

**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 Nos. 819, 850, 854, 859 & 900

**ORDER APPROVING SALE OF LIQUOR LICENSE  
NUMBER R-9207 FREE AND CLEAR OF ALL LIENS,  
CLAIMS, ENCUMBRANCES, ATTACHMENTS, AND OTHER INTERESTS**

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

<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.

orders, among other things, approving the Auction and Sale Procedures; scheduling the Auctions; authorizing the Sale(s) free and clear of all liens, claims, encumbrances, and other interests; authorizing the Debtors to consummate all transactions related to the above; and granting such other relief as is fair and equitable under the circumstances; 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 Debtors having conducted the Auctions pursuant to the terms and conditions of the order, dated June 22, 2011 (ECF No. 854), approving, among other things, the sale and auction procedures for the sale of certain of the Debtors' remaining liquor licenses; and Steven Schwenk (the "Buyer") having made the highest or best offer at the Auction; and the Court having found that good and sufficient cause exists for granting the Motion; and it appearing that the Sale of Liquor License Number R-9207 (the "Liquor License") pursuant to the agreement (the "Agreement") attached hereto as Exhibit 1 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 as it applies to the Sale 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, 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.

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Footnote continued from previous page.

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

2. The Debtors are authorized and empowered to sell Liquor License Number R-9207 in accordance with the Agreement attached hereto as Exhibit 1 and this Order. The Agreement is approved, and the Debtors are authorized to execute it.

3. The Buyer is deemed a good-faith purchaser of Liquor License Number R-9207 entitled to the protection of Bankruptcy Code § 363(m) with respect to the transactions contemplated by the 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 applicable state, county, town, or municipality control boards or agencies and to facilitate the sale and transfer of the Liquor License contemplated and authorized by this order, and the applicable state, county, town, or municipality control boards or agencies 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 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 (ECF No. 177)) relating to the Liquor

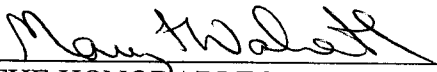
License, the net proceeds of the sale of the Liquor License shall be wire transferred to Ally as soon as practicable after the closing of the sale.

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 any other applicable rule.

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

Dated: July 19, 2011  
Wilmington, Delaware

  
\_\_\_\_\_  
THE HONORABLE MARY F. WALRATH  
UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT 1**

**Agreement**

**AGREEMENT FOR SALE OF LIQUOR LICENSE**

THIS AGREEMENT FOR SALE OF LIQUOR LICENSE ("Agreement") is made as of this 12<sup>th</sup> day of July, 2011, between Steven Schwenk, an adult individual, with a present mailing address of 26 Iroquois Lane, Chester Springs, Pennsylvania 19425 (hereinafter called "Purchaser"), and Charlie Brown's of Berwyn, LLC, a duly organized and operating Pennsylvania limited liability company, with a present mailing address of 1450 Route 22 West, Mountainside, New Jersey 07092 (hereinafter called "Seller") (Purchaser and Seller hereinafter collectively called the "Parties" and individually referred to as a "Party").

**BACKGROUND**

A. Purchaser desires to purchase on the terms and conditions contained herein Seller's liquor license, Pennsylvania Liquor Control Board ("PLCB") License No. R-9207 (the "License"), which Seller used in the operation of a business at 324 W. Swedesford Road, Devon, Pennsylvania 19333-0000.

~~B. Purchaser desires to use the License in connection with the operation of a~~ restaurant to be located at 325 Simpson Drive, Chester Springs, Pennsylvania (the "Premises").

C. 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 promises and covenants herein contained, it is agreed by and between the Parties, intending to be legally bound, as follows:

1. **Sale of License.** Subject to the approval of the Court, Seller agrees to sell and deliver the License, and Purchaser agrees to purchase the License from Seller at Closing (as defined in Paragraph 8 herein), free and clear of all liens, claims, and encumbrances.

2. **Purchase Price.** The Purchase Price to be paid by Purchaser to Seller hereunder shall be the sum of One Hundred Seventy Thousand Dollars (\$170,000.00) ("Purchase Price").

3. **Payment.** The Purchase Price shall be paid by Purchaser to Seller as follows:

(A) **Deposit** — Purchaser at the execution hereof will deposit with Wilmington Trust Company ("Escrow Agent") the sum of Seventeen Thousand Dollars (\$17,000.00) (the "Deposit")<sup>1</sup>, 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.

(B) **Balance of Purchase Price** — The balance of the Purchase Price shall be paid as follows:

From the Purchase Price shall be deducted the Deposit, which shall be paid to Seller at Closing.

The balance of the Purchase Price in the amount of One Hundred Fifty-Three Thousand Dollars (\$153,000.00) shall be paid to the Seller by the Purchaser at Closing in certified funds, bank check, or wire transfer. Wire transfers shall be sent to:

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

(C) **Taxes; Transfer Fees** — 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), PLCB application fees, and Purchaser's attorney fees associated with the transfer of the License. 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. **Representations and Warranties of Seller.** Seller represents and warrants to Purchaser the following:

<sup>1</sup> 10% of Purchase Price.

(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 currently in safekeeping with the PLCB, and is valid for the period through and including March 31, 2012; 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.

