

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. [___]

<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 Trexler-town, 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 AUTHORIZING AND APPROVING THE SALE OF  
SUBSTANTIALLY ALL THE DEBTORS' ASSETS COMPRISING THE  
BUGABOO CREEK STEAK HOUSE BUSINESS AND ASSUMPTION  
AND ASSIGNMENT OF CERTAIN RELATED EXECUTORY  
CONTRACTS AND UNEXPIRED LEASES RELATING THERETO FREE  
AND CLEAR OF ALL LIENS, CLAIMS AND OTHER INTERESTS**

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

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

it appearing that no other notice need be provided; and the Debtors having marketed the Assets pursuant to the terms and conditions of the order approving the Sale Procedures entered by this Court on [\_\_\_\_\_] , 2011 (the “Sale Procedures Order”); [and the Debtors having conducted an auction for the Assets (the “Auction”) pursuant to the terms and conditions of the Sale Procedures Order on [\_\_\_\_\_] , 2011]; and [\_\_\_\_\_] (in such capacity, the “Purchaser”) having made the highest or best offer [at the Auction] for the Assets and the Debtors and the Purchaser having executed the attached Purchase Agreement (the “Agreement”) for the purchase of the Assets; and it appearing that consummation of the Agreement is in the best interest of the Debtors, their estates, and creditors as it will maximize the value of the Assets for the benefit of all parties-in-interest herein and is a sound and prudent exercise of the Debtors’ business judgment; and upon the respective records of the Sale Procedures Hearing and the Sale Hearing held before this Court on [\_\_\_\_\_] , 2011, and [\_\_\_\_\_] , 2011, respectively, and all affidavits or other pleadings submitted in connection with the relief sought in the Motion; and any objections to the substantive relief requested in the Motion having been resolved, withdrawn, or otherwise overruled by this Court; and after due deliberation, and sufficient cause appearing therefor,

IT IS HEREBY FOUND AND DETERMINED THAT:<sup>3</sup>

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

B. The statutory predicates for the relief sought in the Motion are §§ 105(a), 363, and 365 of the Bankruptcy Code as supplemented by Rules 2002, 6004, 6006, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Local Rule 6004-1.

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3 Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. See Bankruptcy Rule 7052.

C. Proper, timely, adequate, and sufficient notice of the Motion, the Agreement and all transactions contemplated thereby, the Sale, the Sale Procedures, the Auction, the assumption and assignment of the Assumed Agreements and the Proposed Cure Amounts set forth on Exhibit A hereto, the Sale Hearing, and the various objection deadlines, has been provided in accordance with: (i) § 102(1) of the Bankruptcy Code; (ii) Bankruptcy Rules 2002 and 6004 and any applicable local rules of this Court; and (iii) the Sale Procedures Order, and no other or further notice of the Motion, the Sale, the assumption and assignment of the Assumed Agreements and the Proposed Cure Amounts, the Sale Hearing, or the entry of this Order is required.

D. A reasonable opportunity to object or be heard regarding the relief requested in the Motion has been afforded to all parties-in-interest.

E. The Debtors have full corporate power and authority to execute the Agreement and all other documents contemplated thereby, and the Sale of the Assets has been duly and validly authorized by all necessary corporate action of the Debtors. The Debtors have all the corporate power and authority necessary to consummate the transactions contemplated by the Agreement, and no consents or approvals, other than those expressly provided in the Agreement, are required for the Debtors to consummate such transactions.

F. The Agreement and the transactions contemplated thereby reflect the exercise of the Debtors' sound and prudent business judgment.

G. Approval at this time of the Agreement, and the consummation of the transaction contemplated thereby, is in the best interests of the Debtors, their creditors, and estates. Good and sufficient business justification for consummating the Sale of the Assets pursuant to § 363(b) of the Bankruptcy Code, and the assumption and assignment of the Assumed Agreements pursuant to § 365 of the Bankruptcy Code to has been established in that, among other matters:

(i) In the absence of a prompt sale of the Assets, their value may decline because of current market conditions and the Debtors' financial situation.

