monetary valuation and satisfaction). Indeed, because the Liquor License would be sold for what the Debtors approximate to be at least the fair market value thereof, the holders of any liens thereon could be compelled to accept money in satisfaction of such liens. See In re WPRV-TV, Inc., 143 B.R. 315, 321 (D.P.R. 1991), vacated on other grounds, 165 B.R. 1 (D.P.R. 1992), aff'd in part, rev'd in part, 983 F.2d 336 (1st Cir. 1993) (where "properties ... sold for the best price obtainable under the circumstances, and the liens will attach to the sale proceeds, the proposed sale [satisfies Bankruptcy Code § 363(f)(5)] and may be approved").

34. Thus, the Debtors submit that at least one (if not more) of the subsections of Section 363(f) will be satisfied, such that this Court should approve the sale of the Liquor License free and clear of all liens, claims, encumbrances, and attachments.

The Sale of the Liquor License Satisfies the Good-Faith Requirement of Bankruptcy Code § 363(m)

35. Bankruptcy Code § 363(m) provides, in pertinent part, that:

The reversal or modification on appeal of an authorization under [section 363(b) or (c)] ... of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an

entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

36. The terms of the Sale Agreement were negotiated at arm's length, without collusion, and in good faith. Upon information and belief, the Buyer is not an insider nor is it affiliated in any way with any of the Debtors.

37. Moreover, the Debtors have fully disclosed and requested this Court's approval of all terms and conditions of the Sale Agreement. See generally In re Colony Hill Assocs., 111 F.3d 269 (2d Cir. 1997) (stating that the determination of "in good faith" is based upon traditional equitable principles, including whether there has been full disclosure to the bankruptcy court).

38. In addition, the Buyer and the Debtors each were represented by separate, experienced professionals, including competent counsel, helping to ensure that the sale process has been fair to date and will continue to be so and that the Sale Agreement was negotiated, proposed, and entered into by the Debtors and the Buyer without collusion, in good faith, and at arm's length. See In re Abbotts Dairies of Pa., Inc., 788 F.2d 143, 149-150 (3d Cir. 1986) (parties acted in good faith if purchase price is adequate and reasonable, and terms of sale are fully disclosed).

39. Thus, the Debtors submit that this Court should find that the Buyer is entitled to the protection of Section 363(m) with respect to the transactions contemplated by the Sale Agreement and, accordingly, should be deemed a good-faith purchaser.

The Sale of the Liquor License Satisfies the Requirements of Bankruptcy Code § 363(n)

40. Bankruptcy Code § 363(n) provides, in pertinent part, that "the trustee may avoid a sale ... if the sale price was controlled by an agreement among potential bidders ... ."

The Debtors are unaware of any agreements among potential bidders that would violate Section 363(n).

41. Accordingly, for all of the reasons set forth above, the Debtors submit that the requested relief should be granted. To facilitate the closing of the transactions contemplated by this Motion, the Debtors also requested that their Chief Restructuring Officer or any successor or agent established by order of this Court be authorized to effectuate any necessary documentation or transfers with any applicable local or state licenses on regulatory boards or agencies (collectively, the “Liquor Boards”), and that the Liquor Boards be directed to accept any such documentation or transfers submitted by the Debtors’ Chief Restructuring Officer or any such successor or agent on behalf of the Debtors.

#### **NOTICE**

42. Notice of this Motion has been given, in accordance with the Bankruptcy Rules and the Local Rules, via first-class mail service, e-mail, facsimile and/or hand delivery, as appropriate, to the United States Trustee, counsel to the Committee, counsel to the Debtors’ pre- and post-petition secured lenders, counsel to the holders of the Debtors’ subordinated notes, the Debtors’ equity sponsor, the Buyer, any parties known to the Debtors that may have any interest or right in the Liquor License, including the Debtors’ former landlord under the lease for the Matawan Restaurant and the Liquor Boards, and all parties that have requested service of notice in these cases pursuant to Bankruptcy Rule 2002. The Debtors submit that no other or further notice need be given in light of the circumstances of these cases.

