UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

IN RE:

JOHNNY CHIMPO II, LLC

CASE NO.: 8:17-bk-007764-RCT
CHAPTER 11

Debtor.
_________________________________/

EXPEDITED MOTION FOR AUTHORITY TO SELL PROPERTY OF THE ESTATE FREE AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES PURSUANT TO 11 U.S.C. §§363, 1123 AND 1129

COMES NOW the Debtor, Johnny Chimpo II, LLC ("Chimpo" or "Debtor"), by and through undersigned counsel, and moves this Honorable Court for authority to sell a Florida Alcoholic Beverage License No. 39-09561(4-COP), issued in Hillsborough County, Florida, (the "License" or "Liquor License") free and clear of all liens, claims and encumbrances (the "Motion") pursuant to 11 U.S.C. §§105, 363, 1123 and 1129 and Rules 2002, 4001, 6004, 6006 and 9019 of the Federal Rules of Bankruptcy Procedure (the "FRBP"). In support of this Motion, the Debtor states as follows:

1. The Debtor filed for protection under Chapter 11 of the United States Bankruptcy Code (the "Code") on August 31, 2017 (the "Petition Date").

2. No Trustee having been appointed or qualified, Debtor is a Debtor-In-Possession.

3. The Debtor is a Florida limited liability company doing business as Bad Willies with its principal place of business in Tampa, Florida and is currently owned by Lucas Good and Keli Sjoberg. The Debtor formerly owned and operated a bar but has ceased operations and filed a Chapter 11 Liquidation Plan (Doc. No. 41).

4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409. The subject matter of this

Motion is a core proceeding pursuant to 28 U.S.C. § 157(b). The statutory predicates for the relief requested are 11 U.S.C. §§ 105, 363, 1107, 1108, 1123, 1129 and 1146 and Rules 2002, 4001, 6004, 6006 and 9019, Fed.R.Bankr.P.

5. The Debtor purchased the Liquor License entered into a certain security agreement with Tiller Law Group ("Tiller") securing the License, which was properly perfected. The Debtor scheduled the claim of Tiller in the amount of $118,000 and made a payment on the security agreement during the pendency of the case. Tiller filed its proof of claim on October 25, 2017 in the amount of $106,000. Tiller filed its Motion for relief from stay (Doc. No. 54) on January 21, 2018 and asserted a total amount due of $129,948.26. With negotiations, Debtor and Tiller have come to an agreement that after the sale of the License Tiller will receive $115,000.00. The remaining amount of 15,000.00 after applicable closing costs, will be distributed through the Liquidation Plan.

<u>Relief Requested and Grounds for Relief</u>

6. As of the Petition Date, the Debtor held the License. Debtor has received an offer from third party 3 Wize Men, Inc. to purchase the License for $130,000.00, with a $5,000.00 Escrow Deposit due upon the Effective date to be credited to the Purchase Price. The proposed Liquor License Asset Purchase Agreement is attached hereto as Exhibit "A".

7. Debtor believes the sale is in the best interest of Debtor's estate and the proposed sale price of $130,000.00 is reasonable and a good price for the License.

8. By this Motion, the Debtor requests that this Court, pursuant to Sections 363(b), (f) and (m) of the Bankruptcy Code and Rule 6004 of the Federal Rules of Bankruptcy Procedure, approve the sale of the License free and clear of all encumbrances.

9. The Bankruptcy Court has "exclusive jurisdiction of all the property, wherever located, of the debtor as of the commencement of the case, and of property of the estate." 28 U.S.C.

§ 1334(e). The broad jurisdictional grant in § 1334(e) is implemented and supplemented in part by 11 U.S.C. § 105, which gives the Court the power to "issue any order, process or judgment that is necessary or appropriate to carry out the provisions of the Bankruptcy Code."

10. 11 U.S.C. 363(b)(1) provides that the "trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." Courts generally defer to the sound business judgment of a debtor in deciding whether or not to allow the sale of property outside the ordinary course of business. *See e.g., In re Continental Airlines, Inc.*, 780 F.2d 1223 (5th Cir. 1986); *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2nd Cir. 1983).

11. In considering whether a debtor is justified in selling assets outside the ordinary course of business, courts consider four factors: (1) whether there is a sound business reason justifying the sale; (2) whether adequate and reasonable notice of the sale was provided to interested parties; (3) whether the sale has been negotiated in good faith; and (4) whether the purchase price is fair and reasonable. *In re Taylor*, 198 B.R. 142, 156-57 (Bankr. D.S.C. 1996).