(ii) Unless a sale to the Purchaser is concluded expeditiously pursuant to the Agreement as provided for in the Motion, the Debtors, their estates, and creditors will likely realize less value for the Assets.

(iii) The terms and conditions of the Agreement are fair and reasonable. The Agreement represents the highest or best offer for the Assets and the purchase price payable thereunder is fair and reasonable. The Debtors determined to accept the Purchaser's offer to purchase the Assets following an appropriate marketing effort under the circumstances [and their conducting of the Auction, at which time the Purchaser submitted the higher or better bid over any other bid for the Assets].

H. The Agreement was negotiated, proposed, and entered into by the parties without collusion, in good faith, and from arm's length bargaining positions. The Purchaser is a buyer in good faith under § 363(m) of the Bankruptcy Code and, upon consummation of the sale, is entitled to the protections afforded thereby. Neither the Debtors nor the Purchaser has engaged in any conduct that would cause or permit the Agreement and the transactions contemplated thereby to be avoided under § 363(n) of the Bankruptcy Code.

I. The Debtors are the sole and lawful owners of the Assets. The transfer of the Assets to the Purchaser will be a legal, valid, and effective transfer of the Assets and, except for the Assumed Liabilities and Permitted Liens, will vest Purchaser with all right, title, and interest of the Sellers to the Assets free and clear of interests, claims, encumbrances, security interests, or liens (collectively, the "Interests"), including, but not limited to (1) those that purport to give to any party a right or option to effect any forfeiture, modification, right of first refusal, or termination of the Sellers' or the Purchaser's interest in the Assets or any similar rights, (2) those relating to taxes arising under or out of, in connection with, or in any way relating to the ownership and/or operation of the Assets prior to the Closing Date, and (3)(a)

those arising under all mortgages, deeds of trust, security interests, conditional sale or other title retention agreements, pledges, liens, judgments, demands, encumbrances, rights of first refusal or charges of any kind or nature, if any, including, but not limited to, any restriction on the use, voting, transfer, receipt of income or other exercise of any attributes of ownership and (b) all debts arising in any way in connection with any agreements, acts, or failures to act, of any of the Sellers or any of the Sellers' predecessors or affiliates, claims (including, without limitation, as that term is defined in the Bankruptcy Code), causes of action, suits, rights of recovery, obligations, liabilities, demands, guaranties, options, rights, contractual or other commitments, restrictions, judgments, order and decrees of any court or governmental entity, interests, and matters of any kind and nature, whether known or unknown, contingent or otherwise, liquidated or unliquidated, whether arising, accruing, incurred, or relating to a period prior to or subsequent to the commencement of these bankruptcy cases, and whether imposed by agreement, understanding, law, equity or otherwise, including but not limited to claims otherwise arising under doctrines of successor liability, alter ego, or similar doctrines.

J. The Purchaser would not have entered into the Agreement and would not consummate the transactions contemplated thereby, thus adversely affecting the Debtors, their estates, and their creditors, if the sale of the Assets to the Purchaser, the assumption and assignment of the Assumed Agreements to the Purchaser, and the assumption of the Assumed Liabilities by the Purchaser were not, except as otherwise provided in the Agreement with respect to Permitted Liens or otherwise, free and clear of all Interests of any kind or nature whatsoever, or if the Purchaser would, or in the future could, be liable for any of the Interests, which shall include, but not be limited to (1) any employment or labor agreements; (2) any pension, welfare, compensation, or other employee benefit plans, agreements, practices, and programs, including, without limitation, any pension plan of a Seller; (3) any other employee, worker's compensation, occupational disease, or unemployment or temporary disability related claim, including without limitation claims that might otherwise arise under or pursuant to (A) the