**REQUEST FOR WAIVER OF STAY**

43. In order to successfully implement the foregoing as expeditiously and efficiently as possible, the Debtors seek a waiver of the 14-day stay of any order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h) or under any other applicable rule.

**NO PREVIOUS REQUEST**

44. No previous request for the relief sought in this Motion has been made to this or to any other Court.

**CONCLUSION**

WHEREFORE, the Debtors request entry of an order, substantially in the form attached here as Exhibit B, granting the relief requested herein and such other and further relief as is just and proper under the circumstances.

Dated: November 1, 2011  
Wilmington, Delaware

Respectfully submitted,

/s/ Tyler D. Semmelman  
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Attorneys for the Debtors and  
Debtors-in-Possession

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

In re:	)	Chapter 11
	)	
CB HOLDING CORP., <u>et al.</u> , <sup>1</sup>	)	Case No. 10-13683 (MFW)
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	)	Jointly Administered
Debtors.	)	
	)	<b>Obj. Deadline: November 15, 2011 at 4:00 p.m. (EST)</b>
	)	<b>Hearing Date: November 22, 2011 at 2:00 p.m. (EST)</b>

**NOTICE OF MOTION AND HEARING**

PLEASE TAKE NOTICE that on November 1, 2011, the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) filed the **Debtors’ Motion for Order Approving Sale of Liquor License Number 1329-33-016-009 Free and Clear of All Liens,**

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<sup>1</sup> The other Debtors, and the last four digits of each of their tax identification numbers, are: 1820 Central Park Avenue Restaurant Corp. (5151); Bugaboo Creek Acquisition, LLC (4629); Bugaboo Creek Holdings, Inc. (0966); Bugaboo Creek of Seekonk, Inc. (1669); CB Holding Corp. (8640); CB VII, Inc. (9120); CB VIII, Inc. (1468); Charlie Brown North (6721); Charlie Brown’s Acquisition Corp. (8367); Charlie Brown’s at Clifton, Inc. (7309); Charlie Brown’s Mark Corp. (3569); Charlie Brown’s Montclair, Inc. (4223); Charlie Brown’s 1981, Inc. (7781); Charlie Brown’s of Allentown, L.L.C. (8420); Charlie Brown’s of Alpha, Inc. (9083); Charlie Brown’s of Berwyn, LLC (3347); Charlie Brown’s of Blackwood, L.L.C. (5698); Charlie Brown’s of Bloomsburg, LLC (3326); Charlie Brown’s of Brielle, Inc. (8115); Charlie Brown’s of Carlstadt, Inc. (6936); Charlie Brown’s of Chatham, Inc. (2452); Charlie Brown’s of Commack LLC (4851); Charlie Brown’s of Denville, Inc. (1422); Charlie Brown’s of East Windsor, LLC (2747); Charlie Brown’s of Edison, Inc. (8519); Charlie Brown’s of Egg Harbor Twp, LLC (none); Charlie Brown’s of Franklin, LLC (5232); Charlie Brown’s of Garden City, LLC (7440); Charlie Brown’s of Hackettstown, L.L.C. (7493); Charlie Brown’s of Harrisburg, LLC (1085); Charlie Brown’s of Hillsborough, Inc. (0344); Charlie Brown’s of Holtsville, LLC (0138); Charlie Brown’s of Jackson, LLC (3478); Charlie Brown’s of Lacey, L.L.C. (6282); Charlie Brown’s of Lakewood, Inc. (0156); Charlie Brown’s of Langhorne, LLC (3392); Charlie Brown’s of Lynbrook LLC (2772); Charlie Brown’s of Maple Shade, Inc. (0404); Charlie Brown’s of Matawan, Inc. (8337); Charlie Brown’s of Middletown LLC (7565); Charlie Brown’s of Oradell, Inc. (0348); Charlie Brown’s of Pennsylvania, Inc. (6918); Charlie Brown’s of Piscataway, LLC (8285); Charlie Brown’s of Reading, LLC (1214); Charlie Brown’s of Scranton, LLC (9817); Charlie Brown’s of Selinsgrove, LLC (6492); Charlie Brown’s of Springfield, LLC (9892); Charlie Brown’s of Staten Island, LLC (1936); Charlie Brown’s of Tinton Falls, Inc. (6981); Charlie Brown’s of Toms River, LLC (5492); Charlie Brown’s of Union Township, Inc. (8910); Charlie Brown’s of Trexlertown, LLC (6582); Charlie Brown’s of Wayne, Inc. (4757); Charlie Brown’s of West Windsor, Inc. (0159); Charlie Brown’s of Williamsport LLC (8218); Charlie Brown’s of Woodbury, Inc. (0601); Charlie Brown’s of York, LLC (0980); Charlie Brown’s of Yorktown, LLC (7855); Charlie Brown’s Restaurant Corp. (7782); Charlie Brown’s Steakhouse Fishkill, Inc. (9139); Charlie Brown’s Steakhouse Woodbridge, Inc. (1906); Charlie Brown’s, Inc. (4776); Jonathan Seagull Property Corp. (7248); Jonathan Seagull, Inc. (9160); The Office at Bridgewater, Inc. (3132); The Office at Cranford, Inc. (3131); The Office at Keyport, Inc. (1507); The Office at Montclair, Inc. (3128); The Office at Morristown, Inc. (3127); The Office at Ridgewood, Inc. (2949); The Office at Summit, Inc. (3126); and What’s Your Beef V, Inc. (4719). The Debtors’ address is 1450 Route 22 West, Mountainside, NJ 07092.