12. The Debtor, through exercise of its business judgment, has determined that the sale of the License to 3 Wize Men, Inc. for the proposed sale price of $130,000.00 is in the best interests of the Debtor, its creditors, and the estate.

13. 11 U.S.C. §363(f) authorizes the sale of the License free and clear of encumbrances if:

> (a) Applicable non-bankruptcy law permits a sale of such property free and clear of such interests;
> (b) Such entity consents;
> (c) Such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
> (d) Such interest is in bona fide dispute; or
> (e) Such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

14. It is not believed that any entity has any perfected security interest in the License other than Tiller. However, Debtor will be providing notice of the proposed sale to all creditors and parties-in-interest. Thus, the sale will be appropriately free and clear of encumbrances, consistent with §363(f) as applicable non bankruptcy law would permit a sale of the License free and clear of any imperfect security or lien interest.

15. As the sale is in contemplation, furtherance of and subject to the confirmation of a plan of reorganization, pursuant to 11 U.S.C. § 1146(a), the Debtor requests that the making or delivery of an instrument or instruments of transfer, any or all of which include the vesting, transfer and/or the sale of any real or personal property or any direct or indirect interest therein, including, without limitation, all documents related to the proposed transfer, not to be taxed under any law imposing any recording, registration, transfer or stamp tax or fee, or any similar tax or fee, including any applicable transfer taxes or fees, sales taxes, or mortgage recording taxes or fees. The Debtor further requests that all federal, state and local governmental agencies or departments be directed to accept and abide by the terms of the transfer tax exemption as set forth herein in connection with any transfer of the properties, including accepting any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Purchase Agreement.

16. The final Sale Order shall be conditioned upon, subject to, incorporate and preserve all the rights and protections resulting from the entry of an order confirming the Plan of Reorganization (the "Confirmation Order") and the Sale shall be deemed a sale "under a plan confirmed under section 1129 of [the Bankruptcy Code]". 11 U.S.C. § 1146(a).

17. The License is being sold pursuant to arm's length, good faith negotiations. Therefore, the Debtor requests the Sale Order contain findings of fact and conclusions of law that the purchasers have acted in good faith within the meaning of § 363(m).

18. A copy of this Motion is being served on the Office of the United States Trustee. A copy of this Motion is being served on all creditors and parties in interest of the Debtor. Accordingly, the Debtor requests that the Court enter an order finding that such notice of this Motion is adequate and sufficient and complies with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure and the Local Rules of this Court.

19. At the hearing on this motion, the Debtor will request that the Court enter an order waiving the 14-day stays set forth in Rules 6004(g) and 6006(d) of the Federal Rules of Bankruptcy Procedure and providing that the orders granting this Motion be immediately enforceable and that the transaction may occur immediately.

WHEREFORE, the Debtor, Johnny Chimpo II, LLC, respectfully requests this Honorable Court to enter an order (a) granting the instant Motion and authorizing the free and clear sale of the License (Florida Alcoholic Beverage License No. 39-09561 (4-COP)), contemplated herein, (b) scheduling a preliminary hearing on the Motion at the earliest possible time, and (c) granting such other and further relief as the Court may deem appropriate.

/s/ Jake C. Blanchard
BLANCHARD LAW, P.A.
FBN: 055438
Jake C. Blanchard, Esquire
Attorney for Debtor
1501 S. Belcher Rd. Suite 2B
Largo, FL 33771
Telephone: (727) 531-7068
Facsimile: (727) 535-2086

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of March, 2018, a true and correct copy of the foregoing was filed electronically with the Court and served via CM/ECF to all parties receiving electronic service, including the U.S. Trustee, and via U.S. Mail to the Debtor, to 3 Wize Men, Inc., 6716 Central Ave, St. Petersburg, Fl 33707, Counsel for 3 Wize Men, Mike Nelson, Nelson, Bisonti & McClain, 1005 North Marion Street, Tampa, FL 33602 and to all parties on the attached mailing matrix who do not receive CM/ECF notice.

BLANCHARD LAW, P.A.