Employee Retirement, Income, Security Act of 1974, as amended, (B) the Fair Labor Standards Act, (C) Title VII of the Civil Rights Act of 1964, (D) the National Labor Relations Act, (E) the Worker Adjustment and Retraining Act of 1988, (F) the Age Discrimination and Employee Act of 1967, or (G) the Consolidated Omnibus Budget Reconciliation Act of 1985; (4) any products liability or similar claims, whether pursuant to any state or federal laws or otherwise, including without limitation, asbestos-related claims; (5) to the fullest extent permitted by applicable law, environmental claims or encumbrances arising from conditions first existing on or prior to the Closing Date (including, without limitation, the presence of hazardous, toxic, polluting, or contaminating substances or waste) that may be asserted on any basis, including, without limitation, under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq. or similar state statute; (6) any bulk sales or similar law; (7) any tax statutes or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended; and (8) claims arising under the Perishable Agricultural Commodities Act of 1930, as amended, the Packers and Stockyards Act of 1921, as amended, and all similar state statutes (collectively, "PACA/PASA").

K. The Debtors may sell the Assets free and clear of all Interests because the requirements of the Bankruptcy Code, including one or more of the standards set forth in § 363(f)(1)-(5) of the Bankruptcy Code have been satisfied or such sale otherwise is authorized pursuant to § 105 of the Bankruptcy Code. All holders of Interests, non-debtor parties to the Assumed Agreements, and all other parties-in-interest who did not object or who withdrew their objections, to the Sale, the Motion, or the assumption and assignment of the Assumed Agreements are deemed to have consented to the transactions contemplated in the Agreement pursuant to §§ 363(f)(2) and 365 of the Bankruptcy Code. Those holders of Interests who did object fall within one or more of the other subsections of Bankruptcy Code § 363(f) and are adequately protected by having their Interests, if any, attach to the proceeds of the sale of the

Assets ultimately attributable to the property against or in which they claim or may claim any Interests.

L. Subject to the occurrence of the Closing Date and the payment of Cure Amounts (defined below), the Debtors have (i) cured and/or provided adequate assurance of cure of any default existing prior to the date hereof under any of the Assumed Agreements, within the meaning of § 365(b)(1)(A) of the Bankruptcy Code, and (ii) provided compensation or adequate assurance of compensation to any party for any actual pecuniary loss to such party resulting from a default prior to the date hereof under any of the Assumed Agreements, within the meaning of § 365(b)(1)(B) of the Bankruptcy Code, and the Purchaser has provided adequate assurance of future performance under the Assumed Agreements, within the meaning of § 365(b)(1)(C) of the Bankruptcy Code.

M. The transfer of the Assets pursuant to the Agreement is or will be legal, valid, and effective transfers of property of the Debtors' estates to the Purchaser and vest or will vest the Purchaser with good title to the Assets, free and clear of any and all liens, claims, interests, and encumbrances under § 363(f) of the Bankruptcy Code.

N. The consideration provided by the Purchaser to the Debtors pursuant to the Agreement and this Order for the purchase of the Assets constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code, the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance Act, and under the laws of the United States and any state, district, territory, or possession thereof.

O. All of the provisions of this Order and the Agreement are nonseverable.

P. The relief requested in the Motion, including approval of the Agreement, is in the best interests of the Debtors, their creditors, and estates.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:



1. All of the relief requested in the Motion that was not previously granted in the Sale Procedures Order is hereby granted as set forth herein.

2. All Objections, if any, to the Motion or the relief requested therein that have not been withdrawn, waived, or settled, and all reservations of rights included therein, are overruled on the merits with prejudice.

3. The terms, conditions, and transactions contemplated by the Agreement with the Purchaser are hereby approved in all respects, and the sale transaction contemplated thereby is hereby approved in all respects and authorized under § 363(b) of the Bankruptcy Code. Without limiting the generality of the foregoing, the funds contained in the Escrow shall be remitted to the Debtors pursuant to the terms and conditions set forth in the Agreement, without the need for any other or further notice or order of this Court.