**Claims, Encumbrances, Attachments, and Other Interests** (the “Motion”) with the United States Bankruptcy Court for the District of Delaware (the “Court”).

PLEASE TAKE FURTHER NOTICE that any responses or objections to the Motion must be in writing, filed with the Clerk of the Court, 824 Market Street, 3<sup>rd</sup> Floor, Wilmington, Delaware 19801, and served upon and received by the undersigned attorneys for the Debtors on or before **November 15, 2011 at 4:00 p.m. (Eastern Standard Time)**.

PLEASE TAKE FURTHER NOTICE that a hearing with respect to the Motion will be held on **November 22, 2011 at 2:00 p.m. (Eastern Standard Time)** before The Honorable Mary F. Walrath, United States Bankruptcy Judge for the District of Delaware at the Court, 824 Market Street, 5<sup>th</sup> Floor, Courtroom 4, Wilmington, Delaware 19801.

IF NO OBJECTIONS TO THE MOTION ARE TIMELY FILED, SERVED AND RECEIVED IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: November 1, 2011  
Wilmington, Delaware

Respectfully submitted,

*/s/ Tyler D. Semmelman*

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Mark D. Collins (No. 2981)  
Christopher M. Samis (No. 4909)  
Tyler D. Semmelman (No. 5386)  
RICHARDS, LAYTON & FINGER, P.A.  
One Rodney Square  
920 North King Street  
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-and-

Joel H. Levitin  
Richard A. Stieglitz Jr.  
Maya Peleg  
CAHILL GORDON & REINDEL LLP  
Eighty Pine Street  
New York, New York 10005  
Telephone: (212) 701-3000  
Facsimile: (212) 269-5420

*Attorneys for the Debtors and  
Debtors-in-Possession*

**EXHIBIT A**

**Sale Agreement**

## AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT FOR SALE OF LIQUOR LICENSE (“Agreement”) made this 1st day of November, 2011 between Charlie Brown’s of Matawan, Inc., a New Jersey corporation, having an address at 1450 Route 22 West, Mountainside, New Jersey 07092 (“Seller”), and Jose Barreiro, a New Jersey individual, having an address at 4 Douglas Street, Sayreville, New Jersey 08872 (“Purchaser”).

