



**DEBTORS' MOTION FOR ORDER APPROVING SALE OF  
LIQUOR LICENSE NUMBER 1217-33-017-006 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 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 1217-33-017-006 (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

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<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).

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

4. The Debtors own and operate the brands known as *Charlie Brown's Steakhouse* ("Charlie Brown's"), *Bugaboo Creek Steak House* ("Bugaboo Creek"), and *The Office Beer Bar & Grill* ("The Office"). There are currently 20 total Charlie Brown's restaurants in New York, New Jersey, and Pennsylvania; 12 total Bugaboo Creek restaurants in Massachusetts, Delaware, Maryland, New Hampshire, and Maine; and seven The Office restaurants in New Jersey.

5. A variety of external factors have led to a decline in the Debtors' revenue over the last several years, at the same time that costs have increased, and the economy has struggled, greatly impacting the Debtors' customer base. Accordingly, for some time, the Debtors have been in discussions with their lenders and other parties regarding a financial restructuring.

6. Prior to the Petition Date, the only party willing to provide the operations and to work toward a restructuring was Ally Commercial Finance LLC (f/k/a GMAC Commercial Finance LLC) ("Ally"), one of the Debtors' pre-petition senior secured lenders, which was only willing to do so as a DIP loan in Chapter 11. In an effort to maximize their value, the Debtors commenced these cases and entered into a DIP arrangement with Ally (which incorporates a settlement of various issues with the Committee), and during these cases, the

Debtors intend to market and sell substantially all of their assets expeditiously pursuant to Bankruptcy Code § 363.

7. By order entered on January 21, 2011 (Docket No. 468), this Court approved the sale of The Office to Villa Enterprises Management. On February 2, 2011, the Debtors also filed a motion (Docket No. 489) to sell Bugaboo Creek.

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

8. 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 (Docket No. 176) authorizing the rejection, nunc pro tunc to the Petition Date, of the leases related to the Closed Restaurants.

9. 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.

10. The Debtors owned and maintained the Liquor License for use at their former Charlie Brown's Steakhouse restaurant (the "Piscataway Restaurant") located at 1776 South Washington Avenue, Piscataway, New Jersey. As a result of Hilco's marketing efforts, on

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<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.

or about February 14, 2011, the Debtors entered into an agreement (the “Sale Agreement”) to sell the Liquor License to Thomas Whelan (the “Buyer”).<sup>4</sup>

11. In accordance with the terms and conditions of the Sale Agreement, the Buyer has agreed to pay an aggregate purchase price of \$200,000 for the Liquor License.

### **RELIEF REQUESTED**

12. 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 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**

#### **A. The Sale of the Liquor License is a Valid Exercise of the Debtors’ Business Judgment**

13. 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.”

14. Although § 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, 394-395 (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

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<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 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 the summary and the Sale Agreement, the terms of the Sale Agreement shall govern.

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).

15. 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].”

16. The purpose of § 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).

17. 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 \$200,000 represents a fair sale price based upon the estimated value of the Liquor License.

18. 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 Piscataway Restaurant, the Debtors submit that the Liquor License is not necessary and should be sold now to maximize its value.

19. 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.

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

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

21. 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).

22. 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.

23. 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.

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

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

25. 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.

26. 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).

27. 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.

28. Because Bankruptcy Code § 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. denied, 503 U.S. 987 (1992) (same).

29. 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”).

30. Thus, the Debtors submit that at least one (if not more) of the subsections of Bankruptcy Code § 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.

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

31. 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.

32. 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.

33. 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 (2nd 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).

34. 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 (3rd Cir. 1986) (parties acted in good faith if purchase price is adequate and reasonable, and terms of sale are fully disclosed).

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

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

36. 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).

37. 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**

38. 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, telephone, 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 Piscataway 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**

39. 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).

**NO PREVIOUS REQUEST**

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

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: February 15, 2011  
Wilmington, Delaware

Respectfully submitted,



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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)
	)	
Debtors.	)	Jointly Administered
	)	Hearing Date: March 9, 2011 at 11:30 a.m. (ET)
	)	Obj. Deadline: March 2, 2011 at 4:00 p.m. (ET)

**NOTICE OF MOTION AND HEARING**

PLEASE TAKE NOTICE that on February 15, 2011, the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) filed the **Debtors’ Motion for Order Approving Sale of Liquor License Number 1217-33-017-006 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 **March 2, 2011 at 4:00 p.m. (ET)**.


