

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

In re:)	
)	Chapter 11
CB HOLDING CORP., <u>et al.</u> , ¹)	
)	Case No. 10-13683 (MFW)
Debtors.)	
)	Jointly Administered
)	
)	Re: Docket No. 485, 6/4

**ORDER APPROVING SALE OF LIQUOR LICENSE
NUMBER 2108-33-003-011 FREE AND CLEAR OF ALL LIENS,
CLAIMS, ENCUMBRANCES, ATTACHMENTS, AND OTHER INTERESTS**

¹ 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")² 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 Liquor License Number 2108-33-003-011 (the "Liquor License") to Mark Falow (the "Buyer"), as described in the Motion and as provided for by the sale agreement (the "Sale Agreement"), attached hereto as Exhibit A; 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.

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

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. 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* (Docket No. 177)) relating to the Liquor License, the net proceeds of the sale of the Liquor License shall be wire transferred to Ally Commercial Finance LLC as soon as practicable after the Closing of the sale.

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 otherwise.

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

Dated: March 17, 2011
Wilmington, Delaware



THE HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A

AMENDED AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT made this 10th day of March, 2011, between

Charlie Brown's of Hackettstown, L.L.C., a New Jersey limited liability company, as a debtor and debtor-in-possession, having an address at 1450 Route 22 West, Mountainside, New Jersey 07092 ("Seller"),

and

Mark Falow, having an address at 10 Independence Trail, Totawa, NJ 07512 ("Purchaser").

WITNESSETH

WHEREAS, Seller is the holder of a certain Plenary Retail Consumption Liquor License 2108-33-003-011 (the "Liquor License") issued by the governing body of the Town of Hackettstown, State of New Jersey (the "Town");

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 FOUR HUNDRED AND SEVEN THOUSAND AND FIVE HUNDRED DOLLARS (\$407,500.00) as the Purchase Price for the Liquor License. Purchaser at the execution hereof will deposit with Wilmington Trust Company ("Escrow Agent") the sum of FORTY THOUSAND AND SEVEN HUNDRED AND FIFTY DOL-

LARS (\$40,750.00) (the "Deposit")¹, 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 THREE HUNDRED AND SIXTY-SIX THOUSAND AND SEVEN HUNDRED AND FIFTY DOLLARS (\$366,750.00) ("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 consents to the escrow by Purchaser's attorney from the sale price, and the payment of any such escrowed funds as required by the Division of Taxation 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 (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, (iv) he is eligible to hold a liquor license as defined by New Jersey Law and (v) has

¹ 10% of Purchase Price.

sufficient funds to purchase the Liquor License in accordance with the terms of this agreement;

b 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 for the transfer of the Liquor License from Seller to Purchaser (“Requisite Approvals”); (ii) the receipt by Purchaser 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 pursuant to 11 U.S.C. §363, which shall include a finding under 11 U.S.C. § 363(m) 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 on which a Consent to Transfer and copy of the first four pages of the last-filed long form Liquor License Application are received by Purchaser 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 Purchaser does not prosecute the Application diligently, and in good faith provide all required information and documentation to the Township and the ABC, and the Requisite Approvals are denied, then Seller shall have the right to terminate this Agreement, and the Escrow Agent shall deliver the Deposit to Seller.

b. In the event of default, the Closing Contingencies are not satisfied, 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 on which Pur-

chaser received from Seller the Consent to Transfer in accordance with Section 6, above, or as may be extended due to the failure of the Township to act upon the transfer application within the 120-day period. 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, and in such case the Seller shall have no further claim against the Purchaser.

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, and in such case 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. Purchaser and Seller each represent that no broker, finder or intermediary has been consulted or used in connection with the purchase and sale of the Liquor License except (i) the Listing Broker (RAS Brokerage and Hilco) who shall be compensated upon Closing by Seller pursuant to a separate agreement and (ii) the Selling Broker (Liquor License Sales PA-NJ, L.L.C.) who shall be compensated upon Closing by the Purchaser per separate brokerage agreement.

10. 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 HACKETTSTOWN, L.L.C.
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:

MARK FALOW
10 Indendence Trail
Totawa, NJ 07512

With a simultaneous copy to:

JOHN F. VASSALLO, JR., ESQ
50 Twin Hill Drive
Willingboro, NJ 08046-3724

And to:

POLSINELLI SHUGHART PC
222 Delaware Avenue, Suite 1101
Wilmington, DE 19801
Attn: Christopher A. Ward, Esq.

11. 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; provided however, that the right to purchase the Liquor License may be assigned to an entity to be formed solely for the purpose of purchasing the Liquor License; provided further that Purchaser shall not be released from any of the obligations set forth herein as a result of such assignment. If this Agreement is so assigned, all references to "Purchaser" herein shall be deemed to apply to the entity applying for the license transfer, as well as to Mark Falow individually. Notwithstanding any of the foregoing, any such assignment shall not release Mark Falow of any of his obligations set forth in this Agreement, including payment of the Balance of Purchase Price at the Closing.

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

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

14. 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.

15. 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.

16. 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.

17. 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 HACKETTSTOWN, L.L.C.

By: _____

Name: Gary Lembo

Title: CRO

PURCHASER:

By: _____


MARK FALOW

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

SELLER:

CHARLIE BROWN'S OF
HACKETTSTOWN, L.L.C.

By: _____

Name: Gary Lembo

Title: CRO