### W I T N E S S E T H

WHEREAS, Seller is the holder of a certain Plenary Retail Consumption Liquor License (Number 1329-33-016-009) (the “Liquor License”) issued by the governing body of the Borough of Matawan, State of New Jersey (the “Governing Authority”);

WHEREAS, Seller desires to sell, and Purchaser desires to purchase, the Liquor License upon the terms and conditions hereinafter set forth;

WHEREAS, it is Purchaser’s intent to make application to the Governing Authority to obtain the Requisite Approvals (as hereinafter defined) to effectuate a transfer of the Liquor License; and

WHEREAS, Seller filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code on November 17, 2010, in the United States Bankruptcy Court for the District of Delaware (the “Court”).

NOW, THEREFORE, in consideration of the mutual covenants, promises, and representations hereinafter contained and for other good and valuable consideration and intending to be legally bound, the parties hereto agree as follows:

1. Subject to approval of the Court, Seller shall convey free and clear of all liens, claims, and encumbrances the Liquor License to Purchaser, and Purchaser shall purchase the Liquor License from Seller subject to the terms and conditions contained herein. Purchaser is not

otherwise assuming any liabilities of Seller in connection with the transfer of the Liquor License and is not purchasing any liquor inventory.

2. Purchaser shall pay Seller the sum of One Hundred Fifty-Five Thousand Dollars (\$155,000) as the Purchase Price for the Liquor License. Purchaser at the execution hereof will deposit with Wilmington Trust Company (“Escrow Agent”) the sum of Fifteen Thousand Five Hundred Dollars (\$15,500) (the “Deposit”), to be held by Escrow Agent until Closing. If Purchaser defaults hereunder prior to Closing, Escrow Agent shall, after 10 days’ prior written notice to both Parties, deliver to Seller the Deposit. The balance of the Purchase Price, the sum of One Hundred Thirty-Nine Thousand Five Hundred Dollars (\$139,500) (“Balance of Purchase Price”) shall be paid to Seller at Closing (as hereinafter defined) in certified funds, bank check, or wire transfer. Wire transfers shall be sent to:

Wilmington Trust Company  
ABA 031100092  
Credit: CB Holding Corp. Escrow  
Account #099751-000  
Attn: David Young

3. In addition to the Purchase Price, Purchaser shall pay all filing fees, renewal costs (for the unexpired portion of the License term at Closing and/or for any License period after Closing), the State of New Jersey Division of Alcoholic Beverage Control (“ABC”) application fees, and Purchaser’s attorney fees associated with the transfer of the License under this application. Seller shall pay its own counsel fees and any sales tax or unemployment taxes due in order to obtain a tax clearance certificate to transfer the License.

4. To induce Purchaser and Seller to enter into this Agreement and the transaction contemplated hereby, the following representations and warranties are made and all of the same shall be true as of the date hereof and, as a condition of Closing, as of the Closing:

(A) Seller represents and warrants to Purchaser the following:

1. Authorization. — This Agreement has been duly executed and delivered and constitutes a legal and binding Agreement;

2. Ownership. — That it is the sole holder of the Liquor License and has full right and authority to enter into this Agreement, subject to approval of the Court;

3. License. — The Liquor License is currently in safekeeping with the Governing Authority, and is valid for the period through and including June 30, 2012; and

4. No Violations, Etc. — There are no violations of any provisions of the Seller’s Articles of Incorporation or Bylaws or of any judicial or administrative order, award, judgment, or decree applicable to Seller with respect to the execution and delivery of this Agreement, and the fulfillment and compliance with the terms and conditions hereof.