4. Pursuant to § 363(b) of the Bankruptcy Code, the Debtors and the Purchaser are each hereby authorized, empowered, and directed to perform under, consummate, and implement the Agreement, subject to the terms thereof, together with all additional instruments and documents that may be reasonably necessary or desirable to consummate the sale and all other transactions contemplated by the Agreement, such as any and all transition or management agreements arrangements contemplated by Sections 6.07 and 8.02(n) of the Agreement (including the Management Agreement), and to take all further actions reasonable or necessary in their determination for the purpose of selling, assigning, transferring, granting, conveying, and conferring to the Purchaser the Assets, free and clear of any and all Interests, or as may be necessary or appropriate to the performance of the Debtors' and the Purchaser's obligations as contemplated by the Agreement.

5. Subject to the terms and conditions of the Agreement, the Purchaser shall execute all instruments and documents and perform all of their obligations under the Agreement, including without limitation, payment of the Purchase Price.

6. The Purchaser is a good-faith purchaser under § 363(m) of the Bankruptcy Code and, as such, is entitled to the protections afforded thereby.

7. With reference to § 363(n) of the Bankruptcy Code, the consideration paid by the Purchaser was not controlled by an agreement among potential bidders, and the Purchaser has taken no actions which would warrant the avoidance of the sale or the imposition of any of the damages, costs, attorneys' fees, or expenses provided for in § 363(n) of the Bankruptcy Code.

8. Pursuant to § 365 of the Bankruptcy Code and subject to and conditioned upon the Closing Date, the Debtors' assumption and assignment to the Purchaser of the Assumed Agreements, and the Purchaser's assumption of the Assumed Agreements on the terms set forth in the Agreement is hereby approved, and the requirements of § 365(b)(1) of the Bankruptcy Code with respect thereto are hereby deemed satisfied. The Purchaser shall have up to and until the Closing Date to remove any executory contract or unexpired lease from the listing of Assumed Agreements.

9. The Debtors are hereby authorized in accordance with §§ 105(a) and 365 of the Bankruptcy Code to (a) assume and assign to the Purchaser, effective upon the Closing Date, the Assumed Agreements free and clear of all Interests of any kind or nature whatsoever other than the Assumed Liabilities and Permitted Liens and (b) execute and deliver to the Purchaser such documents or other instruments as may be reasonably necessary to assign and transfer the Assumed Agreements and Assumed Liabilities to the Purchaser.

10. The sale of the Assets shall vest the Purchaser with all right, title, and interest of the Sellers to the Assets free and clear of any and all Interests and other liabilities and claims, but subject to the Assumed Liabilities and Permitted Liens, whether secured or unsecured, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, disputed or undisputed, or known or unknown, whether arising prior to or subsequent

to the Petition Date, whether imposed by agreement, understanding, law, equity or otherwise, with all such Interests to attach only to the proceeds of the sale with the same priority, validity, force, and effect, if any, as they now have in or against the Assets, subject to all claims and defenses the Debtors or their estates may possess with respect thereto. Except as expressly permitted or otherwise specifically provided by the Agreement or this Order, all persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax, and regulatory authorities, lenders, trade, and other creditors, holding Interests of any kind or nature whatsoever against or in a Seller, or the Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, senior or subordinated), arising under or out of, in connection with, or in any way relating to the Debtors, the Assets, the ownership/and or operation of the Assets prior to the Closing Date, or the Sale are forever barred, estopped, and permanently enjoined from asserting against the Purchaser, its successors or assigns, its property, or the Assets such persons' or entities' Interests.

11. The Purchaser will take the Assets free and clear of any and all claims arising under PACA/PASA and the Assets are being transferred, in each instance, free and clear of any claims or trusts provided for under PACA/PASA.

