

ENTERED

TAWANA C. MARSHALL, CLERK
THE DATE OF ENTRY IS
ON THE COURT'S DOCKET



The following constitutes the ruling of the court and has the force and effect therein described.

Barbara J. Houser

United States Bankruptcy Judge

Signed January 18, 2013

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

IN RE: § Chapter 11
CENTENNIAL BEVERAGE GROUP, LLC § Case No. 12-37901-bjh-11
Debtor. §

ORDER GRANTING, IN PART, EMERGENCY MOYION TO AUTHORIZE AND APPROVE (I) THE SALE OF THIRTEEN STORE LOCATIONS AND RELATED ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS; AND (II) THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS

Upon consideration of the *Emergency Motion to Authorize and Approve (i) the Sale of Thirteen Store Locations and Related Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests; and (ii) the Assumption and/or Assignment of Certain Executory*

Contracts (the “**Motion**”)¹ filed by Centennial Beverage Group, LLC (“**Centennial**” or the “**Debtor**”), the Court finds that with respect to the relief that can be granted: (i) it has jurisdiction to grant that relief pursuant to 28 U.S.C. § 1334(b); (ii) this is a core proceeding pursuant to 28 U.S.C. § 157(b) for which it is proper for this Court to enter final orders; (iii) granting that relief is in the best interest of the Debtor and its estate, creditors, and other parties-in-interest and is necessary to avoid immediate and irreparable harm to the Debtor’s estate; (iv) proper and adequate notice of the Motion and the hearing thereon has been given and no other or further notice is necessary; (v) good and sufficient cause exists for the granting of that relief after having given due deliberation upon the Motion and all of the proceedings had before the Court in connection therewith. Therefore, it is **ORDERED, ADJUDGED, AND DECREED:**

1. The Motion is GRANTED to the extent set forth herein.
2. No bankruptcy impediment exists to the Debtor exercising its rights as an interest holder to direct the sale contemplated by the Cheers PSA, subject to requirements of applicable non-bankruptcy law.
3. With respect to the property of the Debtor’s estate to be transferred pursuant to the Cheers PSA (the “**Debtor Property**”), pursuant to § 363(b) and (f) of the Bankruptcy Code and the Cheers PSA, the Debtor is authorized and empowered to (i) take any and all actions necessary or appropriate to effectuate, consummate, or close the sale contemplated by the Cheers PSA, including the assumption and assignment of the Assumed Contracts to Cheers provided thereunder.
4. The transfer of the Debtor Property, upon closing, shall be free and clear of all liens, claims, encumbrances, and interests (collectively, “**Interests**”) arising or relating to the

¹ Capitalized terms not otherwise defined herein shall have the meaning assigned to them in the Motion.

period prior to the closing of the Asset Sale pursuant to § 363(f). Such Interests shall attach to the net cash proceeds derived from the Asset Sale with the same validity, force, and effect that such Interests had prior to closing of the Asset Sale, subject to the rights and defenses – if any – of the Debtor with respect thereto. The Court makes no findings herein with respect to § 363(f) as to the property of the non-debtor affiliate to be transferred pursuant to the Cheers PSA (the “*Non-Debtor Property*”).

5. Notwithstanding anything to the contrary herein, all outstanding ad valorem property taxes, sales taxes, or personal property taxes owed in connection with the Debtor Property for years prior to and including 2012, including any penalties or interest thereon, are to be paid in full by the Debtor within three business days of the closing of the Asset Sale. The liens of the taxing authorities for 2012 and prior tax years shall attach to the proceeds of the sale of the Debtor Property with the same validity and priority as such liens attached to the Debtor Property, until such time as these taxes are paid in full. All claims against the Debtor with respect to taxes owed in connection with the Debtor Property, including administrative claims under § 503 of the Bankruptcy Code and claims against “Responsible Parties,” as defined under Section 32.07 of the Texas Tax Code, are hereby preserved if these claims of the taxing authorities against the Debtor are not paid in full. The ad valorem tax liens for the 2013 tax year as to the Debtor Property are hereby assumed by Cheers and expressly retained until the payment by Cheers or any successor-in-interest thereof of the 2013 ad valorem taxes, and any penalties or interest which may ultimately accrue to those 2013 taxes, in the ordinary course of business.