(B) Purchaser represents and warrants to Seller the following:

1 Eligibility as an Individual. — That if an individual, (i) he is 18 years of age or older, (ii) he has not been convicted of a crime involving moral turpitude, (iii) he is not a police officer, and (iv) he is eligible to hold a liquor license as defined by New Jersey Law;

2 Eligibility as a Corporation. — That if a corporation, (i) it is in good standing in the State of New Jersey, (ii) any applicable directors, officers or managers satisfy the above requirements, and (iii) any manager is a U.S. citizen, a resident of the State of New Jersey, and experienced in the sale of alcoholic beverages;

3 Eligibility as a Limited Liability Company (LLC) — That if a LLC, (i) it is in good standing in the State of New Jersey, (ii) any applicable members satisfy the above requirements, and (iii) any manager is a U.S. citizen, a resident of the State of New Jersey, and experienced in the sale of alcoholic beverages; and

4 No liquor licenses cancelled or revoked — That no liquor license held by Purchaser, or any entity in which the Purchaser has or had an interest, has been cancelled or revoked.

5. This Agreement and the obligations of the parties hereto are made expressly subject to and contingent upon only: (i) the receipt by Purchaser of all necessary approvals from the Governing Authority and ABC for the transfer of the Liquor License from Seller to Purchaser (“Requisite Approvals”); (ii) the receipt by Seller of an Alcoholic Beverage Retail License Tax Clearance Certificate from the NJ Division of Taxation authorizing the transfer of the Liquor License to Purchaser; and (iii) approval of this Agreement and the transaction contemplated hereby the Court (i-iii are hereinafter collectively referred to as “Closing Contingencies”).

6. Purchaser agrees to make application within 15 days from the date hereof in the name of Purchaser for the approval by the Governing Authority and the ABC for the transfer of the Liquor License to Purchaser (the “Application”). Purchaser shall pay any required fees and costs in connection with the Application. Purchaser shall prosecute the Application for transfer diligently and in good faith. Purchaser shall copy Seller with all transmittals letters sent or received regarding the transfer and shall advise Seller of the date of all hearings. Seller agrees that it shall cooperate with Purchaser in taking all reasonable steps, including, but not limited to, the execution by Seller of a consent to the applications of Purchaser for the transfer of the Liquor License and attendance of hearing(s) as, and if, required by the Governing Authority or the ABC to facilitate the transfer of the Liquor License to Purchaser, and Seller hereby consents to such transfer.

(A) In the event the Requisite Approvals shall be denied, or the Closing Contingencies are not satisfied, then Seller shall have the right to terminate this Agreement, and the Escrow Agent shall deliver the Deposit to Purchaser.

(B) In the event Purchaser does not prosecute the Application diligently, and in good faith provide all required information and documentation to the Governing Authority and the ABC, then Seller shall have the right to terminate this Agreement, and the Deposit shall be retained by Seller.

(C) In the event of default or the failure of this transaction to be consummated, Purchaser shall execute any and all documentation needed to withdraw any pending applications relating to the transfer of the License, and deliver all such papers as may be necessary to vest and restore the License to the Seller. In either event, Seller's retention of the Deposit shall not forfeit or preclude Seller's ability to exercise any other right or remedy against Purchaser under law, equity or statute.

7. It is agreed that the closing of the transaction (the "Closing") shall take place, and closing documents shall be delivered, at a time and place to be mutually agreed upon by the parties. The Closing shall occur within five (5) business days after the Governing Authority's or the ABC's approval of the transfer of the Liquor License to Purchaser, and if all of the conditions precedent herein have been satisfied or waived, but not later than 120 days from the date hereof. At the time of Closing, the Balance of the Purchase Price will be paid, and all documents will be executed. If the transfer application is denied, Purchaser shall have the opportunity, but not the obligation, to cure or appeal the denial within the term of this Agreement.

(A) In the event that Purchaser should breach the Agreement by failing and/or refusing to close as required hereby, Escrow Agent shall deliver the Deposit to the Seller as liquidated damages, in which the Seller shall have no further claim against the Seller.

(B) In the event that Seller should breach the Agreement by failing to meet the above conditions, the Deposit shall be returned to the Purchaser as liquidated damages, in which the Purchaser shall have no further claim against the Seller.

8. All the terms, covenants, and conditions contained in this Agreement shall insure to the benefit of and shall be binding upon the respective heirs, successors, and assigns of Seller and Purchaser.