/s/ Jake C. Blanchard
Jake C. Blanchard, Esquire

LIQUOR LICENSE ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT, (the "Agreement") is made and entered into this ___ day of March, 2018, between **Johnny Chimp II, LLC.,** whose address is 12950 Racetrack Rd. #111 Tampa, FL 33626, (hereinafter referred to as "Seller"), and **3 Wize Men, Inc**., a Florida corporation or assigns, whose address is 1005 N Marion St. Tampa, FL. 33602, (hereinafter referred to as "Buyer").

WITNESSETH:

WHEREAS, Seller is the owner of that certain Florida Alcoholic Beverage License No. 39-09561, issued in Hillsborough County, Florida, and

WHEREAS, Buyer desires to purchase said license and Seller is desirous of selling same to Buyer.

NOW, THEREFORE, in consideration of the following covenants, conditions and understandings, the parties hereto agree as follows:

1. **PURCHASE AND SALE OF LICENSE**. Seller shall sell, assign, transfer and deliver to Buyer and Buyer shall purchase from Seller that certain Florida Alcoholic Beverage License No. 39-09561 (4-COP) (the "License").

2. **REPRESENTATIONS AND WARRANTIES OF SELLER**. Seller hereby represents and warrants to Buyer, as of the date hereof, and as of the closing, as follows:

(a) The License is in good standing and can be used in Hillsborough County, Florida.

(b) The License authorizes and permits the retail sale of packaged liquors, wines and beers, on and off premises, and the consumption of same on the duly licensed premises.

(c) There are no revocations or suspensions against the License, nor has Seller committed any acts which will or could cause revocation or suspension of the License.

(d) The License is capable of being transferred legally to a qualified transferee.

(e) Seller will commit no acts that would be grounds for revocation or suspension of the License pending Closing (as hereinafter defined).

(f) The License is free and clear of all liens and encumbrances, or that any liens or encumbrances will be cleared at the time of Closing.

(g) The License is not a lottery license under Section 561.19 of the Florida Statutes.

(h) Seller will comply with all reporting requirements for the transfer including reporting the gross annual sales as required pursuant to Section 561.32 of the Florida Statutes.

3. **EFFECTIVE DATE**. For purposes of this Agreement, the Effective Date shall mean the Date when the LAST party has signed this Agreement. If this Agreement is not executed by both parties by March 12, 2017, this Agreement shall become null and void and the deposit shall be refunded to the Buyer.

4. **PURCHASE PRICE**. As consideration for the sale and transfer of the License, the purchase price to be paid by the Buyer to the Seller for the License shall be **One Hundred Thirty Thousand and No/100 ($130,000.00) Dollars**, and shall be payable as follows:

(a) By the Buyer's delivery of a wire transfer to payable to the order of Escrow Agent in the amount of **Five Thousand and No/100 ($5,000.00)** Dollars as the Escrow Deposit;

(b) Balance of **One Hundred and Twenty-Five Thousand ($125,000.00)** in available funds at Closing.

(c) **ESCROW DEPOSIT**. Upon the Effective Date, the Buyer shall remit a wire transfer in the amount of **Five Thousand and No/100 ($5,000.00) Dollars** (the "Escrow Deposit") to G. Michael Nelson, Esq. ("Escrow Agent"). Said Escrow Deposit shall be credited to the Purchase Price. Should this transaction fail to close due to any act or omission of Buyer, including the withdrawal of application, by Buyer without cause, said Escrow Deposit shall be forfeited by Buyer as liquidated damages, which the parties agree have been determined to be reasonable and fair in light of time and expense incurred by Seller, and paid by Escrow Agent to Seller as full settlement of any claims or demand by Seller.

In any dispute regarding payment of the Escrow Deposit due to failure to close, or in any dispute concerning the terms of this Agreement, Escrow Agent shall be entitled to deposit said funds in the registry of the court where the license is located, unless otherwise mutually agreed by Seller and Buyer. Any suit between Buyer and Seller where Escrow Agent is made a party because of acting as Escrow Agent hereunder, or in any suit wherein Escrow Agent interpleads the subject matter of the Escrow, Escrow Agent shall recover reasonable attorney's fees (even if he represents himself either as interpleader or party to the action) and costs incurred with the fees and costs to be charged and assessed as court costs in favor of the prevailing party. Parties agree that Escrow Agent shall not be liable to any party or person for misdelivery to Buyer or Seller of items subject to this Escrow, unless such misdelivery is due to willful breach of contract or the negligent, intentional or reckless acts or omissions of the Escrow Agent. In any litigation arising out of this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and costs.