12. With respect to the Assumed Agreements: (a) the Assumed Agreements shall be transferred and assigned to, and following the Closing Date remain in full force and effect for the benefit of, the Purchaser, notwithstanding any provision in any such Assumed Agreement (including those of the type described in § 365(b)(2) and (f) of the Bankruptcy Code) that prohibits, restricts, or conditions such assignment or transfer, and pursuant to § 365(k) of the Bankruptcy Code, the Debtors shall be relieved from any further liability with respect to the Assumed Agreements arising after such assignment to and assumption by the Purchaser; (b) each Assumed Agreement is an executory contract or unexpired lease under § 365 of the Bankruptcy Code; (c) subject to the Closing Date, the Debtors may assume each of their respective Assumed Agreements in accordance with § 365 of the Bankruptcy Code and assign each Assumed

Agreement in accordance with §§ 363 and 365 of the Bankruptcy Code, and any provisions in any Assumed Agreement that prohibit or condition the assignment of such Assumed Agreement or allow the party to such Assumed Agreement to terminate, recapture, impose any penalty, condition renewal or extension, or modify any term or condition upon the assignment of such Assumed Agreement, constitute unenforceable anti-assignment provisions, which are void and of no force and effect; (d) all other requirements and conditions under §§ 363 and 365 of the Bankruptcy Code for the assumption by the Debtors and assignment to the Purchaser of each Assumed Agreement have been satisfied, subject to the occurrence of the Closing Date and the payment of Cure Amounts; and (e) upon the Closing Date, in accordance with §§ 363 and 365 of the Bankruptcy Code, Purchaser shall be fully and irrevocably vested in all right, title and interest of each Assumed Agreement free and clear of Interests. Any portions of the property leases with respect to any of the Leased Properties that purport to permit the landlords thereunder to cancel the remaining term of any of such leases if the Debtors discontinue their use or operation of the Leased Properties are void and of no force and effect and shall not be enforceable against the Purchaser, its assignees, and sublessees, and the landlords under such leases shall not have the right to cancel or otherwise modify such leases or increase the rent, assert any claim, or impose any penalty by reason of such discontinuation, the Debtors' cessation of operations, the assignment of such leases to the Purchaser, or the interruption of business activities at any of the leased premises.

13. All defaults or other obligations of the Sellers under the Assumed Agreements arising, incurred, or accruing prior to the Closing Date (without giving effect to any acceleration clauses or any default provisions of the kind specified in § 365(b)(2) of the Bankruptcy Code) shall be cured at the Closing Date or as soon thereafter as practicable by payment in the manner set forth in the Agreement of the cure amounts necessary under § 365(b) of the Bankruptcy Code (collectively, the "Cure Amounts"), and the Purchaser shall have no liability or obligation for amounts arising, accruing, incurred, or relating to a period prior to the

date of the Closing Date (including, without limitations, the Cure Amounts), relating to the Assumed Agreements, except as otherwise expressly provided in the Agreement. Other than the Cure Amounts, no other amounts are or shall be due to the non-debtor parties in connection with the assumption by the Debtors and the assignment to the Purchaser of the Assumed Agreements.

14. Pursuant to § 365(b)(I)(A) and (B) of the Bankruptcy Code, and except as otherwise provided in this Order or as agreed to by the Debtors and non-debtor parties to the Assumed Agreements, upon the Closing Date, the requisite Cure Amounts, if any, shall be paid in the manner provided for in the Agreement to the non-debtor parties to the Assumed Agreements, in the amounts set forth on Exhibit A attached hereto, except to the extent that a Cure Amount was amended on the record of the Sale Hearing, by written agreement between the Purchaser and the affected non-debtor party (which may have been executed prior to, or which may be executed after, the entry of this Order), or pursuant to another order of this Court.

15. Each non-debtor party to an Assumed Agreement hereby is forever barred, estopped, and permanently enjoined from (i) asserting against the Purchaser and its affiliates or the property of any of them, any default arising prior to or existing as of the Closing Date or, against the Purchaser or its affiliates, any counterclaim, defense, setoff, or any other claim asserted or assertable against the Debtors arising prior to or existing as of the applicable Effective Transfer Date; and (ii) imposing or charging against the Purchaser or its affiliates any rent accelerations, assignment fees, increases, or any other fees as a result of the Debtors' assumption and assignments to the Purchaser of the Assumed Agreements. The validity of such assumption and assignments of the Assumed Agreements shall not be affected by any dispute between the Debtors and any non-debtor party to an Assumed Agreement.