9. Any notice, request, demand, consent, approval, or other communication required or permitted under this Agreement will be written and will be deemed to have been given (i) on the next day after delivery to a nationally-recognized express delivery service with instructions for overnight delivery; or (ii) on the third day after it is deposited in any depository regularly maintained by the United States postal service, postage prepaid, certified or registered mail, return receipt requested, addressed to the address or to such other address as the party to be notified shall have specified to the other party as set forth below:

IF TO SELLER:

CHARLIE BROWN'S OF MATAWAN, INC.

c/o CRG Partners Group LLC  
2 Atlantic Avenue, 4th Floor  
Boston, Massachusetts 02110  
Attn: Gary Lembo, CRO

With a simultaneous copy to:

CAHILL GORDON & REINDEL LLP  
Eighty Pine Street  
New York, New York 10005  
Attn: Joel H. Levitin, Richard A. Stieglitz Jr., and Maya Peleg

VICTOR & BERNSTEIN, P.C.  
18 East 41st Street, 10th Floor  
New York, New York 10017  
Attn: Saul Victor, Donald Bernstein, and Martha M. Redo

IF TO PURCHASER:

JOSE BARREIRO  
4 Douglas Street  
Sayreville, New Jersey 08872

With a simultaneous copy to:

ROBERT C. WILLIAMS, ESQ.  
622 Eagle Rock Avenue  
West Orange, New Jersey 07052

10. This Agreement shall not be assigned by Purchaser, except to an entity in which Purchaser owns a majority interest, has voting control and a majority of the equitable interests, without Seller's prior written consent; provided however, that such assignment must be made prior to filing the application with the Governing Authority or the ABC; provided further that Purchaser shall not be released from any of the obligations set forth herein as a result of such assignment. Notice of such assignment and assumption shall promptly be given to Seller.

11. It is understood and agreed that this Agreement alone represents the full, final, and complete understanding of the parties hereto.

12. This Agreement may only be amended, modified, or terminated by written consent of both parties.

13. This Agreement shall be governed by, and be construed and enforced in accordance with, the laws of the State of New Jersey. The Court shall have sole jurisdiction to interpret and enforce the terms of this Agreement.



14. Each provision of this Agreement shall be considered to be separable, and if, for any reason, any provision or any part hereof is deemed to be invalid and contrary to any applicable law, such invalidity shall not impair the portions of this Agreement that are valid; and this Agreement shall be construed and enforced to all effects as if such invalid provision had been omitted.

15. The failure of the Seller or Purchaser to insist upon strict performance of any of the covenants or conditions of this Agreement shall not be construed as a waiver by such party of any of its rights or remedies under this Agreement, and shall not be construed as a waiver, relinquishment or failure of any such covenants, conditions, or options.

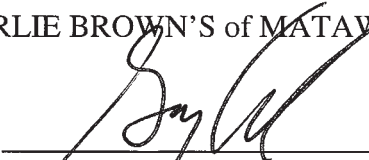
16. This Agreement may be executed with original, faxed, or e-mail signatures in one or more counterparts, each of which, when taken together, shall constitute a single original.

[Signature Page Follows]

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed the date hereinabove written.

SELLER:

CHARLIE BROWN'S of MATAWAN, INC.

By:   
Name: Gary Lembo  
Title: CRO

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed the date hereinabove written.

**SELLER:**

CHARLIE BROWN'S OF MATAWAN, INC.