Any notices or communications to Escrow Agent shall be sufficiently given if sent by United States Registered or Certified Mail, postage prepaid, to G. Michael Nelson, Esq., 1005 N. Marion St. Tampa, FL 33602.

5. **CLOSING.** The Closing contemplated hereunder shall take place on March 23, 2018 at the offices of G. Michael Nelson, Esq. located at 1005 N. Marion St. Tampa, Florida.

6. **DOCUMENTS TO BE DELIVERED BY SELLER**. At or prior to the Closing, the Seller agrees to do the following:

(a) Execute a Bill of Sale transferring the License free and clear of all encumbrances and liens and acknowledging that all taxes have been paid.

(b) Execute the necessary transfer application, which shall be held by the Closing Agent and shall be released to the Buyer following Closing;

(c) Provide Sales Tax information.

7. **LICENSE TRANSFER FEE.** The Seller shall be responsible for any and all transfer fees due to the State of Florida as a result of the transfer of the License and may a closing be require to place in escrow sufficient funds to cover said transfer fee.

8. **ANNUAL LICENSE FEE**. The annual license fee for the License in the amount of $1,820.00 as required for the period of time from October 1, 2017 to September 30, 2018 shall be prorated between the parties at closing.

9. **BROKERAGE COMMISSION**. The parties warrant that no broker has been involved in this transaction and shall indemnify and hold each other harmless regarding any claims for brokerage fees.

10. **CLOSING COSTS**. Seller shall pay all closing costs relating to this transfer other than Buyer's attorney's fees which shall be paid by the Buyer.

11. **BUYER'S QUALIFICATIONS**. Buyer knows of no basis by which it would not be

qualified for approval as an applicant for the License to be sold herein.

12. **COOPERATION**. Both parties agree to cooperate with each other and all parties, including the Division of Alcoholic Beverages and Tobacco, with respect to transferring the License. In addition, both parties agree to execute nay other documents, including application, forms and bill of sale, necessary to accomplish the transfer.

13. **TIME OF ESSENCE**. The precise date and time are of the essence of this Agreement. Notwithstanding, any excuse, delay, or act of God or other reason out of control of the party whose payment is required shall operate to defer, reduce or waive any such obligation.

14. **AMENDMENT**. This Agreement may be amended only in writing executed by all parties hereto.

15. **COSTS OF ENFORCEMENT.** In any action or dispute, at law or in equity, that may arise under or otherwise relate to this Agreement, the prevailing party shall recover his or its attorney's fees, costs and expenses from the non-prevailing party.

16. **ENTIRE AGREEMENT**. This Agreement sets forth the entire understanding between the parties hereto and supersedes all prior contracts, agreements, communications, discussions, representations, and warranties, whether oral or written, among the parties.

17. **COUNTERPARTS.** The Parties may execute this Agreement in counterparts. Each executed counterpart shall be deemed to be an original, and all of them, together, shall constitute one and the same Agreement.

18. **GOVERNING LAW.** The validity, construction, interpretation and enforceability of this Agreement are governed by the laws of the State of Florida.

19. **NOTICES**. Any notice, request or other communication required or permitted hereunder shall be in writing and shall be deemed to have been duly given if sent by certified mail, return receipt requested, postage prepaid, to the parties set forth at the beginning of this Agreement. Any party, by written notice to the other party, may change the address of the persons to whom notices shall be directed.

20. **SEVERABILITY**. Each section and subsection of this Agreement constitutes a separate and distinct provision hereof. In the event that any provision of this Agreement shall be determined to be unlawful, such provision shall be deemed limited in scope and effect to the minimum extent necessary to

render the same valid and enforceable, and, if such a limiting construction is not possible, such provision shall be severed from this Agreement, but every other provision of this Agreement shall remain in full force and effect.

21. **BINDING EFFECT**. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors-in-interest, heirs, successors and assigns. All Parties bound by this Agreement shall take any and all actions necessary or appropriate to effectuate the purposes and provisions hereof.

22. **SURVIVAL OF REPRESENTATIONS AND WARRANTIES**. The representations and warranties made in this Agreement by the Seller shall survive the Closing and the execution of any documents incident to said Closing.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year first above written.