16. The failure of the Debtors or the Purchaser to enforce at any time one or more terms or conditions of any Assumed Agreement shall not be a waiver of such terms or conditions, or of the Debtors' and the Purchaser's rights to enforce every term and condition of the Assumed Agreements.

17. Pursuant to §§ 105(a) and 363(f) of the Bankruptcy Code, upon the Closing Date under the Agreement, the applicable Assets shall be transferred to the Purchaser free and clear of any and all Interests, if any, with all Interests to transfer, affix, and attach to the net proceeds of the Sale in the order of their priority and with the same validity, force, and effect that they have against the Assets immediately prior to the Sale, subject to the rights, claims, defenses, and objections, if any, of the Debtors and all interested parties with respect to such liens, claims, security interests, and encumbrances. For the avoidance of doubt, and without limiting the foregoing, the Liquor Licenses are hereby being transferred to the Purchaser free and clear of any and all Interests. Nothing in this Order or the Agreement authorizes the transfer or assignment to the Purchaser of any license, permit, registration, authorization, or approval of or with respect to a governmental unit without the Purchaser's complying with all applicable legal requirements under non-bankruptcy law governing such transfers or assignment; provided, however, that no governmental unit that was provided with notice of the Motion but failed to timely object thereto may be entitled to rely on this sentence in connection with any objection, refusal, or other challenge to any proposed transfer or assignment by the Sellers to the Purchaser of any license, permit, registration, authorization, or approval. Other than the amount of the Other Assets Resolution Consideration (as defined in the Final DIP Order) relating to the Bugaboo Creek Business, the net proceeds of the Sale shall be wire transferred to Ally Commercial Finance LLC from the Escrow upon the Closing Date.

18. The provisions of this Order authorizing the sale of the Assets free and clear of all Interests, other than Assumed Liabilities and Permitted Liens, shall be self-executing, and neither the Debtors nor the Purchaser shall be required to execute or file releases, termination statements, assignments, consents, or other instruments in order to effectuate, consummate, and implement the provisions of this Order. However, the Debtors and the Purchaser, and each of their respective officers, employees, and agents are hereby authorized and empowered to take all actions and execute and deliver any and all documents and instruments

that the Debtors and the Purchaser deem necessary or appropriate to implement and effectuate the terms of the Agreement and this Order. Moreover, effective as of the Closing Date, the Purchaser, its successors and assigns, shall be designated and appointed, in the Debtors' name and stead, on behalf and for the benefit of the Purchasers, their successors and assigns, to demand and receive from any non-debtor third parties any and all of the Assets and to give receipts and releases for and in respect of the Assets, or any part thereof, and from time to time to institute and prosecute for the benefit of the Purchaser, its successors, and assigns, any and all proceedings at law, in equity or otherwise against any non-debtor party, which the Purchaser, its successors and assigns, may deem proper for the collection or reduction to possession of any of the Assets, and to do all acts and things with respect to the Assets which the Purchaser, its successors, and assigns, shall deem desirable.

19. The Debtors are authorized to cooperate with, and shall provide their reasonable best efforts in the manner set forth in the Agreement to support, the Purchaser in executing such applications and furnishing such documents as may be necessary for the Purchaser to obtain all Liquor License Approvals. All applicable state alcoholic beverage control, law enforcement, and other regulatory agencies are hereby prohibited from interrupting any of the Debtors' operations of the Business without first bringing the matter before this Court. Furthermore, the Debtors are authorized to continue operating the Business until each of the Liquor Licenses have been changed to the Purchaser's name, and may do so under all existing alcoholic beverage and other licenses of the Debtors (including, without limitation, all state alcoholic beverage licenses, state food service licenses, local occupational licenses, and any other licenses reasonably necessary or appropriate to operate the Business), and no governmental, law enforcement, or other regulatory authority or agency shall interrupt such operation until such time as each of the Liquor Licenses have been changed to the Purchaser's name.