By: \_\_\_\_\_

Name: Gary Lembo

Title: CRO

**PURCHASER:**

By:  \_\_\_\_\_

Name: José Barreiro

**EXHIBIT B**

**Proposed Form of Order**

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

In re	)	
	)	Chapter 11
CB HOLDING CORP., et al., <sup>1</sup>	)	Case No. 10-13683 (MFW)
	)	
Debtors.	)	Jointly Administered
	)	
		Re: Docket No. ____

**ORDER APPROVING SALE OF LIQUOR LICENSE  
NUMBER 1329-33-016-009 FREE AND CLEAR OF ALL LIENS,  
CLAIMS, ENCUMBRANCES, ATTACHMENTS, AND OTHER INTERESTS**

Upon consideration of the motion (the “Motion”)<sup>2</sup> of the Debtors for entry of an

<sup>1</sup> The other Debtors, and the last four digits of each of their tax identification numbers, are: 1820 Central Park Avenue Restaurant Corp. (5151); Bugaboo Creek Acquisition, LLC (4629); Bugaboo Creek Holdings, Inc. (0966); Bugaboo Creek of Seekonk, Inc. (1669); CB Holding Corp. (8640); CB VII, Inc. (9120); CB VIII, Inc. (1468); Charlie Brown North (6721); Charlie Brown’s Acquisition Corp. (8367); Charlie Brown’s at Clifton, Inc. (7309); Charlie Brown’s Mark Corp. (3569); Charlie Brown’s Montclair, Inc. (4223); Charlie Brown’s 1981, Inc. (7781); Charlie Brown’s of Allentown, L.L.C. (8420); Charlie Brown’s of Alpha, Inc. (9083); Charlie Brown’s of Berwyn, LLC (3347); Charlie Brown’s of Blackwood, L.L.C. (5698); Charlie Brown’s of Bloomsburg, LLC (3326); Charlie Brown’s of Brielle, Inc. (8115); Charlie Brown’s of Carlstadt, Inc. (6936); Charlie Brown’s of Chatham, Inc. (2452); Charlie Brown’s of Commack LLC (4851); Charlie Brown’s of Denville, Inc. (1422); Charlie Brown’s of East Windsor, LLC (2747); Charlie Brown’s of Edison, Inc. (8519); Charlie Brown’s of Egg Harbor Twp, LLC (none); Charlie Brown’s of Franklin, LLC (5232); Charlie Brown’s of Garden City, LLC (7440); Charlie Brown’s of Hackettstown, L.L.C. (7493); Charlie Brown’s of Harrisburg, LLC (1085); Charlie Brown’s of Hillsborough, Inc. (0344); Charlie Brown’s of Holtsville, LLC (0138); Charlie Brown’s of Jackson, LLC (3478); Charlie Brown’s of Lacey, L.L.C. (6282); Charlie Brown’s of Lakewood, Inc. (0156); Charlie Brown’s of Langhorne, LLC (3392); Charlie Brown’s of Lynbrook LLC (2772); Charlie Brown’s of Maple Shade, Inc. (0404); Charlie Brown’s of Matawan, Inc. (8337); Charlie Brown’s of Middletown LLC (7565); Charlie Brown’s of Oradell, Inc. (0348); Charlie Brown’s of Pennsylvania, Inc. (6918); Charlie Brown’s of Piscataway, LLC (8285); Charlie Brown’s of Reading, LLC (1214); Charlie Brown’s of Scranton, LLC (9817); Charlie Brown’s of Selinsgrove, LLC (6492); Charlie Brown’s of Springfield, LLC (9892); Charlie Brown’s of Staten Island, LLC (1936); Charlie Brown’s of Tinton Falls, Inc. (6981); Charlie Brown’s of Toms River, LLC (5492); Charlie Brown’s of Union Township, Inc. (8910); Charlie Brown’s of Trexlertown, LLC (6582); Charlie Brown’s of Wayne, Inc. (4757); Charlie Brown’s of West Windsor, Inc. (0159); Charlie Brown’s of Williamsport LLC (8218); Charlie Brown’s of Woodbury, Inc. (0601); Charlie Brown’s of York, LLC (0980); Charlie Brown’s of Yorktown, LLC (7855); Charlie Brown’s Restaurant Corp. (7782); Charlie Brown’s Steakhouse Fishkill, Inc. (9139); Charlie Brown’s Steakhouse Woodbridge, Inc. (1906); Charlie Brown’s, Inc. (4776); Jonathan Seagull Property Corp. (7248); Jonathan Seagull, Inc. (9160); The Office at Bridgewater, Inc. (3132); The Office at Cranford, Inc. (3131); The Office at Keyport, Inc. (1507); The Office at Montclair, Inc. (3128); The Office at Morristown, Inc. (3127); The Office at Ridgewood, Inc. (2949); The Office at Summit, Inc. (3126); and What’s Your Beef V, Inc. (4719). The Debtors’ address is 1450 Route 22 West, Mountainside, NJ 07092.