PLEASE TAKE FURTHER NOTICE that a hearing with respect to the Motion will be held on **March 9, 2011 at 11:30 a.m. (ET)** 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: February 15, 2011  
Wilmington, Delaware

Respectfully submitted,



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Attorneys for the Debtors and  
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**EXHIBIT A**

**Sale Agreement**

## AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT made this 14th day of February, 2011 between Charlie Brown's of Piscataway, LLC, a New Jersey limited liability company, having an address at 1450 Route 22 West, Mountainside, New Jersey 07092 ("Seller"), and Thomas Whelan (or his assigns), residing at 508 Warren Avenue, Spring Lake, NJ 07762 ("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 1217-33-017-006 (the "Liquor License") issued by the governing body of the Township of Piscataway, State of New Jersey (the "Township");

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 Township 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 TWO HUNDRED THOUSAND DOLLARS (\$200,000.00) as the Purchase Price for the Liquor License. Purchaser at the execution hereof will deposit into the account of Wilmington Trust Company ("Escrow Agent") the sum of TWENTY THOUSAND DOLLARS (\$20,000.00) (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 EIGHTY THOUSAND DOLLARS (\$180,000.00) ("Balance of Purchase Price") shall be paid to Seller at Closing (as hereinafter defined) in certified funds, bank check, or wire transfer.

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 local 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:

Seller represents and warrants to Purchaser the following:

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

b. 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;

c. License. — The Liquor License is in full force and effect, and is valid for the period through and including June 30, 2011; and

d. 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.

Purchaser represents and warrants to Seller the following:

a. 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;

b. 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;

c. 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

d. 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 Township 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 by 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 Township and the ABC for the transfer of the Liquor License to Purchaser (the "Application") and within 5 days thereafter provide a copy of the transmittal letter to the Seller indicated that the Application has been filed. 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 Township 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 Township 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 Township'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 within such 120 day period. If the transfer application has neither been approved nor denied within the 120 day period, and Purchaser has complied with all of its obligations and the sole reason that approval has not been obtained is that the background checks conducted by law enforcement authorities have not been completed, the 120-day period will be extended an additional 30 days, after which either party may cancel this agreement and the Deposit shall be delivered to the Seller.

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. The delivery of the Deposit shall not forfeit or preclude the Seller's ability to exercise any other right or remedy against the Purchaser under law, equity, or statute.

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.

c. If there is a dispute regarding a breach of this Agreement that results in litigation, the losing party shall pay to the prevailing party the reasonable and documented attorneys' fees, court costs and related expenses of such party incurred or paid in prosecuting or defending such litigation.

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 PISCATAWAY, LLC  
1450 Route 22 West  
Mountainside, New Jersey 07092  
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, NY 10017  
Attn: Saul Victor, Donald Bernstein, and Martha M. Redo

IF TO PURCHASER:

THOMAS WHELAN

508 Warren Avenue  
Spring Lake, NJ 07762

With a simultaneous copy to:

BROEGE, NEUMANN, FISCHER & SHAVER, LLC  
25 Abe Voorhees Drive  
Manasquan, New Jersey 08736  
Attn: Timothy P. Neumann, Esq.

10. This Agreement shall not be assigned by Purchaser, except to an entity in which Purchaser maintains a controlling interest, without Seller's prior written consent.

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.

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

SELLER:

CHARLIE BROWN'S of PISCATAWAY, LLC

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

Name: Gary Lembo

Title: CRO



SELLER:

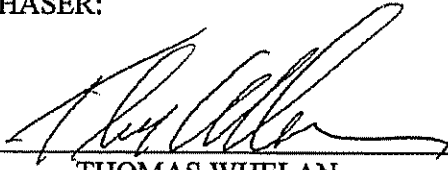
CHARLIE BROWN'S of PISCATAWAY, LLC

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

Name: Gary Lembo

Title: CFO

PURCHASER:

  
\_\_\_\_\_  
THOMAS WHELAN

**EXHIBIT B**

**Proposed Form of Order**

**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)
	)	
Debtors.	)	Jointly Administered
	)	
	)	Re: Docket No. ____

**ORDER APPROVING SALE OF LIQUOR LICENSE  
NUMBER 1217-33-017-006 FREE AND CLEAR OF ALL LIENS,  
CLAIMS, ENCUMBRANCES, ATTACHMENTS, AND OTHER INTERSTS**

<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.

Upon consideration of the motion (the “Motion”)<sup>2</sup> of the Debtors for entry of an 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 the Liquor License, 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, in their discretion to sell the Liquor License. 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.

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

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

8. 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 otherwise.

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

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

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THE HONORABLE MARY F. WALRATH  
UNITED STATES BANKRUPTCY JUDGE