20. This Order: (a) is and shall be effective as a determination that, on the Closing Date, all Interests against the Assets prior to such Closing Date have been unconditionally released, discharged, and terminated and that the conveyance of the Assets, free and clear of any and all Interests has been effected and vested in the Purchaser; and (b) is and shall be binding upon and govern the acts of all entities (including without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, registrars of patents, trademarks or other intellectual property, administrative agencies, governmental departments, secretaries of state, federal and local officials, and all other persons and entities that may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments or who may be required to report or insure any title or state of title in or to the Assets).

21. If any person or entity that has filed financing statements or other documents or agreements evidencing liens, claims, or encumbrances on or interests in the Assets shall not have delivered to the Debtors prior to the Closing Date, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all liens, claims, and encumbrances or other interests (including liens, claims, security interests, and encumbrances) that the person or entity with respect to the Assets, the Debtors or the Purchaser are hereby authorized to execute and file such statements, instruments, releases, and other documents on behalf of the person or entity with respect to the Assets and shall have no liability for any act pursuant thereto.

22. Except as otherwise expressly provided in the Agreement, the Purchaser shall have no obligation to pay wages, bonuses, severance pay, benefits (including, without limitation, contributions or payments on account of any under-funding with respect to any and all pension plans), or any other payment with respect to employees or former employees of the Debtors. Except as otherwise expressly provided in the Agreement, the Purchaser shall have no liability with respect to any collective bargaining agreement, employee pension plan, employee



welfare or retention, benefit, and/or incentive plan to which any of the Debtors is a party and relating to the Assets (including, without limitation, arising from or related to the rejection or other termination of any such agreement), and the Purchaser shall in no way be deemed a party to or assignee of any such agreement, and no employee of the Purchaser shall be deemed in any way covered by or a party to any such agreement, and except for the Assumed Liabilities and Permitted Liens, **all parties to any such agreement are hereby enjoined from asserting against the Purchaser any and all claims arising from or relating to such agreement.** All notices, if any, required to be given to the Debtors' employees pursuant to the Workers Adjustment and Relocation Adjustment Act, or any similar law, shall be the sole responsibility and obligation of the Debtors, and the Purchaser shall have no duties, responsibility, or liability therefor.

23. All entities that are in possession of some or all of the Assets on the Closing Date are hereby directed to surrender and transfer possession of the Assets to the Purchaser at such Closing Date.

24. Except for the Assumed Liabilities and Permitted Liens or as expressly permitted or otherwise specifically provided for in the Agreement or this Order, the Purchaser shall have no liability or responsibility for any liability or other obligation of the Debtors arising under or related to the Assets other than for the Assumed Liabilities and Permitted Liens. Without limiting the generality of the foregoing, and except as otherwise specifically provided herein and in the Agreement, the Purchaser shall not be liable for any claims against the Debtors or any of their predecessors or Affiliates, and the Purchaser shall have no successor or vicarious liabilities of any kind or character including but not limited to any theory of antitrust, environmental (to the fullest extent permitted by applicable law), successor or transferee liability, labor law, de facto merger, or substantial continuity, whether known or unknown as of the Closing Date, now existing or hereafter arising, whether fixed or contingent, with respect to the Debtors or any obligations of the Debtors arising prior to the Closing Date, including, but not

limited to, liabilities on account of any Taxes arising, accruing, incurred or payable under, out of, in connection with, or in any way relating to the ownership and operation of the Assets prior to the Closing Date. The Purchaser has given substantial consideration under the Agreement for the benefit of holders of Interests. The consideration given by the Purchaser shall constitute valid and valuable consideration for the releases of any potential claims of successor liability of the Purchaser, releases which this Court holds shall be deemed to have been given in favor of the Purchaser by all holders of Interests against the Debtors or their respective assets.