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

order, pursuant to Bankruptcy Code §§ 105(a) and 363(b)(1), Bankruptcy Rules 2002, 6004, and 9014, and Local Rule 6004-1, approving the sale of Liquor License Number 1329-33-016-009 (the “Liquor License”) to Jose Barreiro (the “Buyer”), as described in the Motion and as provided for by the Sale Agreement; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and the Court having found that good and sufficient cause exists for granting the Motion; and it appearing that the sale of the Liquor License pursuant to the Sale Agreement is within the Debtors’ sound and prudent business judgment; and upon the record of these Chapter 11 cases and any hearings held to consider the Motion; and it appearing that the relief requested in the Motion is appropriate in the context of these cases and in the best interests of the Debtors and their respective estates, creditors, and all other parties-in-interest; and it appearing that notice of the Motion and the relief requested therein was adequate and proper under the circumstances of these cases, including the Notice provided to the Liquor Boards, and it appearing that no other or further notice need be given;

**IT IS HEREBY ORDERED THAT:**

1. The Motion is granted as set forth herein.
2. The Debtors are authorized and empowered to sell the Liquor License in accordance with the Purchase Agreement and this Order. The Sale Agreement is approved, and the Debtors are authorized to execute it.
3. The Buyer is deemed a good-faith purchaser of the Liquor License entitled to the protection of Bankruptcy Code § 363(m) with respect to the transactions contemplated by the Sale Agreement.

4. The sale of the Liquor License to the Buyer does not violate the requirements of Bankruptcy Code § 363(n).

5. The Debtors and Buyer are authorized and directed to take all actions, and execute all documents, necessary or appropriate to effectuate the sale of the Liquor License to the Buyer. In connection therewith, the Debtors' Chief Restructuring Officer or any successor or agent established by order of this Court shall be authorized to effectuate any necessary documentation or transfers with the Liquor Boards, to facilitate the sale and transfer of the Liquor License contemplated and authorized by this order, and the Liquor Boards are directed to accept any such documentation or transfers submitted to the Debtors' Chief Restructuring Officer or any such successor or agent on behalf of the Debtors.

6. The Debtors and the Buyer are authorized to amend or modify the Sale Agreement without further order of this Court, provided that any such amendments or modifications are non-material and do not have an adverse affect on the Debtors or their estates.

7. Prior to the confirmation of any plan of reorganization in these cases providing for the distribution of proceeds of the Liquor License, the net proceeds of the sale of the Liquor License, other than the amount of the Other Assets Resolution Consideration (as defined in the Final Order (I) Authorizing Secured Post-Petition Financing, (II) Authorizing Use Of Cash Collateral, and (III) Granting Adequate Protection (ECF No. 177)), relating to the Liquor License, shall be wire transferred to Ally Commercial Finance LLC as soon as practicable after the Closing of the sale. After the confirmation of any such plan, all net proceeds of the sale of the Liquor License shall be distributed in accordance with the terms of such plan.

8. The Debtors are authorized and empowered to take any and all actions necessary to implement the terms of this Order.

9. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry notwithstanding any applicability of Bankruptcy Rule 6004(h) or any other applicable rule.

10. This Court shall retain jurisdiction over all matters arising from or related to the interpretation and implementation of this Order.

Dated: \_\_\_\_\_, 2011  
Wilmington, Delaware

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THE HONORABLE MARY F. WALRATH  
UNITED STATES BANKRUPTCY JUDGE