6. The consideration provided by Cheers under the Cheers PSA is fair and reasonable.

7. With respect to the Debtor Property, the Debtor has undertaken the proposed transaction in good faith (as that term is used in § 363(m) of the Bankruptcy Code), and Cheers is and shall continue to be in good faith (as that term is used in § 363(m) of the Bankruptcy Code) by proceeding to close the Asset Sale. Accordingly, the reversal or modification on appeal of the authorization to consummate the sale of the Debtor Property approved hereby shall not affect the validity and enforceability of such sale, unless such authorization is duly stayed pending such appeal. Cheers is a good faith purchaser of the Debtor Property and entitled to all of the protections afforded by § 363(m) of the Bankruptcy Code with respect to such assets. As the Non-Debtor Property is not property of the Debtor's bankruptcy estate, the Court makes no findings herein with respect to § 363(m) as to the Non-Debtor Property.

8. Pursuant to § 365(b)(1) of the Bankruptcy Code, Cheers has identified the executory contracts and unexpired leases to be assumed by the Debtor and assigned to Cheers (the "*Assumed Contracts*"), as set forth in the Motion, and has demonstrated that (i) no defaults exist under the Assumed Contracts or that the Debtor has provided adequate assurance of the prompt cure of such defaults, and (ii) adequate assurance has been provided of Cheers' future performance under the Assumed Contracts. The Debtor's assumption and assignment to Cheers of the Assumed Contracts is approved, and shall be effective upon closing of the Asset Sale.

9. From and after the entry of this Order, Cheers shall be responsible for payment of rent with respect to the Leases (as defined in the Cheers PSA), subject to and in accord with the terms of the Cheers PSA. To the extent Cheers is issued a TABC license for any Leased Property (as defined in the Cheers PSA) before the end of a month for which Cheers has paid rent on such Leased Property in accordance with this Order and the Cheers PSA, the payment out

of the Escrow Deposit to Cheers on account of such rent payment shall be prorated for the term of the month up to the date of issuance of the TABC license.

10. The Debtor shall pay the following cure amounts (the “*Cure Amounts*”) within three business days of the closing of the Asset Sale:

<u>Party</u>	<u>Amount</u>	<u>Location</u>
Palm Beach Holdings (2202) LLC and 4663 Okeechobee Boulevard LLC	\$2,500.00	M13 – Trophy Club

The Debtor shall further pay, within ten days of receipt of a statement showing the Debtor’s allocated share of total Common Area Maintenance (as defined in the Trophy Club lease) for the 2012 calendar year, any amounts due to Palm Beach Holdings (2202) LLC and 4663 Okeechobee Boulevard LLC in the event that the amount paid by Debtor during the 2012 calendar year is less than the Debtor’s actual share of the Common Area Maintenance. Further, any overpayment by Debtor during the 2012 calendar year for such Common Area Maintenance shall be promptly paid to the Debtor by Palm Beach Holdings (2202) LLC and 4663 Okeechobee Boulevard LLC. The Cure Amounts are the sole amounts necessary under §§ 365(b)(1)(A) and (B) and 365(f)(2)(A) to cure all defaults and pay all actual pecuniary losses under the Assumed Contracts.

11. Notwithstanding anything herein to the contrary, the assumption and assignment of the locations leased from National Retail Properties, LP shall not be effective, and the Debtor, JWV Associates, Ltd., and Cheers shall have no obligations with respect thereto, until approval by this Court by separate order of the proposed settlement between the Debtor, NRP, and Cheers resolving the objection filed by NRP to the Motion.

12. The stay provision of Federal Rule of Bankruptcy Procedure 6004(h) is hereby waived as to the sale of the Debtor Property, and notwithstanding Federal Rules of Bankruptcy

Procedure 7062 and 6004, to the extent applicable, the Debtor and Cheers may consummate the sale of the Debtor Property at any time after entry of the Order.

13. This Court shall retain jurisdiction to hear and consider all disputes arising out of the interpretation or implementation of this Order.

END OF ORDER

Submitted By:

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**PROPOSED ATTORNEYS FOR THE
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