25. To the fullest extent permitted by applicable law, under no circumstances shall the Purchaser be deemed a successor of or to the Debtors for any Interest against or in the Assets of any kind or nature whatsoever. The transactions contemplated by the Agreement do not constitute a consolidation, merger, or de facto merger, the Purchaser is not an alter ego of the Debtors, and the Purchaser is not merely a continuation of the Debtors. Except for the Assumed Liabilities and the Permitted Liens, the sale, transfer, assignment, and delivery of the Assets shall not be subject to any Interests, and Interests of any kind or nature whatsoever shall remain with, and continue to be obligations of the Debtors. Except for the Assumed Liabilities and Permitted Liens, all persons holding Interests against or in the Debtors or the Assets of any kind or nature whatsoever (including but not limited to, the Debtors and/or their respective successors, including any trustees thereof, creditors, employees, unions, former employees and shareholders, and, to the fullest extent permitted by applicable law, administrative agencies, governmental units, secretaries of state, federal, state and local officials, maintaining any authority relating to any environmental, health and safety laws, and their respective successors or assigns) shall be, and hereby are, forever barred, estopped, and permanently enjoined from asserting, prosecuting, or otherwise pursuing such Interests of any kind or nature whatsoever against the Purchaser, its property, its successors and assigns, or the Assets, as an alleged successor or otherwise, with respect to any Interest of any kind or nature whatsoever such person or entity had, has, or may have against or in any of the Debtors, any of the Debtors' estates, their respective officers,

directors, shareholders, or the Assets. Following the Closing Date, no holder of an Interest in the Debtors shall interfere with the Purchaser's title to or use and enjoyment of the Assets based on or related to such Interest, or any actions that the Debtors may take in their bankruptcy cases to sell the Assets to the Purchaser.

26. Each and every federal, state, and local governmental agency or department is directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by this Order.

27. The Debtors and the Purchaser are each hereby authorized to consummate the Sale without the necessity of complying with any state or local bulk sale or transfer laws or other requirements, including, without limitation, including, without limitation, MD. CODE ANN. COM. LAW §§ 6-101 - 6-111 (West 2010), and any noticing or escrowing requirements under any such laws, such that no bulk sales or transfer laws or any similar laws or requirements (including any requirements to post any escrow amounts) of any state, local authority (including any liquor license authorities), or other jurisdiction shall apply in any way to the Sale or any of the other transactions contemplated by the Agreement.

28. This Court retains jurisdiction: (i) to enforce and implement the terms and provisions of the Agreement, all amendments thereto, any waivers and consents thereunder, and of each of the agreements executed in connection therewith; (ii) to compel delivery of the Assets to the Purchaser in accordance with, and subject to, the terms of the Agreement; (iii) to resolve any disputes, controversies, or claims arising out of or relating to the Agreement; and (iv) to interpret, implement, and enforce the provisions of this Order.

29. The terms and provisions of the Agreement, together with the terms and provisions of this Order, shall be binding in all respects upon the Debtors, their estates and creditors, the Purchaser, and their respective affiliates, successors and assigns, any affected third parties, and all persons asserting a claim against or interest in the Debtors' estates or the Assets to be sold to the Purchaser pursuant to the Agreement. The Agreement and the transactions

contemplated thereby, shall be specifically performable, enforceable against, binding upon and not subject to rejection by the Debtors or any Chapter 7 or Chapter 11 trustee of the Debtors and their estates or by the Purchaser.

30. The failure specifically to include any particular provisions of the Agreement in this Order shall not diminish or impair the efficiency of such provisions, it being the intent of the Court that the Agreement, all transactions contemplated thereby, and all documents required to effectuate the Agreement, are approved in their entirety and incorporated by reference in this Order.

31. The Agreement and any related agreements, documents, or other instruments may be modified, amended, or supplemented by the parties thereto in accordance with the terms thereof without further order of this Court, provided that any such modification, amendment, or supplement is not material.

32. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h) and 6006(d), this Order shall not be stayed for 14 days after the entry hereof and shall be effective immediately upon signature hereof. In the absence of any person or entity obtaining a stay pending appeal, the Debtors and the Purchaser are free to close under the Agreement at any time, subject to the terms of the Agreement.

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

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

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HONORABLE MARY F. WALRATH  
UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT C**

**EXHIBIT A**

**SCHEDULE OF CURE AMOUNTS**