SELLER

Johnny Chimpo II, LLC

______________________ ______________________
By: **Lucas Good, Manager**

____

BUYER

3 Wize Men, Inc.

By: ______________________ 03/09/18
William Hepsher, President

____

____

Label Matrix for local noticing
113A-8
Case 8:17-bk-07764-RCT
Middle District of Florida
Tampa
Wed Mar 14 18:25:37 EDT 2018

Roberta A. Colton
Tampa
, FL

Dept of Revenue, State of Florida
Gordon L. Kiester, Esq
P O Box 2299
Mango, FL 33550-2299

Fairway - Main Street, LLC
C/O Iurillo Law Group
5628 Central Avenue
St. Petersburg, FL 33707-1718

Johnny Chimpo II, LLC
2202 N Westshore Blvd
Suite 200
Tampa, FL 33607-5749

Natasha Lin
c/o Mark Robens, Esq.
Stichter, Riedel, Blain & Postler, P.A.
110 E. Madison Street
Suite 200
Tampa, FL 33602-4718

ADT Security
701 US Hwy 301 South
Suite 301
Tampa, FL 33619-4349

ADT Security Services, Inc
3190 South Vaughn Way
Aurora, CO 80014-3512

Bennet and Aiello
The Ingraham Building
Eighth floor
25 Southeast Second Ave
Miami, FL 33131-1506

Cintas
6800 Cintas Blvd
Cincinnati, OH 45262

Department of Revenue
PO Box 6668
Tallahassee FL 32314-6668

Eric Ludin, Esq.
5235 16th Street North
Saint Petersburg, FL 33703-2611

Fairway - Main Street, LLC
c/o Fairway Management Group, LLC
728 Shades Creek Parkway, Suite 200
Birmingham, AL 35209-4453

Fairway - Main Street, LLC
c/o Iurillo Law Group, P.A.
5628 Central Ave.
St. Petersburg, FL 33707-1718

Fairway Main Street, LLC
c/o Fairway Management Group
4524 Southlake Parkway
Suite 2
Birmingham, AL 35244-3271

Florida Dept. of Revenue
5050 W. Tennessee Street
Tallahassee, FL 32399-0100

Internal Revenue Service
P.O. Box 7346
Philadelphia, PA 19101-7346

Lucas Good
2202 N. Westshore Blvd.
Suite 200
Tampa, FL 33607-5749

Natasha Lin
c/o William Collins, Esq
503 East Jackson Street
Suite 332
Tampa, FL 33602-4904

S&W Refigeration, LLC
11447 Challenger Ave.
Odessa, FL 33556-3446

Tampa Service Center
6302 E. Dr. Martin Luther
King Jr. Blvd ste 100
Tampa, FL 33619

The Tiller Law Group
15310 Amberly Drive
Suite 180
Tampa, FL 33647-1640

Wendy C. Tiller
Richard Weinstein
250 S. Central Blvd.
Suite 101
Jupiter, FL 33458-8812

Gordon L Kiester +
Florida Department of Revenue
P O Box 2299
Mango, FL 33550-2299

United States Trustee - TPA +
Timberlake Annex, Suite 1200
501 E Polk Street
Tampa, FL 33602-3949

Camille J Iurillo +
Iurillow Law Group, P.A.
5628 Central Avenue
St. Petersburg, FL 33707-1718

Nicole Peair +
Timberlake Annex
501 E Polk Street, Suite 1200
Tampa, FL 33602-3945

Jake C Blanchard +
Blanchard Law, PA
1501 S. Belcher Rd. Unit 2B
Largo, FL 33771-4505

Mark F Robens +
Stichter, Riedel, Blain & Postler, PA
110 E. Madison Street
Tampa, FL 33602-4799

Richard S Weinstein +
Richard S. Weinstein, P.A.
250 South Central Boulevard, Suite 101
Jupiter, FL 33458-8812

Note: Entries with a '+' at the end of the name have an email address on file in CMECF

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u)Wendy C. Tiller

(d)Natasha Lin
c/o Mark Robens, Esq.
Stichter Riedel Blain & Postler, P.A.
110 E. Madison Street, Suite 200
Tampa, FL 33602-4718

(d)Natasha Lin
c/o Mark Robens, Esq.
Stichter, Riedel, Blain & Postler, P.A.
110 E. Madison Street, Suite 200
Tampa, FL 33602-4718

End of Label Matrix

Mailable recipients	30
Bypassed recipients	3
Total	33