5. Representations and Warranties of Purchaser. 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 Pennsylvania Law;

(B) Eligibility as a Corporation. — That if a corporation, (i) it is in good standing in the Commonwealth of Pennsylvania, (ii) any applicable directors, officers or managers satisfy the above requirements, and (iii) any manager is a U.S. citizen, a resident of the Commonwealth of Pennsylvania, 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 Commonwealth of Pennsylvania, (ii) any applicable members satisfy the above requirements, and (iii) any manager is a U.S. citizen, a resident of the Commonwealth of Pennsylvania, 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.

6. Conditions Precedent to Parties' Obligations. The obligations of Seller and Purchaser under this Agreement are subject to the fulfillment, prior to or at Closing, of the following conditions:

(A) The representations and warranties of Seller and Purchaser contained herein shall be true and correct as of Closing.

(B) Seller and Purchaser shall have fully complied with any and all provisions of this Agreement.



(C) Pennsylvania Liquor Control Board Contingency —

This Agreement and Closing hereunder are contingent upon approval by the PLCB of the transfer of the License from Seller to Purchaser or Purchaser's nominee. Purchaser shall file the necessary applications for transfer of the License within five (5) business days following the date on which Purchaser obtains the consent(s) required hereunder and shall fulfill all terms and conditions for said application. Purchaser shall pay any required fees and costs in connection with the Application. Purchaser shall prosecute the Application for transfer diligently and in good faith. Purchaser shall copy Seller with all transmittals letters sent or received regarding the transfer and shall advise Seller of the date of all hearings. Seller shall assist Purchaser and comply with Purchaser's reasonable requests in Purchaser's efforts to complete the transfer of the License.

Closing shall take place within five (5) business days after the receipt of the approval of the transfer of the License to Purchaser by the PLCB, if said approval is received prior to the Closing date set forth in Paragraph 8 and prior to any necessary approvals of the Bankruptcy Court.

7. Failure to Satisfy the Conditions Precedent.

(A) Should the PLCB refuse to transfer the License to Purchaser for any reason (other than the failure of the municipality in which the Premises is located to consent to the transfer), or if the approval of the transfer is in any event not obtained within 120 days from the date of execution of this Agreement (unless such approval is not obtained due to the failure of the municipality in which the Premises is located to consent to the transfer), and the Seller desires to terminate this Agreement, which desire is communicated in writing to the Escrow Agent at such time, the Deposit in escrow shall be delivered to the Seller as liquidated damages.

(B) In the event that Purchaser should breach the Agreement by failing and/or refusing to close as required hereby, or failing to prosecute the Application diligently and in good faith providing all required information and documentation to PLCB, then Seller shall have the right to terminate the agreement and the Deposit shall be retained by Seller as liquidated damages.

(C) 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. Upon the return of the Deposit as aforesaid, this Agreement shall be null and void, and the Parties shall have no further liabilities to each other, and the Purchaser shall have no further remedy against Seller.

(D) In any and all events in which this Agreement fails to close, the 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 Seller.

8. **Closing.** Subject to the fulfillment of the conditions precedent set forth above, Closing shall be held within five (5) business days after PLCB approval of the transfer of the License, at such time and place agreed to by Seller and Purchaser. At the time of Closing, the Balance of the Purchase Price will be paid, all documents will be executed, and all closing documents shall be delivered.

9. **Notices.** All notices required to be given under any of the terms of this Agreement shall be given personally or by certified mail, return receipt requested, addressed as follows:

If to Seller: CHARLIE BROWN'S OF BERWYN, LLC  
450 Route 22 West  
Mountainside, New Jersey 07092  
Attn: Gary Lembo, CRO

with a 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: STEVEN SCHWENK  
26 Iroquois Lane  
Chester Springs, Pennsylvania 19425

with a copy to: FOX ROTHSCHILD LLP  
747 Constitution Drive, Suite 100  
P.O. Box 673  
Exton, Pennsylvania 19341  
Attn: Michael S. Harrington, Esq.

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

11. **Severability.** If any provision of this Agreement, or the application thereof to any party or circumstance, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provision to other parties or circumstances, shall not be affected thereby, and to this end the provisions of this Agreement are declared severable.

12. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties, and any modification, revision, or alteration thereof shall not be valid unless in writing signed by all Parties.

13. **Benefit.** This Agreement shall be binding upon and inure to the benefit and be enforceable against the Parties, their respective heirs, executors, administrators, successors, nominees, and assigns.

14. **Governing Law and Jurisdiction.** This Agreement shall be governed by and construed under the laws of the Commonwealth of Pennsylvania. The Court shall have sole jurisdiction to interpret and enforce the terms of this Agreement.

15. **Survival.** Notwithstanding any presumption to the contrary, all covenants, conditions, and representations contained in this Agreement, which, by their nature, impliedly or expressly, involve performance in any particular, after settlement, or which cannot be ascertained to have been fully performed until after Closing.

16. **Waiver.** 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. **Descriptive Headings.** The descriptive headings used herein are for convenience only and they are not intended to indicate all of the matters in the sections which follow them. Accordingly, they shall have no effect whatsoever in determining the rights or the obligations of the Parties.

18. **Counterparts.** 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 have hereunto set their hands and seal the  
day and year first above written.


**SELLER:**

CHARLIE/BROWN'S OF BERWYN, LLC

By: 

Gary Lembo- CRO

**PURCHASER:**

  
Steven Schwenk